

**COSO GEOTHERMAL PROJECTS**

**POWER SALES AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**THE CITY OF RIVERSIDE**

**Dated as of September 17, 2020**

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>1. PARTIES .....</b>	<b>1</b>
<b>2. RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS .....</b>	<b>1</b>
<b>3. AGREEMENT.....</b>	<b>2</b>
<b>4. CERTAIN DEFINITIONS.....</b>	<b>2</b>
4.1 Total Power Costs.....	3
4.2 Monthly Costs.....	4
<b>5. PURCHASE AND SALE OF FACILITY OUTPUT AND THE OBLIGATIONS OF SCPPA AND THE PURCHASER .....</b>	<b>4</b>
5.1 Purchase and Sale of Participant Facility Output Share .....	4
5.2 Facility Output and Deliverables .....	4
5.3 Project Manager.....	5
5.4 Adoption of Annual Budget .....	5
5.5 Reports.....	6
5.6 Records and Accounts .....	6
5.7 Provide Information.....	6
5.8 Consultants and Advisors Available.....	6
5.9 Liquidated Damages .....	6
<b>6. COORDINATING COMMITTEE.....</b>	<b>6</b>
6.1 Establishment and Authorization of the Coordinating Committee .....	6
6.2 Coordinating Committee Responsibilities.....	8
6.3 Management Decisions and the Role of Board of Directors .....	11
6.4 Periodic Audits .....	12
6.5 Additional Committees.....	12
6.6 Costs of Consultants .....	12
6.7 SCPPA Participant Representative Expenses.....	12
<b>7. CHARGES AND BILLINGS .....</b>	<b>12</b>
7.1 Monthly Costs.....	12
7.2 Billing Statement .....	13
7.3 Adoption of Alternative Billing Statement Procedures.....	13
7.4 Disputed Monthly Billing Statement.....	13
7.5 Reconciliation of Monthly Costs.....	14
7.6 Other or Additional Cost Reconciliation Mechanisms.....	14
7.7 Prepayment of Monthly Costs .....	14
<b>8. UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION .....</b>	<b>14</b>
8.1 Unconditional Payment Obligation .....	15
8.2 Source of Payments .....	15
8.3 Rate Covenant.....	15
8.4 Authorizations .....	15
8.5 Conflicts.....	15
8.6 Litigation .....	15

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>9. OTHER TERMS AND SERVICES .....</b>	<b>16</b>
9.1 Delivery Procedures .....	16
9.2 Other Services and Transmission From Point of Delivery .....	16
9.3 Energy Services .....	16
9.4 Transfer of Environmental Attributes to Purchaser .....	16
<b>10. PROJECT SPECIFIC MATTERS AND PURCHASER RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS .....</b>	<b>16</b>
10.1 Rights and Obligations under the Project Agreements .....	16
10.2 Revision of Appendix B .....	17
<b>11. NONPERFORMANCE AND PAYMENT DEFAULT .....</b>	<b>17</b>
11.1 Nonperformance by Purchaser .....	17
11.2 Notice of Payment Default .....	17
11.3 Cured Payment Default .....	18
11.4 Failure to Cure Payment Default .....	18
11.5 Treatment of the Defaulting Purchaser's Project Rights and Obligations upon its Payment Default .....	18
11.6 Elimination or Reduction of Payment Obligations.....	19
11.7 Use of Reserve Funds .....	20
11.8 Step-Up Invoices .....	20
11.9 Application of Moneys Received from Step-Up Invoices Relating to the Project .....	20
11.10 Application of Moneys Received from Default Invoices .....	21
11.11 Application of Moneys Received from Compliance Payments.....	21
11.12 Application of Moneys Received from Sale of Facility Output .....	21
<b>12. CHARACTER, CONTINUITY OF SERVICE.....</b>	<b>21</b>
12.1 Outages, Interruptions and Curtailment of Energy Deliveries .....	21
12.2 Uncontrollable Forces.....	22
<b>13. LIABILITY .....</b>	<b>22</b>
13.1 Participants' Obligations Several .....	22
13.2 No Liability of SCPPA, Directors, Officers, Etc.....	22
13.3 Extent of Exculpation; Enforcement of Rights.....	22
13.4 Indemnification for Claims of Retail Customers.....	23
13.5 Determination or Enforcement of Rights .....	23
13.6 No Relief From Insurer's Obligations .....	23
13.7 SCPPA Directors, Officers, Employees, Agents Not Individually Liable; No General Liability of SCPPA .....	23
<b>14. RESTRICTIONS ON DISPOSITION .....</b>	<b>23</b>
14.1 Assignment .....	23
14.2 Restrictions on Elimination of Payment Obligations .....	23
14.3 Restrictions on Disposition of Purchaser's Entire System .....	24
14.4 Successors and Assigns .....	24

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>15. EFFECTIVE DATE, TERM AND EXPIRATION.....</b>	<b>24</b>
15.1 Effective Date; Execution in Counterparts; Electronic Signatures and Document Transmission .....	24
15.2 Termination Conditions.....	24
15.3 Expiration .....	25
15.4 Termination of Agreement before Expiration Date.....	25
15.5 Final Distribution of Reserve Fund .....	25
<b>16. SEVERABILITY.....</b>	<b>25</b>
<b>17. REPRESENTATION AND GOVERNING LAW .....</b>	<b>25</b>
<b>18. ARBITRATION AND ATTORNEYS' FEES .....</b>	<b>26</b>
<b>19. CONDITIONS TO TERMINATION OR AMENDMENT.....</b>	<b>26</b>
<b>20. NOTICES.....</b>	<b>26</b>
<b>21. AMENDMENTS .....</b>	<b>26</b>

**APPENDICES**

A–	DEFINITIONS .....	A-1
B–	SCHEDULE OF PARTICIPANTS FACILITY OUTPUT SHARES, PARTICIPANT FACILITY OUTPUT COST SHARES .....	B-1
C–	POWER PURCHASE AGREEMENT .....	C-1

## COSO GEOTHERMAL PROJECTS

### POWER SALES AGREEMENT

1. **PARTIES.** This Coso Geothermal Projects Power Sales Agreement (this “Agreement”) is dated for convenience as of the 17th day of September, 2020, 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 (“SCPPA”), and the CITY OF RIVERSIDE, a municipal corporation organized and existing under the laws of the State of California (“Purchaser”). Purchaser 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 intent 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. Unless a clear contrary intention appears, any reference in this Agreement to an agreement (including this Agreement), document, instrument, tariff, rule, or law means such agreement, document, instrument, tariff, rule, or law as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, and any successor to the foregoing (including successor statutes, if applicable). This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to 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 Section 6500 *et seq.* (the “Act”), 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 geothermal 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 power 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 and three of its members – the Purchaser, the City of Pasadena, and the City of Banning (collectively, the “SCPPA Participants” and each, individually, a “SCPPA Participant”) – have identified and investigated the feasibility of the Coso Geothermal Projects, consisting of three individual geothermal energy generation facilities located in Inyo County, California. The Coso Geothermal Projects are owned and operated by Coso Geothermal Power Holdings, LLC, a Delaware limited liability company.
- 2.5 SCPPA intends to enter into a Power Purchase Agreement with the Power Purchase Provider for the purchase of a portion of the electric output of the Coso Geothermal Projects and associated Environmental Attributes and Capacity Rights. The Coso Geothermal Projects shall collectively be referred to as the “Project,” as further defined in Appendix A hereof.
- 2.6 Purchaser has a need for a percentage of SCPPA’s Share of Facility Output, the associated Environmental Attributes and Capacity Rights, and other 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 promises 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. **CERTAIN DEFINITIONS.** Appendix 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 shall have the respective meanings ascribed thereto, including as follows:

- 4.1 Total Power Costs. “Total Power Costs” means all of SCPPA’s costs resulting from SCPPA’s contracting for, providing for, accommodating, and facilitating the Project, including costs arising under any of the Power Purchase Agreement or other Project Agreements. 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 Commencement Date 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 4.1.1), (ii) the Power Purchase Agreement General and Administrative Cost Component (described in Section 4.1.2), (iii) a Supplementary Services Cost Component to the extent SCPPA incurs such costs (described in Section 4.1.3), (iv) a Reserve Fund Cost Component (described in Section 4.1.4), and (v) a Power Purchase Agreement Cost Component (described in Section 4.1.5), and shall include, but not be limited to, the items of cost and expense referred to in the Power Purchase Agreement and this Section 4.1 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 4.1.2 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 4.1.2 shall be appropriately adjusted so that any increase or decrease in the portion of the Annual Budget applicable to Section 4.1.2 shall be evenly apportioned over the remaining Months of such Power Supply Year.
- 4.1.1 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.
- 4.1.2 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, and 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 Project 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.
- 4.1.3 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 4.1.1, 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 the Facility Output from the Point of Delivery to one or more specified delivery point(s) as determined by Purchaser pursuant to Sections 9.2 and 9.5 and by other SCPPA Participants pursuant to the terms of their respective Power Sales Agreements relating to the Project. Absent a request by Purchaser for SCPPA to provide Supplementary Services during a Month, no Supplementary Services cost component shall be included in Purchaser's Total Power Costs for such Month.

4.1.4 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.

4.1.5 The “Power Purchase Agreement Cost Component” of Total Power Costs for each Month shall consist of the costs, without duplication, associated with the Power Purchase Agreement, including, to the extent not otherwise included in this Section 4.1, all costs of SCPPA for such Month in connection with its enforcement of the Power Purchase Agreement or other Project Agreements, or the performance required of SCPPA under any of the Project Agreements, and shall include, without duplication, SCPPA’s monthly payment of any applicable associated ancillary costs under the Power Purchase Agreement, and any costs SCPPA is required to pay for Facility Output.

4.2 Monthly Costs. Monthly Costs is defined in accordance with, and calculated pursuant to, 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 Facility Output received by SCPPA, and Purchaser shall be responsible for and pay any and all Total Power Costs associated with the acquisition of the Participant Facility Output Share and such associated products, rights, and benefits, as applicable, under the Power Purchase Agreement and any other applicable Project Agreement, including the purchase or acquisition of any rights pursuant to the Power Purchase Agreement and any other applicable Project Agreement.

5.2 Facility Output and Deliverables. SCPPA shall provide and Purchaser shall purchase and receive Purchaser’s Participant Facility Output Share of Facility Output pursuant to the terms of this Agreement. To the extent permitted by the Power Purchase Agreement, the applicable Project Agreements, or otherwise determined by the Board of Directors, SCPPA will endeavor to take such actions or implement such measures as may be necessary or desirable for the utilization, maintenance or preservation of the



rights and interests of the 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 Agreement or other applicable Project Agreements, SCPPA shall also provide such other services, as approved by the Board of Directors, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the Power Purchase Agreement or other applicable Project Agreements. SCPPA shall use its best efforts, on behalf of Purchaser, to secure the benefits of the transactions contemplated under the Power Purchase Agreement or other applicable Project Agreements including the delivery of Purchaser's Participant Facility Output Share, as applicable, contemplated by this Agreement, and shall endeavor to maintain and secure the rights and benefits accruing to SCPPA through the Power Purchase Agreement and the other applicable Project Agreements.

- 5.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager as provided in this Agreement to administer the Project, or cause the Project to be administered, as provided in this Agreement or pursuant to assignments, instructions or requests by the Coordinating Committee or the Board of Directors, or through any project management or agency agreement, or contracts for services between SCPPA and a third party. Prior to appointment of a Project Manager (other than SCPPA), SCPPA shall consult with the Purchaser as to such appointment.
- 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 sixty (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 the Commencement Date under the Power Purchase Agreement. The Annual Budget shall establish the basis for monthly Billing Statements to be sent to each SCPPA Participant, as provided in Section 7 hereof.
  - 5.4.2 As required from time to time during any Power Supply Year, after seven (7) 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.
  - 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 (7) 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 one designated representative for each of the SCPPA Participants. Each of the SCPPA Participants shall be entitled to cast a vote equal to its then-current Participant Facility Output Cost Share as set forth in Appendix B hereof. An alternate representative of each of the SCPPA Participants shall be its alternate representative on the Coordinating Committee or, if none has been appointed by a SCPPA Participant, an alternate representative may be appointed by written notice by such SCPPA Participant to SCPPA and each of the other SCPPA Participants. The alternative representative so appointed may act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee, in the absence of such SCPPA Participant's primary designated representative. 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 representative of any of the SCPPA Participants shall exercise any greater authority than permitted for the SCPPA 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 SCPPA Participants having then-current Participant Facility Output Cost Shares aggregating one hundred percent (100%) 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 the Joint Powers Agreement) 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 SCPPA 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), 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 Coordinating Committee meetings and actions taken by the Coordinating Committee may be conducted 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, and any such action taken shall be recorded in the minutes or other written records for the Coordinating Committee meetings.

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 SCPPA 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.
- 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 and 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 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, geothermal energy related data, electric generation information, geothermal 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. For avoidance of doubt, upon SCPPA's delivery and sale of Facility Output to Purchaser at the Point of Delivery, Purchaser shall have full unilateral rights to remarket, sell or otherwise dispose of such Facility Output.
- 6.2.11 Review, modify and approve, if appropriate, any activities with respect to the performance of any Project Agreement, including policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In approving such activities, consideration may be given, if possible, to each SCPPA Participant's electric power 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 the Guaranteed Commencement Date (as defined in 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 Annual Delivered Energy (as defined in 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, rights and electric system requirements and capabilities of all SCPPA Participants.
- 6.2.16 Review and act upon any matters involving any of the applicable Power Purchase Agreement, any guarantee or letter of credit delivered to or for the benefit of SCPPA by the Power Purchase Provider or any other counterparty to any Project Agreement in connection with the Project, and take such actions or make such recommendations as may be appropriate or desirable in connection therewith.
- 6.2.17 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 Facility Output to the Point of Delivery or 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 interruptions having a tendency to cause Deemed Generated Energy.
- 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, provided, that such action shall require the affirmative vote of Purchaser's representative if such adjustment would change Purchaser's Participant Facility Output Share, Purchaser's Participant Facility Output Cost Share or any Capacity Rights associated therewith.
- 6.2.22 Review and approve adjustments to the Participant Facility Output Shares and the Participant Facility Output Cost Shares set forth in Appendix B when and as required by this Agreement; provided, that any such resolution shall require



the affirmative vote of Purchaser's representative if such adjustment would change Purchaser's Participant Facility Output Share or Purchaser's Participant Facility Output Cost Share.

- 6.2.23 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, or any other applicable Project Agreement or as may otherwise be appropriate or beneficial in connection with 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, provided that Purchaser shall disqualify its right to participate upon assuming the status of a Defaulting Purchaser as provided in Section 11 of this Agreement. 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 Project, and SCPPA's rights and interests with respect to the Project.
- 6.3.2 Scheduling Procedures. When recommended by the Coordinating Committee, 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 Facility Output.
- 6.3.3 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements, including agreements for scheduling coordinator services, if any, 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 Coordinating Committee 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 to the credit of Purchaser and the other SCPPA Participants in proportion to their respective Participant Facility Output Cost Share.

- 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 Coordinating Committee, as may be provided for under this Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.4 Periodic Audits. The Board of Directors or the Coordinating Committee may arrange for the annual audit under Section 5.6 of this Agreement by certified accountants, selected by SCPPA and experienced in electric generation or electric utility accounting, of the books and accounting records of SCPPA, and where deemed appropriate the Project Manager (if other than SCPPA), the Power Purchase Provider (to the extent provided under any of the Project Agreements) and any other counterparty under any Project Agreement to the extent allowable, and any cost reimbursable to a consultant or contractor relevant to the administration of the Project, and such audit shall be completed and submitted to SCPPA as soon as reasonably practicable after the close of the Fiscal Year. SCPPA shall promptly furnish to Purchaser copies of all audits. No more frequently than once every calendar year, the Purchaser may, at its sole cost and expense, audit or cause to be audited the books and cost records of SCPPA, the Project Manager (if other than SCPPA), the counterparty under any Project Agreement to the extent so provided in the applicable Project Agreement, and any cost reimbursable to a consultant or contractor relevant to the administration of the Project.
- 6.5 Additional Committees. The Board of Directors may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, diurnal, barometric, meteorological, geothermal, 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 or the Coordinating Committee to perform the duties required hereunder shall be included in Total Power Costs, as appropriate, and shall be billed to SCPPA or the Project Manager (if other than SCPPA).
- 6.7 SCPPA Participant Representative Expenses. Any expenses incurred by any representative of any SCPPA Participant or group of SCPPA Participants serving on the Coordinating Committee or any other committee in connection with his/her duties on such committee shall be the responsibility of the SCPPA Participant which he/she represents and shall not be an expense payable under this Agreement.

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

- 7.1 Monthly Costs. The amount of monthly costs which shall be paid by Purchaser to SCPPA for a particular Month (“Monthly Costs”) shall be the sum of the following, as applicable, subject to any adjustments as provided in Section 12 hereof:

7.1.1 Purchaser’s then-applicable Participant Facility Output Cost Share multiplied



by the Delivery Output Cost Component of Total Power Costs (as provided in Section 4.1.1) for such Month.

7.1.2 Purchaser's then-applicable Participant Facility Output Cost Share multiplied by the Power Purchase Agreement General and Administrative Cost Component of Total Power Costs (as provided in Section 4.1.2 hereof) for such Month.

7.1.3 Purchaser's share of the Supplementary Services Cost Component of Total Power Costs (as provided in Section 4.1.3 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 then-applicable Participant Facility Output Cost Share multiplied by the Reserve Fund Cost Component of Total Power Costs (as provided in Section 4.1.4 hereof) for such Month.

7.1.5 Purchaser's then-applicable Participant Facility Output Cost Share multiplied by the Power Purchase Agreement Cost Component of Total Power Costs (as provided in Section 4.1.5 hereof) for such Month.

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

7.3 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each SCPPA 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 (5th) Day following the receipt by SCPPA of the disputed overpayment. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within thirty (30) Days following receipt of written notification by Purchaser of such dispute.

- 7.5 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, or more frequently if so determined by the Board of Directors, SCPPA will submit to Purchaser and each of the other SCPPA 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 twenty (20) Days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.5, the actual aggregate Monthly Costs or other amounts payable by the Purchaser for any Power Supply Year are less than the amount therefor which Purchaser has been billed, SCPPA shall, unless otherwise directed by Purchaser 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 (5) 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 incurs or becomes 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 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 is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.
- 8.2 Source of Payments. The Purchaser hereby represents and warrants that the obligations of Purchaser to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Purchaser payable solely from its electric power revenue fund, including any and all legally available electric power system reserves. Purchaser will annually in each and every fiscal year of Purchaser during the term of this Agreement include in its electric power system budget, whether or not any other items are included, an appropriation from the revenues of its electric power 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 power service of its electric power system each year so as to provide revenues sufficient, together with any legally available electric power 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 power 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 is to be delivered to Purchaser under the Power Purchase Agreement, to the extent applicable, Purchaser shall schedule and be obligated to take delivery of Energy to be delivered under this Agreement. Such Energy shall be scheduled and delivered at the Point of Delivery under the practices and procedures approved pursuant to Section 6.2, as applicable, all in accordance with the Power Purchase Agreement.
- 9.2 Other Services and Transmission From Point of Delivery. It is the obligation of Purchaser to receive its Participant Facility Output Share from SCPPA all in accordance with the Power Purchase Agreement. 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, 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 be in accordance with the Power Purchase Agreement and shall not affect any of the obligations of Purchaser under this Agreement.
- 9.4 Transfer of Environmental Attributes to Purchaser. SCPPA shall transfer Purchaser's share of 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 term of this Agreement is limited to the Facility Output that 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, 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, 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 SCPPA's Share of Facility Output by the Power Purchase Provider to any third-party purchaser pursuant to the Power Purchase Agreement shall be remitted by SCPPA to Purchaser in proportion to Purchaser's then-applicable Participant Facility Output Cost Share.

- 10.2 Revision of Appendix B. The Parties agree that adjustments of the Participant Facility Output Shares and Participant Facility Output Cost Shares in Appendix B (beyond the periodic adjustments contemplated in Appendix B as of the Effective Date) shall be made and treated as an element of administration and not an amendment of this Agreement. The revised Appendix B shall become Appendix B to this Agreement in replacement of the prior Appendix B hereof.

## **11. NONPERFORMANCE AND PAYMENT DEFAULT.**

- 11.1 Nonperformance by Purchaser. If Purchaser 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 such 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 by Purchaser, Purchaser cures such Payment Default within 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 11.5. SCPPA shall provide to the Defaulting Purchaser a separate monthly invoice of any such payment obligations under this Agreement. SCPPA shall immediately notify the Project Manager (if other than SCPPA), the other SCPPA 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 then-current Participant Facility Output Shares of the non-Defaulting SCPPA Participants, 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 Sections 11.4, 11.5.1, and 11.5.2, SCPPA shall make any necessary adjustments to the Participant Facility Output Shares set forth in Appendix B and give written notice thereof to the non-Defaulting SCPPA Participants. Such adjustments shall only require approval by the Coordinating Committee if the third party assuming a Defaulting Purchaser's Project Rights and Obligations is not a SCPPA member.

11.5.6 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.

11.7 Use of Reserve Funds. With respect to a Payment Default by Purchaser, funds in the Reserve Funds 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.

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 (5th) 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 then-current 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 SCPPA Participant). 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 SCPPA 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 SCPPA Participant pays less than the total amount of its Step-Up Invoice, such SCPPA 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 then-current Participant Facility Output Cost Shares of the non-Defaulting SCPPA Participants, of the amount SCPPA received regarding late payment interest charges. In the event a Defaulting Participant pays less than the full amount of its Default Invoice, the credit to each non-Defaulting Participant shall be adjusted in proportion to their then-current Participant Facility Output Cost Shares.
- 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 then-current 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.

## **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 SCPPA under prescribed circumstances pursuant to the applicable provisions of a Project Agreement or other applicable operating agreement. Should such an interruption or curtailment occur, Purchaser shall be credited with such revenues as are credited or paid to SCPPA on Purchaser's behalf and shall be obligated to pay any costs incurred by SCPPA attributable to Purchaser

which are payable by SCPPA pursuant to the Power Purchase Agreement or any other applicable Project Agreement. SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise Purchaser of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.

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

### 13. **LIABILITY.**

- 13.1 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.
- 13.2 No Liability of SCPPA, Directors, Officers, Etc. Each Party agrees that neither Party nor any of its directors, officers, employees and agents shall be liable to the other Party for loss of profits or direct or consequential loss or damage suffered by a Party as a result of the performance or non-performance (excluding gross negligence or willful misconduct which, unless otherwise agreed to by the Parties, are both to be determined and established by a court of competent jurisdiction in a final, non-appealable order)) 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 13.2 shall not be construed so as to relieve SCPPA from any obligation under this Agreement.
- 13.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 13.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, 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.

- 13.4 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 Project 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).
- 13.5 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 13.2, 13.3 and 13.4 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.
- 13.6 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 13, the provisions of this Section 13 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy provided under the Project Agreements.
- 13.7 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.

#### **14. RESTRICTIONS ON DISPOSITION.**

- 14.1 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 any such other SCPPA Participant or 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 Appendix B to reflect the new Participant Facility Output Share allocation and such revision to Appendix B shall not be considered an amendment to any Power Sales Agreement.
- 14.2 Restrictions on Elimination of Payment Obligations. No sale, assignment or other disposition of Purchaser's Project Rights and Obligations to any Person ("Assignee") shall release Purchaser from its payment obligations under this Agreement; provided, however, such payment obligations may be eliminated or reduced if the sale, assignment or other disposition is made pursuant to Section 14.1 of this Agreement, or if (i) such Assignee 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.

14.3 Restrictions on Disposition of Purchaser's Entire System. Purchaser shall not sell, lease or otherwise dispose of all or substantially all of its electric system to any Person ("Acquiring Entity") unless the Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, and such Acquiring Entity shall have a corporate or long-term senior unsecured credit rating not less than investment grade.

14.4 Successors and Assigns. Subject in all respects to Sections 11 and 14 hereof, the Project Rights and Obligations under this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the Parties to this Agreement.

## **15. EFFECTIVE DATE, TERM AND EXPIRATION.**

15.1 Effective Date; Execution in Counterparts; Electronic Signatures and Document Transmission.

15.1.1 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.

15.1.2 This Agreement may be executed in any number of 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.

15.1.3 The Parties may execute this Agreement by original signature or by electronic signature, each of which shall have the same force and effect. A signed copy of this Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes, to the extent provided under applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and Records Act, and California's Uniform Electronic Transactions Act.

15.2 Termination Conditions. This Agreement shall be effective upon satisfaction of the

conditions set forth in Section 15.1 and shall extend for the term specified in Section 15.3 unless earlier terminated pursuant to an express provision of this Agreement; provided, however, that any obligation to make payments by Purchaser or SCPPA or any outstanding liability of Purchaser or SCPPA hereunder which either exists or may exist as of the date of termination of this Agreement, or which comes into existence at any future time as a result of any activity or transaction implemented under this Agreement, shall survive such termination.

- 15.3 Expiration. The term of this Agreement shall begin on the Day this Agreement becomes effective pursuant to Section 15.1 hereof. Unless terminated earlier pursuant to Section 15.4, the term of this Agreement shall expire on the date on which the Power Purchase Agreement is terminated and all obligation(s) of the parties under the Power Purchase Agreement have been fully satisfied or otherwise adequate provision for satisfaction of such obligation(s) have been made and no other such obligation(s) under the Power Purchase Agreement is outstanding; provided, however, that in no event shall the term of this Agreement expire so long as the Power Purchase Agreement is of any force or effect.
- 15.4 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 15.3 hereof, this Agreement shall terminate on the date, if any, by which SCPPA notifies Purchaser that this Agreement is superseded as a result of Purchaser having (i) succeeded to SCPPA's rights through another agreement or agreements, or (ii) entered into a replacement power sales agreement or other agreement with SCPPA. The purchase price and consideration to be paid to SCPPA by Purchaser with respect to any such superseding arrangement shall consist of the payments and satisfaction of all obligations by Purchaser under and pursuant to this Agreement prior to the effective date of the superseding arrangement plus any remaining costs or obligations incurred by SCPPA in connection with the Project.
- 15.5 Final Distribution of Reserve Fund. Following the expiration or earlier termination of this Agreement, and upon payment and satisfaction of any and all liabilities and obligations to make payments of the SCPPA Participants under their respective Power Sales Agreements, including this Agreement, and upon satisfaction of all remaining costs and obligations of SCPPA in connection with the Project and under the Power Sales Agreements, including this Agreement, with each SCPPA Participant, any amounts then remaining in the Reserve Fund shall be paid to the SCPPA Participants pro rata in accordance with their then-current Participant Facility Output Shares.
16. **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.
17. **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*.

18. **ARBITRATION AND ATTORNEYS' FEES.** If a dispute arises between the Parties which the Coordinating Committee or 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.
19. **CONDITIONS TO TERMINATION OR AMENDMENT.** Neither Party may terminate this Agreement without the prior written consent of the other SCPPA Participants. This Agreement and the Power Sales Agreements of the other SCPPA Participants may not be amended so as to provide terms and conditions materially different from any other Power Sales Agreement unless the SCPPA Participant seeking the amendment obtains a written consent or waiver of the other SCPPA Participants.
20. **NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and accompanied by an email copy, which shall not itself constitute notice, 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 at the addresses and email addresses (with respect to the email copy of the applicable notice) specified below:

Southern California Public Power Authority  
Attention: Executive Director  
1160 Nicole Court  
Glendora, California 91740  
Email: [projects@scppa.org](mailto:projects@scppa.org)

City of Riverside  
Attention: ROSA Contracts and Projects Manager  
3435 14<sup>th</sup> Street  
Riverside, California 92501  
Email: [nxu@riversideca.gov](mailto:nxu@riversideca.gov)  
[settlements@riversideca.gov](mailto:settlements@riversideca.gov)

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: \_\_\_\_\_  
Thomas Miller  
President

Approved as to Legal Form and Content:

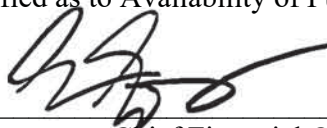
\_\_\_\_\_  
Daniel S. Hashimi  
Senior Assistant General Counsel

CITY OF RIVERSIDE

By: \_\_\_\_\_  
City Manager

Attest: \_\_\_\_\_  
City Clerk

Certified as to Availability of Funds:

By:  \_\_\_\_\_  
Chief Financial Officer

Approved as to form:

By: Susan D. Wilson  
\_\_\_\_\_  
Susan D. Wilson  
Assistant City Attorney



## APPENDIX A

### DEFINITIONS

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

1. Act. “Act” shall have the definition set forth in Section 2.1.
2. Agreement. “Agreement” shall have the definition set forth in Section 1.
3. Ancillary Documents. “Ancillary Documents” shall mean the Ancillary Documents as defined in the Power Purchase Agreement.
4. Annual Budget. The budget adopted by SCPPA pursuant to Section 5.4.1 of this Agreement, including any amendments thereto.
5. Assignee. “Assignee” shall have the definition set forth in Section 14.2.
6. 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.
7. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
8. Capacity Rights. “Capacity Rights” shall have the definition set forth in the Power Purchase Agreement.
9. Commencement Date. “Commencement Date” 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 Reserve Funds 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 (as defined in the Power Purchase Agreement) or collateral assignment under Section 14.7(e) of the Power Purchase Agreement.
12. Coordinating Committee. The committee consisting of representatives from the SCPPA Participants as further described in Section 6 of this Agreement.
13. Cure Period. That period of time beginning on the date of a Payment Default and concluding



thirty (30) Days thereafter.

14. 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.
15. Daily Delay Damages. “Daily Delay Damages” shall have the definition set forth in the Power Purchase Agreement.
16. Day. “Day” means calendar day unless otherwise specified herein.
17. Deemed Generated Energy. “Deemed Generated Energy” shall have the definition set forth in the Power Purchase Agreement.
18. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to the Defaulting Purchaser pursuant to Section 11 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
19. Defaulting Purchaser. “Defaulting Purchaser” means Purchaser, where Purchaser has caused a Payment Default under Section 11.2 of this Agreement that has not been remedied or cured.
20. Defaulting SCPPA Participant. A SCPPA Participant (not including Purchaser) that causes a Payment Default under its Power Sales Agreement that has not been remedied or cured by such SCPPA Participant.
21. Delivered Energy. “Delivered Energy” shall have the definition set forth in the Power Purchase Agreement.
22. Delivery Output Cost Component. “Delivery Output Cost Component” shall have the definition set forth in Section 4.1.1.
23. Energy. “Energy” shall have the definition set forth in the Power Purchase Agreement.
24. Environmental Attributes. “Environmental Attributes” shall have the definition set forth in the Power Purchase Agreement.
25. Facility Output. All output, rights, and other tangible or intangible benefits derived from or associated with the Project, whatsoever, including without limitation all Energy (including Delivered Energy), Environmental Attributes, and Capacity Rights, in each case whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement.
26. 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.
27. Force Majeure. “Force Majeure” shall have the definition set forth in the Power Purchase

Agreement.

28. Guaranteed Annual Delivered Energy. “Guaranteed Annual Delivered Energy” shall have the definition provided in the Power Purchase Agreement.
29. Initial Payment Default Date. The earlier of (i) the end of the fifth (5th) 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, entered into pursuant to the provisions of the Act, among SCPPA and its members.
31. Month. A calendar month.
32. Monthly Costs. “Monthly Costs” shall have the definition set forth in Section 7.1.
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 applicable percentage of SCPPA costs under the Power Sales Agreements payable at any applicable time by such SCPPA Participant, as set forth for such SCPPA Participant in Appendix B of this Agreement and in the corresponding appendices to the other Power Sales Agreements.
37. Participant Facility Output Share. With respect to a particular SCPPA Participant, the applicable percentage entitlement, as set forth for such SCPPA Participant in Appendix B of this Agreement and in the corresponding appendices to the other Power Sales Agreements, of SCPPA’s Share of Facility Output.
38. Party and Parties. “Party” and “Parties” shall have the respective meanings set forth in Section 1.
39. Payment Default. A failure by the Purchaser under this Agreement or by another SCPPA Participant under its Power Sales Agreement to pay when due all of its Billing Statement for any Month.

40. Payment Default Period. That period of time beginning on the initial date of a Payment Default and ending thirty (30) Days following a notice of default as provided in accordance with Section 11.2 hereof.
41. 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.
42. Point of Delivery. “Point of Delivery” shall have the definition set forth in the Power Purchase Agreement.
43. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and Coso Geothermal Power Holdings, LLC, dated as of September 17, 2020, attached hereto as Appendix C, as the same may be amended from time to time.
44. Power Purchase Agreement Cost Component. “Power Purchase Agreement Cost Component” shall have the definition set forth in Section 4.1.5.
45. Power Purchase Agreement General and Administrative Cost Component. “Power Purchase Agreement General and Administrative Cost Component” shall have the definition set forth in Section 4.1.2.
46. Power Purchase Provider. Coso Geothermal Power Holdings, 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 Sales Agreements. This Agreement and each of the power sales agreements entered into between SCPPA and the other SCPPA Participants.
48. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the Commencement Date of the Facility, or (iii) the date of the first delivery of Energy to Purchaser pursuant to this Agreement. The first Power Supply Year shall end on the last Day of the then current Fiscal Year.
49. Project. The term “Project” has the meaning ascribed to the term “Facility” in the Power Purchase Agreement and shall be broadly construed to entail the aggregate of rights, liabilities, interests, and obligations of SCPPA related thereto pursuant to the Power Purchase Agreement and the other Project Agreements.
50. Project Agreements. Insofar as they pertain to the Project, any project management agreement, the Power Sales Agreements, the Power Purchase Agreement, the Ancillary Documents or any other contracts for the purchase, procurement, delivery or transmission of Facility Output, or any other agreements for scheduling, dispatching, exchanging, tagging, movement or transmission of Facility Output, or agreements to which SCPPA is a party relating to the administration or management of the Project.
51. Project 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.

52. 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.
53. Project Rights and Obligations. The Purchaser's Project Rights and obligations under the terms of this Agreement.
54. Purchaser. "Purchaser" shall have the definition set forth in Section 1.
55. Reserve Fund Cost Component. "Reserve Fund Cost Component" shall have the definition set forth in Section 4.1.4.
56. 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.
57. S&P. "S&P" shall mean Standard & Poor's Financial Services LLC.
58. SCPPA. "SCPPA" shall have the definition set forth in Section 1.
59. SCPPA Participant and SCPPA Participants. "SCPPA Participant" and "SCPPA Participants" shall have the respective meanings set forth in Section 2.4.
60. SCPPA's Share of Facility Output. Buyer's Share (as defined in the Power Purchase Agreement) of the Facility Output as of the applicable time of determination.
61. Shortfall Damages. "Shortfall Damages" shall have the definition set forth in the Power Purchase Agreement
62. Step-Up Invoice. An invoice sent pursuant to Section 11.8.1 to non-Defaulting SCPPA 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.
63. 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, 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.

- 64. Supplementary Services Cost Component. “Supplementary Services Cost Component” shall have the definition set forth in Section 4.1.3.
- 65. Total Power Costs. “Total Power Costs” shall have the definition set forth in Section 4.1.
- 66. 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.
- 67. WECC. The Western Electricity Coordinating Council or its successor.

## **APPENDIX B\***

### **COSO GEOTHERMAL PROJECTS POWER SALES AGREEMENT**

#### **SCHEDULE OF SCPPA PARTICIPANTS, PARTICIPANT FACILITY OUTPUT SHARES, PARTICIPANT FACILITY OUTPUT COST SHARES**

##### **Participant Facility Output Shares**

<b>Dates</b>	<b>City of Riverside</b>	<b>City of Banning</b>	<b>City of Pasadena</b>
<b>Effective Date until 12/31/2026</b>	<b>55%</b>	<b>45%</b>	<b>0%</b>
<b>1/1/2027-12/31/2036</b>	<b>62%</b>	<b>17%</b>	<b>21%</b>
<b>1/1/2037-12/31/2041</b>	<b>48%</b>	<b>15%</b>	<b>37%</b>

##### **Participant Facility Output Cost Share**

<b>Dates</b>	<b>City of Riverside</b>	<b>City of Banning</b>	<b>City of Pasadena</b>
<b>Effective Date until 12/31/2026</b>	<b>55%</b>	<b>45%</b>	<b>0%</b>
<b>1/1/2027-12/31/2036</b>	<b>62%</b>	<b>17%</b>	<b>21%</b>
<b>1/1/2037-12/31/2041</b>	<b>48%</b>	<b>15%</b>	<b>37%</b>

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

**APPENDIX C**  
**POWER PURCHASE AGREEMENT**

POWER PURCHASE AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

COSO GEOTHERMAL POWER HOLDINGS, LLC

DATED AS OF \_\_\_\_\_, 2020



ARTICLE I DEFINITIONS AND INTERPRETATION.....	1
Section 1.1    Definitions .....	1
Section 1.2    Interpretation.....	25
Section 1.3    Order of Precedence .....	26
ARTICLE II EFFECTIVE DATE, TERM AND EARLY TERMINATION .....	26
Section 2.1    Effective Date .....	26
Section 2.2    Agreement Term and Delivery Term .....	27
Section 2.3    Survivability .....	27
Section 2.4    Early Termination .....	27
ARTICLE III DEVELOPMENT OF THE FACILITY .....	28
Section 3.1    In General .....	28
Section 3.2    Commencement Date Notices .....	28
Section 3.3    Other Information .....	28
Section 3.4    CEC Certification .....	29
Section 3.5    Performance Damages .....	29
Section 3.6    Decommissioning and Other Costs .....	29
ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY .....	30
Section 4.1    Compliance with Electrical Service Requirements .....	30
Section 4.2    General Operational Requirements.....	30
Section 4.3    Operation and Maintenance Plan.....	30
Section 4.4    Reporting and Information .....	31
ARTICLE V COMPLIANCE DURING OPERATION PERIOD.....	31
Section 5.1    In General .....	31
Section 5.2    Compliance with Standards .....	32
Section 5.3    Quality Assurance Program.....	32
Section 5.4    Security Provided by Seller .....	32
Section 5.5    Effect of Review by Buyer .....	34
ARTICLE VI PURCHASE AND SALE OF POWER.....	34
Section 6.1    Purchases by Buyer.....	34
Section 6.2    Point of Delivery.....	34
Section 6.3    Energy to Come Exclusively from Facility .....	35
Section 6.4    Sales to Third Parties .....	35
Section 6.5    Right of First Refusal.....	35

ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS .....	36
Section 7.1      Transmission and Interconnection .....	36
Section 7.2      Forecasting and Scheduling of Energy .....	36
Section 7.3      Scheduled Outage .....	39
Section 7.4      Curtailments .....	40
Section 7.5      Title; Risk of Loss .....	41
ARTICLE VIII ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE .....	41
Section 8.1      Transfer of Environmental Attributes .....	41
Section 8.2      Reporting of Ownership of Environmental Attributes .....	41
Section 8.3      Environmental Attributes .....	41
Section 8.4      Use of Accounting System to Transfer Environmental Attributes .....	42
Section 8.5      Further Actions Regarding Environmental Attributes .....	42
Section 8.6      RPS and EPS Compliance .....	43
Section 8.7      Change in Law .....	43
ARTICLE IX MAKEUP OF SHORTFALL ENERGY .....	44
Section 9.1      Makeup of Shortfall .....	44
Section 9.2      Makeup Energy and Replacement Energy .....	44
Section 9.3      Energy Replacement Price .....	44
Section 9.4      No Limitation on Remedies .....	45
ARTICLE X CAPACITY RIGHTS .....	45
Section 10.1     Purchase and Sale of Capacity Rights .....	45
Section 10.2     Representation Regarding Ownership of Capacity Rights .....	45
Section 10.3     Failure to Provide Expected RA Capacity .....	45
Section 10.4     Further Action by Seller Regarding Capacity Rights .....	46
ARTICLE XI BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES .....	46
Section 11.1     Billing and Payment .....	46
Section 11.2     Payment .....	47
Section 11.3     WREGIS Withholding .....	48
Section 11.4     Disputed Invoices .....	48
Section 11.5     Buyer's Right of Setoff .....	48
Section 11.6     Records and Audits .....	48
Section 11.7     Electric Metering Devices .....	49
Section 11.8     Taxes .....	51

ARTICLE XII REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER.....	51
Section 12.1    Representations and Warranties of Buyer .....	51
Section 12.2    Representations and Warranties of Seller .....	52
Section 12.3    Covenants of Seller Related to Real Property Agreements .....	54
Section 12.4    Covenants of Seller Related to Tax Equity Financing.....	56
Section 12.5    Additional Covenants of Seller .....	57
Section 12.6    Additional Related Projects .....	57
Section 12.7    Storage Technology and Shared Facilities .....	58
ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE.....	58
Section 13.1    Default .....	58
Section 13.2    Default Remedy .....	60
Section 13.3    Termination for Default.....	61
ARTICLE XIV MISCELLANEOUS .....	63
Section 14.1    Authorized Representative.....	63
Section 14.2    Notices .....	63
Section 14.3    Dispute Resolution.....	63
Section 14.4    Further Assurances .....	64
Section 14.5    No Dedication of Facilities .....	64
Section 14.6    Force Majeure .....	64
Section 14.7    Assignment of Agreement; Change in Control .....	66
Section 14.8    Ambiguity .....	68
Section 14.9    Attorneys' Fees and Costs .....	68
Section 14.10    Voluntary Execution .....	68
Section 14.11    Entire Agreement; Amendments .....	68
Section 14.12    Governing Law .....	69
Section 14.13    Venue.....	69
Section 14.14    Execution in Counterparts, Electronic Signatures and Document Transmission .....	69
Section 14.15    Effect of Section Headings .....	69
Section 14.16    Waiver.....	69
Section 14.17    Relationship of the Parties .....	70
Section 14.18    Third Party Beneficiaries .....	70
Section 14.19    Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.....	70
Section 14.20    Severability .....	72
Section 14.21    Confidentiality .....	72
Section 14.22    Mobile-Sierra.....	74
Section 14.23    Service Contract.....	74

## **Appendices**

APPENDIX A	CONTRACT PRICE AND EXCESS ENERGY PRICE
APPENDIX B	FACILITY
APPENDIX C	BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION
APPENDIX D	FORM OF ATTESTATION
APPENDIX E	FORM OF LETTER OF CREDIT
APPENDIX F	INSURANCE
APPENDIX G	DESIGNATED REPLACEMENT ENERGY RESOURCES
APPENDIX H	QUALIFIED OPERATORS
APPENDIX I	REAL PROPERTY AGREEMENTS
APPENDIX J	[RESERVED]
APPENDIX K	FORM OF COMMENCEMENT DATE CERTIFICATE
APPENDIX L	ORGANIZATIONAL STRUCTURE AND OWNERSHIP OF SELLER AND PARENT ENTITY
APPENDIX M	FORM OF QUARTERLY CERTIFICATE
APPENDIX N	EXPECTED ANNUAL GENERATION, GUARANTEED ANNUAL DELIVERED ENERGY, DESIGNATED RA CAPACITY, AND PERFORMANCE SECURITY AMOUNTS
APPENDIX O	FORM OF MONTHLY REPORT
APPENDIX P	FORM OF CONSENT TO COLLATERAL ASSIGNMENT

# POWER PURCHASE AGREEMENT

## PARTIES

THIS POWER PURCHASE AGREEMENT (“**Agreement**”), which is dated for convenience as of this \_\_\_\_ day of \_\_\_\_\_, 2020, is being entered into by and between the Southern California Public Power Authority, a public entity and joint powers authority formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, et seq.) (“**Buyer**”), and Coso Geothermal Power Holdings, LLC (“**Seller**”), a limited liability company organized and existing under the laws of the State of Delaware. Each of Buyer and Seller is referred to individually in this Agreement as a “**Party**” and together they are referred to as the “**Parties**”.

## RECITALS

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

WHEREAS, in early 2019, Buyer issued a request for proposals to acquire eligible renewable energy resources; and

WHEREAS, on May 13, 2019, an initial response was submitted on behalf of Seller to Buyer’s request for proposals and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, certain renewable energy, capacity rights, and associated environmental attributes; 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, and the mutual covenants and agreements herein set forth, the Parties hereto 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:

“**Acceptable Form of Performance Security**” means a letter of credit issued by a Qualified Issuer, substantially in the form attached hereto as Appendix E, which will guarantee Seller’s obligations under this Agreement.

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

“**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.

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

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

“**Ancillary Documents**” means any agreement, instrument, certificate or other document required to be executed and delivered between Buyer, on the one hand, and any Seller Party, on the other hand, in connection with this Agreement.

“**APN**” means a CAISO aggregated pricing node.

“**Appraisal**” means a written appraisal independently and impartially prepared by a qualified appraiser reasonably acceptable to Seller, setting forth an opinion as to the Facility Value that is (i) addressed to Buyer or Buyer’s designated Authorized Representatives, and (ii) made in compliance with the requirements of Title XI of the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 and the Uniform Standards of Professional Appraisal Practice maintained by the Appraisal Standards Board of the Appraisal Foundation.

“**ASCE**” means American Society of Civil Engineers and any successor thereto.

“**ASME**” means American Society of Mechanical Engineers and any successor thereto.

“**Assumed Daily Deliveries**” has the meaning set forth in Section 13.3(c).

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

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

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

“**AWS**” means American Welding Society and any successor thereto.

“**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 that is consented to or acquiesced in by such Person or that results in an order for relief or that remains undismissed for sixty (60) days.

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

**“BLM Project”** means the geothermal project located in Inyo County in the Coso region of California known as “BLM,” Resource ID: BLM\_2\_UNITS, which consists of three (3) turbine generators that deliver Energy at a 230kV level.

**“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.

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

**“Buyer’s Agent”** means any Person that Buyer may designate from time to time to perform certain tasks acting as Buyer’s agent, including the Participating Members.

**“Buyer’s Check Meters”** has the meaning set forth in Section 11.7(e).

**“Buyer’s Members”** means any member of Buyer that has entered into the Joint Powers Agreement.

**“Buyer’s Share”** means (a) when applied during the first through fifth Contract Years, fourteen percent (14%), (b) when applied during the sixth through fifteenth Contract Years, forty percent (40%), and (c) when applied during the sixteenth through twentieth Contract Years, fifty percent (50%), each as adjusted pursuant to Section 6.5. When this term is used with respect to Facility Energy, the applicable percentage shall be applied to the hourly quantity of Facility Energy.

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

**“CAISO Costs”** means all current and future costs, expenses, fees, charges, credits, penalties, sanctions, and other amounts assessed by the CAISO to Seller or to Buyer in connection with the Facility, the delivery of Facility Energy to the Points of Interconnection, or the Scheduling of Delivered Energy, including any and all fees, costs and charges that come into existence for integration of the Facility into the CAISO grid and any imbalance costs, expenses and charges.

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

**“Cal-OSHA”** means California Occupational Safety and Health Administration and any successor thereto.

**“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, RAR Attributes, local capacity attributes, or reserves, in each case, associated with Buyer’s Share of the electric generating capability of the Facility, as defined by the CAISO, or any other balancing authority, reliability entity, or Governmental Authority, including the right to resell such rights.

**“CARB”** means California’s Air Resources Board, and any successor agency thereto.

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

**“CEC Certified”** or **“CEC Certification”** means that the CEC has certified that the Facility or, as applicable, any facility listed on Appendix G for the procurement of Replacement Energy, is an eligible renewable energy resource in accordance with Section 399.12(e) of the Public Utilities Code and the guidelines adopted by the CEC relating thereto.

**“CEC Compliance Period”** means any single three-year compliance period during which the CEC verifies that the Facility and its associated Environmental Attributes qualify as RPS Compliant.

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

**“CFTC”** has the meaning set forth in Section 14.24.

**“Change in Control”** means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions, of any one or more of the following: (a) a merger or consolidation of Seller or the Parent Entity with or into any other Person or any other reorganization in which the members of Seller or the 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, (b) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or the Parent Entity, or the power to control the management and policies of Seller or the Parent Entity, is transferred to another Person, (c) a sale, lease or other disposition of all or substantially all of the assets of Seller or the Parent Entity, (d) the dissolution or liquidation of Seller or the Parent Entity or (e) 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 a membership interest or other equity interest in Seller or the Parent Entity is issued or transferred to another Person solely for the purpose of a Tax Equity Financing.

**“Commencement Date”** means the first day of the first month following the date on which (a) Seller has demonstrated, to the reasonable satisfaction of Buyer, that all Commencement Date Conditions have been satisfied with respect to the Facility as a whole, and (b) the Commencement Date Certificate has been accepted or deemed accepted by Buyer pursuant to Section 3.2.

**“Commencement Date Certificate”** means a certificate in the form attached as Appendix K.

**“Commencement Date Conditions”** means the conditions to the Commencement Date identified on Appendix K.

**“Compensable Curtailments”** has the meaning set forth in Section 7.4(a).

**“Compliance Expenditure Cap”** has the meaning set forth in Section 8.7(a).

**“Compliance Standards”** has the meaning set forth in Section 8.6.

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

**“Consent to Collateral Assignment”** means a Consent to Collateral Assignment, executed by the Facility Lenders providing debt financing (or their agent or agents), Buyer and Seller, in substantially the form attached as Appendix P.

**“Contract Price”** means the price set forth in paragraph 1 of Appendix A, as adjusted from time to time in accordance with this Agreement.

**“Contract Year”** means (a) the stub year period beginning on the Commencement Date (or year beginning on the Commencement Date if the Commencement Date occurs on January 1, 2022) and ending on December 31 of the year in which the Commencement Date occurs; and (b) each of the nineteen (19) calendar years thereafter, with the last such calendar year ending on December 31, 2041.

**“Control”** means 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.

**“Costs”** has the meaning set forth in Section 13.3(f)(3).

**“COVID-19”** means the disease named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations thereof.

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

**“Daily Delay Damages”** has the meaning set forth in Section 3.5.

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

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

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

**“Deemed Generated Energy”** means Deemed Delivered Energy and Buyer’s Share of Facility Energy that the Parties reasonably estimate would have been delivered to the Points of Interconnection but for a Force Majeure that excuses Seller’s delivery thereof pursuant to Section 14.6, including Buyer’s Share of Facility Energy actually generated but not delivered due to such Force Majeure.

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

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

**“Delivered Energy”** means, for the applicable hour, (a) if the CAISO accepts an IST submitted by Seller for the benefit of Buyer or the Participating Members in accordance with Section 7.2(a), the aggregate MWh of Energy included in such IST (**“Scheduled Energy”**), or (b) if the CAISO rejects Seller’s IST for such hour and the Parties agree to settle such hour pursuant to a contracts-for-differences structure in accordance with the Scheduling Procedures, the aggregate MWh of Facility Energy and Replacement Energy forecasted by Seller pursuant to Section 7.2(c)(5) (**“Forecasted Energy”**).

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

**“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 any event that results in a Person failing to meet the credit requirements of a Qualified Issuer or the commencement 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) with respect to such Person.

**“Early Termination Date”** has the meaning set forth in Section 13.3(a).

**“EEI”** means Edison Electric Institute and any successor thereto.

**“Effective Date”** has the meaning set forth in Section 2.1.

**“Election Notice”** has the meaning set forth in Section 6.5(b).

**“Electric Metering Devices”** means all meters, metering equipment and data processing equipment conforming to the requirements set forth in Section 11.7 and used to measure, record

or transmit data relating to the Energy output from the Facility. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

**“Energy”** means electrical energy.

**“Energy Replacement Price”** means, with respect to each MWh of Shortfall Energy, (a) if Buyer purchased a replacement MWh of Energy with associated Environmental Attributes and Capacity Rights prior to the Makeup Deadline or such earlier date as set forth in clause (y) of Section 9.2, the actual amount paid by Buyer to purchase such replacement Energy and associated Environmental Attributes and Capacity Rights, and (b) if Buyer did not purchase a replacement MWh of Energy with associated Environmental Attributes and Capacity Rights, as contemplated by the preceding clause (a), an amount equal to the average of no less than three broker quotes obtained by Buyer stating the value of the MWh of Shortfall Energy that accrued during the applicable Contract Year, together with the value of Environmental Attributes and Capacity Rights associated therewith; *provided, however*, that if three broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the Energy Replacement Price will be equal to the average of any available broker quotes.

**“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 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 (including carbon benefits, 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 Governmental Authority or other Person, and (b) that are attributable to (i) Buyer’s Share of Facility Energy generation capability or generation during the Agreement Term or Replacement Energy required to be provided by Seller during the Delivery Term or (ii) the emissions or other environmental characteristics of such Facility Energy 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, the principles identified in the Paris Agreement of the UNFCCC that took effect in 2016, the Clean Power Plan promulgated by the United States Environmental Protection Agency, California’s greenhouse gas legislation (including RPS Law and California Assembly Bill 32 (Global Warming Solutions Act of 2006 and California Senate Bill 32) 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 Facility Energy. Notwithstanding any other provision in this definition, Environmental Attributes do not include (x) any tax credits associated with the Facility and (y) any grants or any similar benefits related to the Facility.

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

**“EPA”** means the United States Environmental Protection Agency and any successor agency.

**“EPS Compliant,”** means, when used with respect to the Facility or any other facility at any time, that the Facility or other 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, as implemented and amended from time to time, or any successor laws or regulations in the State of California.

**“Excess Energy”** means the portion of the Delivered Energy and Deemed Generated Energy for any Contract Year that is in excess of the Expected Annual Generation; *provided, however*, that any Makeup Energy or Replacement Energy delivered by Seller pursuant to Section 9.2 during any Contract Year shall not be considered Excess Energy and shall be excluded from the calculation of the total Delivered Energy and Deemed Generated Energy during such Contract Year for purposes of this definition.

**“Excess Energy Price”** means the price set forth in paragraph 2 of Appendix A, as adjusted from time to time in accordance with this Agreement.

**“Expected Annual Generation”** means, with respect to any Contract Year, the applicable MWh set forth on Appendix N for such Contract Year; *provided*, that if the Commencement Date occurs on a date other than January 1, 2022, the Expected Annual Generation for the first Contract Year of the Delivery Term shall be an amount equal to the MWh set forth on Appendix N for the first Contract Year multiplied by a fraction, the numerator of which is the number of days between the Commencement Date and December 31, 2022 and the denominator of which is three hundred sixty-five (365).

**“Expected RA Capacity”** means, for each Contract Year and each month during the applicable Contract Year, the expected RA Capacity allocated to Buyer, as set forth in Appendix N for such Contract Year.

**“Facility”** means the Projects, collectively and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Points of Interconnection.

**“Facility Assets”** means all or any portion of the Facility or related assets.

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

**“Facility Energy”** means Energy generated by the Facility and delivered to the Points of Interconnection, as measured using CAISO-approved and -polled revenue-quality Electric Metering Devices in accordance with Section 11.7.

**“Facility Lender”** means any lender providing senior or subordinated interim or long-term debt or equity financing or refinancing for or in connection with the operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

**“Facility Value”** means, as of any applicable date of determination, the Facility’s “as is” market value set forth in the most recent Appraisal.

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

**“Final Non-Compliant Price”** means the lower of (a) the Contract Price, and (b) the average price of the monthly SNL forward curve for Energy in the SP-15 Zone, calculated as of the date Buyer delivers notice to Seller of its election to continue in the Agreement pursuant to clause (y) of Section 8.7(b).

**“Financing Agreement”** shall mean any credit agreement, loan agreement or similar agreement, to be executed between Seller and a Facility Lender.

**“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.

**“Forecasted Energy”** has the meaning set forth in the definition of “Delivered Energy.”



**“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 13.3(f)(1).

**“Generation Hourly Cap”** means, for any hour in a given Contract Year, 115% of the applicable Expected RA Capacity.

**“Generator Interconnection Agreement”** means each of (a) the Large Generator Interconnection Agreement by and among BLM, Southern California Edison Company and CAISO, dated as of June 3, 2011, as assigned by BLM to Seller on March 8, 2018, (b) the Large Generator Interconnection Agreement (LGIA) by and among Navy I Partnership, Southern California Edison Company and CAISO, dated as of June 3, 2011, as assigned by Navy I Partnership to Seller on March 8, 2018, and (c) the Standard Large Generator Interconnection Agreement by and among Navy II, Southern California Edison Company and CAISO, dated as of December 8, 2009, as assigned by Navy II to Seller on March 8, 2018.

**“Governmental Authority”** means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, other governmental, regulatory or administrative agency, court, commission, administration, department, board, other governmental subdivision, legislature, rulemaking board, tribunal, other governmental authority with jurisdiction over the Person or matter at issue, or any Person acting as a delegate or agent of any Governmental Authority.

**“Guaranteed Annual Delivered Energy”** means, for any Contract Year, an amount of Delivered Energy and Deemed Generated Energy equal to or exceeding eighty-five percent (85%) of the Expected Annual Generation for such Contract Year, as set forth in Appendix N.

**“Guaranteed Commencement Date”** means January 1, 2022.

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

**“IEEE”** means Institute of Electrical and Electronics Engineers and any successor thereto.

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

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

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

**“Interest Rate”** has the meaning set forth in Section 11.4.

**“Interim Non-Compliant Price”** means, in any hour, the lower of (a) the Contract Price, and (b) CAISO’s hourly Day-Ahead LMP at the Point of Delivery.

**“ISA”** means Instrument Society of America and any successor thereto.

**“IST”** has the meaning set forth in Section 7.2(a).

**“Joint Powers Agreement”** means 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.

**“Legal Opinion”** means an executed original of a written legal opinion of Akin Gump Strauss Hauer & Feld, LLC or Latham & Watkins LLP, each counsel for Seller, or other counsel reasonably acceptable to Buyer, addressed to Buyer and in form and substance reasonably acceptable to Buyer, concerning, among other matters on the part of Seller, the enforceability and due authorization of this Agreement, and the other Ancillary Documents that are agreements between the Parties, dated as of the Effective Date.

**“Lessor”** means the lessor or landowner under any Real Property Agreement.

**“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.

**“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 13.3(f)(2).

**“Major Maintenance Blockout”** has the meaning set forth in Section 7.3(a).

**“Makeup Deadline”** has the meaning set forth in Section 9.3.

**“Makeup Energy”** has the meaning set forth in Section 9.2.

**“Monthly Report”** means the report required to be delivered by Seller pursuant to Section 4.4 in form and substance substantially similar to Appendix O.

**“MW”** means megawatt(AC).

**“MWh”** means megawatt-hour.

**“Navy I Project”** means the geothermal project located in Inyo County in the Coso region of California known as “Navy I,” Resource ID: CALGEN\_1\_UNITS, which consists of three (3) turbine generators that deliver Energy at a 115kv level.

**“Navy II Project”** means the geothermal project located in Inyo County the Coso region of California known as “Navy II,” Resource ID: NAVYII\_2\_UNITS, which consists of three (3) turbine generators that deliver Energy at a 230kV level.

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

**“NERC Reliability Standards”** means the reliability standards developed by NERC or by any regional authority having jurisdiction, which are applicable to the owner or operator of the Facility or the Facility itself.

**“Non-Compensable Curtailments”** has the meaning set forth in Section 7.4(a).

**“Non-Conforming REC”** has the meaning set forth in Section 11.3.

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

**“Notification Deadline”** has the meaning set forth in Section 10.3(a).

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

**“Operation and Maintenance Plan”** has the meaning set forth in Section 4.3(a).

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

**“Outside Commencement Date”** has the meaning set forth in Section 3.5.

**“Pacific Prevailing Time”** or **“PPT”** means the local time in Los Angeles, California.

**“Parent Entity”** means CGP Holding, LLC, a Delaware limited liability company, together with its successors and assigns.

**“Participating Members”** means (a) from the Effective Date until the expiration of the fifth (5th) Contract Year, the City of Riverside and the City of Banning, and (b) during the

remainder of the Agreement Term, the City of Riverside, the City of Banning, and the City of Pasadena.

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

**“Performance Security”** has the meaning set forth in Section 5.4(a).

**“Performance Security Adjustment Date”** means (a) the first day of any Contract Year in which Buyer’s Share increases from the preceding Contract Year, as shown on Appendix N, and (b) if applicable, the first day of any Contract Month in which an automatic increase in Buyer’s Share, the Expected RA Capacity, the Expected Annual Generation, and the Guaranteed Annual Delivered Energy becomes effective pursuant to Section 6.5(b).

**“Performance Security Amount”** means (a) Four Million Ninety Five Thousand Dollars (\$4,095,000) for the period beginning on the date that is fifteen (15) days after the Effective Date and ending on the Commencement Date, and (b) the amount set forth on Appendix N for each Contract Year during the Delivery Term; *provided*, that if a Performance Security Adjustment Date described in clause (b) of such defined term occurs, the Performance Security Amounts set forth on Appendix N shall automatically be updated in accordance with Appendix N to reflect the increase in Buyer’s Share and Expected RA Capacity.

**“Permit”** 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 which are required to be filed, submitted, obtained or maintained by any Person with respect to the equipping, financing, refinancing, ownership, possession, shakedown, operation or maintenance of the Facility, the production of Buyer’s Share of Facility Energy, the sale of Delivered Energy, Capacity Rights, or Environmental Attributes to Buyer, 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 those described in Appendix B.

**“Permitted Encumbrances”** means (a) any Lien approved by Buyer in a writing separate from this Agreement which expressly identifies the Lien as a Permitted Encumbrance, (b) 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, (c) 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 (i) such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof or (ii) the payment thereof is fully covered by adequate reserves in accordance with GAAP in the form of bonds or other security reasonably acceptable to Buyer, provided that such proceedings end by expiration of the Agreement Term, (d) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations, so long as they have been identified by Seller to Buyer in writing prior

to the Effective Date and do not interfere with or impair the operation of the Facility as contemplated by this Agreement, (e) Liens in favor of the Facility Lenders subject to the limitations on Facility Debt set forth in this Agreement and provided that any such Liens do not prejudice or diminish the rights and benefits of Buyer under this Agreement, and (f) Liens approved by the Facility Lenders in writing so long as any such Liens under this clause (f) would not have a material adverse effect on the rights and benefits of Buyer under this Agreement.

**“Permitted Parent”** has the meaning set forth in the definition of “Special Purpose Entity.”

**“Permitted Subsidiary”** has the meaning set forth in the definition of “Special Purpose Entity.”

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

**“Point of Delivery”** means CAISO’s POD TH\_SP15\_GEN-ANPD or the successor APN in the SP-15 Zone that most closely represents such APN.

**“Point of Interconnection”** means (a) with respect to the Navy I Project, the 115 KV system connecting to the Inyo-Kern Substation, and (b) with respect to the Navy II Project and the BLM Project, the 230 KV system connecting to the Kraemer Junction Substation.

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

**“Principals”** means any board chair, president, chief executive officer, chief operating officer and any other individual who serves in the functional equivalent of one or more of those positions, as well as any individual who holds an ownership interest in Seller or any upstream equity owner of Seller of at least twenty percent (20%).

**“Project”** means the Navy I Project, the Navy II Project, or the BLM Project, as applicable.

**“Prudent Utility Practices”** means those practices, methods and acts, that are commonly used by a significant portion of the geothermal electric generation industry in prudent engineering and operations to operate and maintain electric equipment (including geothermal 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.

**“Public Utilities Code”** means the Public Utilities Code of the State of California.

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

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

“Qualified Issuer” means a U.S. Issuer Bank reasonably acceptable to Buyer that has a current long-term credit rating (corporate or long-term senior unsecured debt) of “A-” or higher by Moody’s Investors Service, Inc. or “A3” or higher by Standard & Poor’s.

“Qualified Operator” means, with respect to the Facility, (a) an Affiliate of Seller, including Coso Operating Company, (b) a Person listed on Appendix H, or (c) a Person reasonably acceptable to Buyer that has at least three (3) years of experience operating generation facilities similar to the Facility.

“Qualified Transferee” means a Person that, when considered collectively with its Affiliates,

(a) (i) has or is a direct or indirect subsidiary of a Person that has, a tangible net worth assets under management, or to the extent its securities are publicly traded, equity value of at least \$500,000,000, or (ii) has a minimum long term unsecured credit rating of at least Baa2 or higher by Moody’s or at least BBB or higher by S&P,

(ii) retains a Qualified Operator or Qualified Operators to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility),

(iii) executes a written assumption agreement in favor of Buyer pursuant to which such Person shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents,

(iv) is a Special Purpose Entity, and

(v) is not at the time of transfer in active litigation against Buyer or any Participating Member; or

(b) is reasonably acceptable to Buyer.

“Qualifying Third Party Agreement Notice” has the meaning set forth in Section 6.5(a).

“Quality Assurance Program” has the meaning set forth in Section 5.3.

“Quarterly Certificate” has the meaning set forth in Section 12.5(e).

**“RA Capacity”** means, for a given period of time, the transferrable qualifying and deliverable capacity of the Facility for RAR purposes allocated to Buyer for such period of time, as determined by the CAISO or other Governmental Authority authorized to make such determination under Requirements of Law.

**“RA Replacement Price”** means, with respect to each MW of RA Shortfall, (a) if Buyer purchases replacement RA Capacity from a generating facility other than the Facility prior to the applicable CAISO submission deadline, an amount equal to the actual amount paid by Buyer to purchase such replacement RA Capacity, and (b) if Buyer does not purchase replacement RA Capacity as contemplated by the preceding clause, an amount equal to the average of no less than three broker quotes obtained by Buyer stating the value of the applicable portion of the Expected RA Capacity; *provided, however*, that if three broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the RA Replacement Price will be equal to the average of any available broker quotes.

**“RA Shortfall”** means (a) the quantity of Expected RA Capacity not provided by Seller for the applicable time period, minus (b) the quantity of Replacement RA Capacity provided by Seller for such time period, minus (c) quantity of Expected RA Capacity that Seller was unable to provide solely as a result of a Force Majeure.

**“RAR”** means the resource adequacy requirements established for load-serving entities by the PUC pursuant to Requirements of Law and PUC decisions, the CAISO pursuant to the CAISO Tariff, or any other Governmental Authority having jurisdiction.

**“RAR Attributes”** means all resource adequacy attributes capable of being provided from the RA Capacity allocated to Buyer, as may be identified from time to time by the PUC or other Governmental Authority having jurisdiction, that may be counted toward RAR.

**“Real Property Agreements”** means the geothermal resource leases and the other leases, easements, rights-of-way or other real property agreements relating to the Site listed in Appendix I (as may be reasonably redacted to prevent disclosure of commercially sensitive financial terms).

**“REC Period”** means (a) the period beginning on the Commencement Date and ending on the earlier to occur of June 30 or December 31 of the year in which the Commencement Date occurs, and (b) each six-month period thereafter, with the last such period ending on December 31, 2041.

**“REC Shortage”** has the meaning set forth in Section 8.5(b).

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

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

**“Renewable Energy Credits”** or **“RECs”** means a certificate of proof associated with the generation of electricity from an RPS Complaint eligible renewable energy resource, which certificate is issued through the accounting system established by the CEC pursuant to the RPS



Law, evidencing that one (1) MWh of Energy was generated from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a “green tag” or “renewable energy credit”) for which the owner of the REC can prove that it has purchased renewable Energy.

**“Replacement Energy”** means Energy produced by a CEC Certified facility identified on Appendix G and delivered to the CAISO grid, as measured using CAISO-approved and -polled revenue-quality Electric Metering Devices, that, at the time of delivery to the CAISO grid, (a) is both RPS Compliant and EPS Compliant, and (b) includes all Environmental Attributes that have the same 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 on the day and at the time for which the Replacement Energy is being provided.

**“Replacement Green Attributes Price”** means, with respect to each MWh of REC Shortage, (a) if Buyer purchased a replacement REC during the REC Period during which such REC Shortage accrued, the actual amount paid by Buyer to purchase such replacement REC, and (b) if Buyer did not purchase a replacement REC as contemplated by the preceding clause (a), an amount equal to the average of no less than three broker quotes obtained by Buyer stating the average value of the RECs associated with Facility Energy during the applicable REC Period; *provided, however*, that if three broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the Replacement Green Attributes Price will be equal to the average of any available broker quotes.

**“Replacement RA Capacity”** has the meaning set forth in Section 10.3(a).

**“Requirements of Law”** means federal, state and local laws, statutes, regulations, rules, codes, ordinances, resolutions, standards, directives, orders, judgments, decrees, rulings or determinations enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, Environmental Laws, and occupational safety and health requirements).

**“ROFR”** has the meaning set forth in Section 6.5(b).

**“RPS Compliant”** means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such Facility or other facility, as applicable, at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 1” eligible renewable resource under the RPS Law and meet the requirements of Public Utilities Code Sections 399.13 (including the long-term requirement) and 399.16(b)(1).

**“RPS Law”** means the California Renewable Energy Resources Act (also known as Senate Bill or SB X1-2), the Clean Energy and Pollution Reduction Act of 2015 (also known as SB 350) and The 100 Percent Clean Energy Act of 2018 (also known as SB 100), including the California Renewables Portfolio Standard Program (Article 16, commencing with Section 399.11, of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code) along with the Renewable Energy Resources Program administered by the CEC and established pursuant to Chapter 8.6, commencing with Section 25740, of Division 15 of the Public Resources Code, and



all policies established pursuant to Section 454.53 of the Public Utilities Code, any related regulations or guidebooks promulgated by the CEC, CARB, and, as applicable, the PUC, and as all of the foregoing may be promulgated, implemented or amended from time to time, and any successor or replacement laws or regulations.

“**SCADA**” has the meaning set forth in Section 7.2(d)(1).

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

“**Scheduled Energy**” has the meaning set forth in the definition of “Delivered Energy.”

“**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 7.3(a).

“**Scheduling Procedures**” has the meaning set forth in Section 7.2(e).

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

“**Seller Party(ies)**” means Seller and any Affiliates of Seller executing any Ancillary Document.

“**Shared Facilities**” means the facilities included in the Facility that are shared by Seller and one or more Affiliates of Seller pursuant to the Shared Facilities Agreements.

“**Shared Facilities Agreements**” means (a) the Co-Tenancy and Shared Facilities Agreement, dated August 4, 2020, by and among Coso Transmission Line Partners, Coso Battery Storage, LLC and Seller, (b) the Partial Sub-Assignment and Assumption Agreement, dated June 29, 2020, by and between Coso Battery Storage, LLC and Seller, (c) the Operations and Maintenance Agreement, dated as of August 4, 2020, by and among Coso Battery Storage, LLC, Coso Transmission Line Partners and Seller, and (d) the interconnection agreements governing the interconnection rights and rights to use of the interconnection facilities among Seller (as assignee of Coso Energy Developers and Coso Power Developers), Coso Battery Storage, LLC, Southern California Edison and the California Independent System Operator Corporation.

“**Shortfall Cure Period**” has the meaning set forth in Section 9.2.

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

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

“**Site**” means the real property (including all fixtures and appurtenances thereto), water, and related physical and intangible property generally identified in Appendix B as owned or

leased by Seller or over which Seller has an easement, right-of-way or other right to use or access the property where the Facility is located or will be located, and including the well fields and land subject to the Real Property Agreements 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 Seller shall: (a) own the Site; (b) be the grantee, licensee, or lessee under one or more Real Property Agreements that permit Seller to perform all of its obligations under this Agreement and, as applicable, the other Ancillary Documents; or (c) have otherwise provided evidence satisfactory to Buyer of Seller’s exclusive right to control the Site so as to permit Seller to perform all of its obligations under this Agreement and the Ancillary Documents to which it is a party; each of the foregoing clauses (a) through (c), for the Agreement Term.

**“SP-15 Zone”** means CAISO’s SP-15 trading zone or the successor trading zone that most closely represents CAISO’s SP-15 trading zone.

**“Special Purpose Entity”** means a limited liability company which at all times prior to, on and after the date hereof (except for any action or inaction taken or liability incurred prior to the change of ownership that occurred on February 16, 2017):

(a) shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a Special Purpose Entity, (v) terminate its qualifications and good standing in the State of Delaware or the State of California, or (vi) terminate its organizational documents or its qualifications and good standing in any other jurisdiction except where such termination would not have a material adverse effect on its ability to carry out its business and perform its obligations under this Agreement;

(b) (i) was organized solely for the purpose of possessing and exercising all the powers and privileges granted by the provisions of the Delaware Limited Liability Company Act and any successor statute or by any other law or by its limited liability company agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Seller and (ii) is and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, financing, exchanging, managing and operating the Facility, including any Shared Facilities, owning its subsidiaries (which as of the date hereof are shown in Appendix L), selling Energy, Capacity Rights, Environmental Attributes, and related products under this Agreement with Buyer and any other agreement for such sales that is not prohibited by this Agreement, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing (including transactions in the CAISO market and non-speculative hedging activities);

(c) has not been, is not, and will not be engaged in any business unrelated to (i) the acquisition, development, ownership, holding, selling, leasing, financing, transferring, management or operation of the Facility, including the Shared Facilities, (ii) sales of Energy, Capacity Rights, Environmental Attributes, and related products therefrom, and (iii) ownership of its subsidiaries (which as of the date hereof are shown in Appendix L;

(d) has not owned or leased, does not own or lease and will not own or lease, any assets other than those related to the Facility, including the Shared Facilities, or the operation, maintenance, or management thereof;

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

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

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

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

(i) has not made and will not make loans or advances to any Person, and has not held and will not hold evidence of any indebtedness or other obligations issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity) except (i) for any business advances or loans to employees or officers to cover business expenses in the ordinary course of business in an aggregate amount not to exceed \$50,000 at any one time outstanding, (ii) overhead expenses that are shared with any Affiliate, or (iii) as required under the Term Loan Agreement (or any replacement thereof permitted hereunder that contains substantially the same requirements), and has not made and will not make any gifts or fraudulent conveyances to any Person;

(j) has not identified and will not identify its members, or any Affiliate of any member, as a division or department or part of it, and has not identified itself and shall not identify itself as a division or department of any other Person other than for tax purposes (to the extent treated as a “disregarded entity” for tax purposes);

(k) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates, except in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party except for (i) the Term Loan Agreement (or any replacement thereof permitted hereunder that contains substantially the same requirements), (ii) the issuance and redemption of the 5.5% senior notes due July 31, 2018 under the Note Issuance Agreement, dated as of February 16, 2017, by and among the Seller and the noteholders party thereto (as amended, restated or otherwise modified from time to time), (iii) transactions in connection with the Shared Facilities, (iv) CGP Holding LLC's repurchase of its Series A Units on July 26, 2019), and (v) the Operations and Maintenance Agreement, dated as of August 17, 2017 between Coso Energy Developers, Coso Finance Partners, Coso Power Developers, Seller, and Coso Operating Company LLC;

(l) has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify its officers, managers or members, as the case may be, other than the Independent Manager other than as set forth in the organizational documents in effect prior to the date of this Agreement (which shall not be modified or renewed without Buyer's consent), and other indemnification obligations to any Person under existing debt obligations;

(m) has considered and shall consider its obligations to its creditors, under applicable law, in connection with all limited liability company actions;

(n) does not and will not have any of its obligations guaranteed by any Affiliate except by (i) the following subsidiaries of Seller: Coso Finance Partners (Navy I), Coso Power Developers (Navy II), Coso Energy Developers (BLM East and West), Coso Geothermal Power GP, LLC, Coso Transmission Line Partners, Coso Hay Ranch, LLC, New CLPSI Company LLC, New RVPI Company, LLC, Coso Operating Company, LLC or Coso Clean Power, LLC, each of which has as of the Effective Date, and will continue to have throughout the Agreement Term no indebtedness other than the indebtedness permitted pursuant to clause (bb) of this definition and no Liens on its assets other than Permitted Encumbrances (each such entity meeting such requirements, a "***Permitted Subsidiary***"), or (ii) a wholly-owned indirect subsidiary of CGP Holding LLC, which is a special purpose entity owning 100% of the membership interests of Seller, or a wholly-owned direct subsidiary of CGP Holding LLC, which is a special purpose entity owning 100% of the membership interests of such parent entity of Seller, and both of which have as of the Effective Date, and will continue throughout the Agreement Term to have, (x) no obligations or business purpose other than owning Seller, (y) no indebtedness other than indebtedness permitted pursuant to clause (bb) of this definition, and (z) no Liens on their assets other than Permitted Encumbrances (each such entity meeting such requirements, a "***Permitted Parent***"), so long all such guarantors received or will receive reasonably equivalent value in exchange for such guarantees;

(o) has complied and will comply with all of the terms and provisions contained in its organizational documents including, on and after the Effective Date, the

provision requiring that there be an Independent Manager at all times and has done or caused to be done and will do all things necessary to preserve its existence;

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

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

(r) has maintained and will maintain its financial statements prepared in accordance with GAAP, accounting records and other entity documents separate from any other Person and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; *provided, however*, that any such consolidated financial statement shall contain: (i) a narrative description of its separate assets, liabilities, business functions, operations and existence to ensure that such separate assets, liabilities, business functions, operations and existence are readily distinguishable by any Person receiving or relying upon a copy of such consolidated financial statement, and (ii) a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated entity nor constitute obligations of the consolidated entity;

(s) has paid and will pay its own liabilities, losses and expenses, including the salaries of its own employees, consultants, independent contractors and agents, out of its own funds and assets (except as required under the Term Loan Agreement (or any replacement thereof permitted hereunder that contains substantially the same requirements)) and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations (taking into account that it has received and will receive services from employees of its Affiliates and third parties under contracts entered into with such Affiliates and third parties);

(t) has been and will be in compliance with all procedures and formalities required under its limited liability company agreement and as required by applicable law in its state of organization;

(u) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for the debts of any other Person and has not held out and will not hold out its credit or assets as being available to satisfy the debts or obligations of any other Person except as permitted pursuant to this Agreement or as required under the Term Loan Agreement (or any replacement thereof so long as any such guarantee is limited to guaranteeing the obligations of a Permitted Subsidiary or a Permitted Parent and such Permitted Subsidiary or Permitted Parent received or will receive reasonably equivalent value in exchange for such guarantee);

(v) has not acquired and will not acquire obligations or securities of its members or any Affiliate (other than ownership interests in its subsidiaries and CGP Holding LLC's repurchase of Series A Units on July 26, 2019);

(w) has allocated and will allocate fairly, reasonably and nonarbitrarily any overhead expenses that are shared with any Affiliate, including but not limited to paying for shared space and services performed by any employee of an Affiliate;

(x) has maintained and used, 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 have borne and shall bear its own name and have not borne and shall not bear the name of any other entity unless such entity is clearly designated as being its agent;

(y) has not pledged and will not pledge its assets to secure the liabilities, debts or obligations of any other Person, except as permitted pursuant to this Agreement or as required under the Term Loan Agreement (or any replacement thereof permitted hereunder that contains substantially the same requirements);

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

(aa) has been, is and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same 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; and

(bb) presently has and will have no indebtedness other than (i) the loan made by the Facility Lender providing financing for the Facility (and any interest rate swap or hedge agreements entered into in connection therewith) and any loan (or interest rate hedge agreement) in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business relating to its ownership, leasing and operation of the Facility, including the Shared Facilities, and their routine administration, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of \$15,000,000 in the aggregate, (iv) any swap or hedge agreements not otherwise maintained with the Facility Lender, and (v) such other liabilities that are permitted pursuant to this Agreement.

**“Supply Plan”** has the meaning set forth in the CAISO Tariff.



**“System Emergency”** means each of the following: (a) “System Emergency” as set forth in the CAISO Tariff and (b) a condition or situation that in the judgment of Buyer (i) is imminently likely to endanger life or property; or (ii) 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 the Parent Entity, any transaction or series of transactions resulting in (a) more than fifty percent (50%) and less than one hundred percent (100%) of the membership interests of Seller or the Parent Entity, as applicable, being issued or otherwise provided to another Person (a **“Tax Equity Investor”**) in exchange for capital contributions to Seller or the Parent Entity, as applicable, (b) the Tax Equity Investor being allocated a necessary share of profits and losses of Seller or the Parent Entity, as applicable, to achieve the associated allocations of tax attributes to the Tax Equity Investor, and (c) the Tax Equity Investor being granted only such management responsibilities in Seller or the Parent Entity, as applicable, as are reasonably satisfactory to Buyer’s Authorized Representative.

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

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

**“Term Loan Agreement”** means that certain Term Loan Agreement, dated February 16, 2017, among Seller, the lenders party thereto and Cantor Fitzgerald Securities.

**“Termination Payment”** has the meaning set forth in Section 13.3(d).

**“Third Party Agreement Notice”** has the meaning set forth in Section 6.5(a).

**“Transmission Provider(s)”** means the Person(s) operating the Transmission System(s) providing Transmission Services to or from the Point of Delivery.

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

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

**“U.S. Issuer Bank”** means any issuer of a letter of credit that is organized under the laws of the United States or any state thereof.

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



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

“WREGIS” means Western Renewable Energy Generation Information System, any successor thereto, including any replacement system required by the CEC, or any replacement system as determined by Buyer.

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

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

“WREGIS Withholding Amount” has the meaning set forth in Section 11.3.

Other terms defined herein have the meanings so given them in this Agreement.

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

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person’s successors and assigns 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;
- (c) reference to any gender includes the other;
- (d) (i) reference to any agreement (including this Agreement), document, instrument, tariff, rule, or law means such agreement, document, instrument, tariff, rule, or law as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, and any successor to the foregoing (including successor statutes, if applicable), and (ii) any term defined herein by reference to the definition of such term in any agreement, document, instrument, tariff, rule, or law shall have the meaning ascribed to such term, or if such term is no longer used, the term or concept most closely representing such term, in any amended or modified version of such agreement, document, instrument, tariff, rule, or law, or any successor thereto, unless the foregoing interpretation would materially affect the interpretation or performance of this Agreement;
- (e) 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;
- (f) “herein”, “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;

(g) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;

(h) 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”;

(i) reference to time shall always refer to Pacific Prevailing Time;

(j) reference to any “day” or “month” shall mean a calendar day or calendar month respectively, unless otherwise indicated, and assumes the use of Pacific Prevailing Time to determine the start and end of each referenced “day” or “month”, unless otherwise indicated;

(k) the term “or” is not exclusive; and

(l) with respect to obligations, the terms “shall” and “will” shall have the same meaning and be of equal force and effect.

**Section 1.3 Order of Precedence.** In the event of any conflict or inconsistency between or among the terms and conditions of any of the body of this Agreement, the Appendices and Exhibits attached to the body of this Agreement and the Ancillary Documents, the following order of precedence, consistent with the controlling Requirements of Law, shall govern the interpretation of this Agreement (other than executed documents based on forms attached to the body of this Agreement that by their terms govern in the event of any inconsistency): (a) the body of this Agreement, (b) the Appendices and Exhibits attached to the body of this Agreement, and (c) the Ancillary Documents.

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

**Section 2.1 Effective Date.** This Agreement shall be effective as of the “*Effective Date*,” which shall occur as of the date upon which (a) Seller and Buyer have executed and delivered this Agreement, and (b) Buyer has confirmed receipt of delivery of such fully executed Agreement. On or prior to the Effective Date, Seller shall deliver to Buyer (i) the Generator Interconnection Agreement, duly executed by Seller and Transmission Provider, providing for full capacity deliverability, (ii) the Legal Opinion, (iii) the Real Property Agreements, duly executed by the parties thereto, as may be reasonably redacted to prevent disclosure of commercially sensitive financial terms, (iv) true, correct, and complete copies of (x) the certificate of formation and limited liability company agreement of Seller, (y) a certificate for Seller, dated no earlier than ten (10) days prior to the Effective Date, from the Secretary of State of the State of Delaware as to Seller’s valid existence and good standing, and (z) all resolutions and other documents evidencing all limited liability company actions required to execute, deliver, and perform the Seller Parties’ obligations under this Agreement and the Ancillary Documents, in each case, certified by an authorized representative of the applicable Seller Party as being true, correct and complete, and (v) an incumbency certificate signed by the secretary of each Seller Party certifying as to the names and signatures of the authorized representatives, signatories, and officers of such Seller Party, in each case, in form and substance reasonably

satisfactory to Buyer. No more than five (5) Business Days after the Effective Date, Seller shall deliver to Buyer acceptable evidence of the Insurance.

**Section 2.2 Agreement Term and Delivery Term.** This Agreement shall have a delivery term (the “***Delivery Term***”) commencing on the Commencement Date and ending on December 31, 2041, unless sooner terminated in accordance with the terms of this Agreement. The term of this Agreement (the “***Agreement Term***”) shall commence on the Effective Date and shall end upon the expiration of the Delivery Term or earlier termination of this Agreement in accordance with the terms hereof.

**Section 2.3 Survivability.** The provisions of this Article II, Section 14.19(b)-(e), and Section 14.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article XII and Section 14.19(a) 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 VII, Article VIII, Article IX, Article X, and Article XI shall continue in effect after termination to the extent necessary to provide for final billing, adjustments and deliveries 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 Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.3.

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

(d) **Early Termination for Agreement’s failure to comply with Article I of Chapter 11 of Division 2 of Title 20 of the California Code of Regulations.** Notwithstanding the provisions of Section 8.7, if, within sixty (60) days after the CEC’s receipt of a complete compliance filing under Sections 2909 and 2910 of Article 1 of Chapter 11 of Division 2 of Title 20 of the California Code of Regulations, the CEC issues a decision pursuant to Section 2910 thereof finding that this Agreement fails to comply with Article 1 of Chapter 11 of Division 2 of Title 20 of the California Code of Regulations, then this Agreement shall be void, and any and all deliveries of Delivered Energy shall be terminated no later than the effective date of such decision of noncompliance by the CEC.

(e) **Early Termination for RPS or EPS Non-Compliance.** Buyer may terminate this Agreement pursuant to Section 8.7(b).

(f) **Effect of Termination.** Any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

## ARTICLE III DEVELOPMENT OF THE FACILITY

### Section 3.1 In General.

(a) **Permitting.** Seller, at its expense, shall timely take all steps necessary to obtain and maintain all Permits required to own, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law and for the performance of Seller's obligations hereunder.

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

(c) **Ownership of the Facility.** Except as otherwise permitted by this Agreement or in any Consent to Collateral Assignment, the Facility shall be owned by Seller during the Agreement Term. Seller shall operate and maintain the Facility, at its sole risk and expense, and in compliance with the requirements of this Agreement, all applicable Requirements of Law, and Prudent Utility Practices; *provided, however,* meeting these requirements shall not relieve Seller of its other obligations under this Agreement. 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 which are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer. If, at any time during the Agreement Term, any Facility Lender permits any Liens on the Facility or any other property or assets of Seller related to the operation, maintenance, and use of the Facility that are not included in clause (a) through (e) of the definition of Permitted Encumbrances, then Seller shall promptly notify Buyer thereof. The Facility shall be operated during the Delivery Term by the party listed as the operator on Appendix B or such other Person as Buyer shall approve in the exercise of its reasonable discretion.

**Section 3.2 Commencement Date Notices.** Seller shall provide Buyer no fewer than ninety (90) days' prior written notice of the date on which Seller anticipates achievement of the Commencement Date Conditions and provide Buyer with the Commencement Date Certificate when Seller believes that all Commencement Date Conditions have been satisfied. Upon receipt of the Commencement Date Certificate, if applicable, Buyer's Authorized Representative shall promptly, and in writing, either accept or reject the Commencement Date Certificate in its reasonable discretion. If Buyer's Authorized Representative rejects the Commencement Date Certificate, Seller shall promptly correct any defects or deficiencies and resubmit the Commencement Date Certificate; *provided,* if Buyer fails to respond in writing to such Commencement Date Certificate within thirty (30) Business Days after receipt thereof, Buyer shall be deemed to have accepted such Commencement Date Certificate.

**Section 3.3 Other Information.** Seller shall provide to Buyer such other information regarding the permitting or operations of Seller or the Facility, financial or otherwise, and other data concerning Seller or the Facility as Buyer or Buyer's Authorized Representative may, from time to time, reasonably request. Until the Commencement Date, Seller shall provide to Buyer

quarterly written reports, in form and substance reasonably satisfactory to Buyer, describing the status of the Facility, including any significant developments or delays and Seller's estimated Commencement Date, and anticipated progress and activities for the upcoming month. Buyer and Buyer's Authorized Representative shall be permitted to inspect the Facility from time to time upon reasonable prior notice to Seller and during reasonable business hours, on the condition that (i) such activity does not materially disrupt operations at the Facility, (ii) any such Authorized Representatives at the Site comply with any Site-specific rules and requirements notified to Buyer in advance, including any applicable Navy access requirements of which Seller notifies Buyer, and (iii) such Authorized Representative enter into a right of entry, in form and substance reasonably acceptable to Buyer, wherein risks of being at the Facility will be assumed by such Authorized Representatives visiting and evidence of insurance will be provided by, or on behalf of, such Authorized Representatives; *provided*, that any such right of entry shall not abridge, modify, supersede, or otherwise affect the indemnification obligations of Seller hereunder, which shall apply to any such inspections by Authorized Representatives of Buyer.

**Section 3.4 CEC Certification.** On or before October 1, 2021, Seller shall deliver to Buyer evidence reasonably satisfactory to Buyer that the Facility is CEC Certified.

**Section 3.5 Performance Damages.** If Seller fails to achieve the Commencement Date by the Guaranteed Commencement Date, Seller shall pay liquidated damages to Buyer in an amount equal to five thousand dollars (\$5,000) per day ("**Daily Delay Damages**") for each day intervening between the Guaranteed Commencement Date and the earlier of (a) the Commencement Date and (b) the date, if any, on which this Agreement is terminated by Buyer pursuant to Section 2.4. The Parties agree that (x) it is impractical or extremely difficult to determine actual damages to which Buyer would be entitled in the foregoing circumstance, and (y) the liquidated damages provided for in this Section are a fair and reasonable calculation of actual damages to Buyer and are not a penalty in such a circumstance. Buyer may draw from the Performance Security the amount of any such Daily Delay Damages due and owing to Buyer. Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Commencement Date occur later than March 31, 2022 (the "**Outside Commencement Date**"), and the failure to achieve the Commencement Date by the Outside Commencement Date shall be an immediate Default by Seller, not subject to extension or cure of any kind. The payment of Daily Delay Damages shall not limit Buyer's right to (i) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after Seller's delay in achieving the Commencement Date by the Guaranteed Commencement Date, (ii) recover any damages not directly attributable to such delay or to pursue any indemnity claims in accordance with this Agreement, or (iii) terminate this Agreement pursuant to Section 2.4.

**Section 3.6 Decommissioning and Other Costs.** Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility Assets or any environmental or other liability associated with the decommissioning or demolition of the Facility Assets without regard to the timing or cause of the decommissioning or demolition of the Facility Assets.

## ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY

**Section 4.1 Compliance with Electrical Service Requirements.** Seller shall, at its sole expense, operate and maintain, or cause a Qualified Operator to operate and maintain, the Facility (a) in accordance with Prudent Utility Practices, the requirements of this Agreement, all applicable Requirements of Law and the requirements of applicable manufacturers' and operators' specifications, using commercially reasonable efforts to comply with any published recommendations of the manufacturers and suppliers of the major components of the Facility, (b) with due regard for the safety, security and reliability of the interconnection facilities and the Transmission System, and (c) in a manner that is reasonably likely to maximize the output of the Facility throughout the Facility's useful life and result in a useful life for the Facility through the end of the Delivery Term.

### **Section 4.2 General Operational Requirements.**

In addition to the requirements set forth in Section 4.1 and elsewhere in this Agreement, Seller shall or shall cause its Qualified Operator to, at all times:

- (a) Employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Agent. Seller shall ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;
- (b) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and Transmission System;
- (c) Comply with operating and maintenance standards required by the Facility's equipment suppliers, consistent with Prudent Utility Practices and Seller's past practices at the Facility; and
- (d) Operate and maintain the Facility in accordance with Prudent Utility Practices.

### **Section 4.3 Operation and Maintenance Plan.**

Following the Commencement Date, Seller shall:

- (a) Devise, implement, and maintain, a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to operate and maintain the Facility in accordance with Prudent Utility Practices (the "***Operation and Maintenance Plan***"). The Operation and Maintenance Plan shall be in form and substance reasonably acceptable to Buyer and available for inspection by Buyer and Buyer's Authorized Representatives during Seller's regular business hours upon reasonable notice.
- (b) Provide to Buyer, on a monthly basis, any regularly prepared operation and maintenance status reports of the Facility provided to WECC or Facility Lenders pursuant to a Financing Agreement.



(c) In addition to the other required and preventative maintenance actions contained in this Agreement, provide notification to Buyer of its actions to: (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify all preventative maintenance requirements for the following calendar year, including the performance of maintenance in accordance with Section 4.4 and Article V; (iii) conduct periodic maintenance of various equipment (which shall include a report to Buyer about any findings); (iv) conduct periodic quality assurance and quality control activities and inspections in accordance with Seller's Quality Assurance Program (which shall include a summary report to Buyer regarding the results of such activities and inspections); (v) hire subcontractors, as applicable, to meet the Facility's maintenance, betterment, and improvement needs; and (vi) schedule and assign routine maintenance during operations, planned outages, as well as maintenance that can be conducted during a Forced Outage, or during an outage occurring as a result of curtailment notifications.

**Section 4.4 Reporting and Information.** For the duration of the Delivery Term, Seller shall provide to Buyer (a) Monthly Reports of the operation of the Facility on or before the fifteenth (15th) day of each month, which shall include (i) a performance summary of the month-and Contract Year-to-date MWh generation of Facility Energy and delivery of Buyer's Share of Facility Energy, capacity factor, availability (including actual availability vs. expected availability), (ii) reports of expected generation indicators of when Shortfall Energy may occur; (iii) any regularly prepared operations and maintenance status reports of the Facility provided to WECC or any Facility Lenders, (iv) reports regarding the ongoing operations of the Facility during such month, which set forth the status of the operation 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, (v) a description of the reasons for any downtime, maintenance or repairs, and curtailment periods during the applicable month, and (vi) a safety and environmental summary; and (b) such other information regarding the Facility as Buyer may, from time to time, reasonably request.

## **ARTICLE V COMPLIANCE DURING OPERATION PERIOD**

### **Section 5.1 In General.**

(a) **The Facility.** Seller represents and warrants that Seller performed, or caused to be performed, all engineering, design, development and construction of the Facility in a good and workmanlike manner and in accordance with applicable standards, Prudent Utility Practices, all applicable Requirements of Law, in each case, at the time of such engineering, design, development and construction. Seller warrants and guarantees that throughout the Delivery Term: (i) the Facility and its components and related work, will be free from material defects caused by errors or omissions in design, engineering, and construction, (ii) the Facility will be free and clear of all Liens other than Permitted Encumbrances, and (iii) the Facility will comply in all respects with the requirements of this Agreement and all applicable Requirements of Law. Seller also warrants and guarantees that throughout the Agreement Term it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in compliance with standards, Prudent Utility Practices, Requirements of Law, Seller's Quality Assurance



Program, applicable and material standards, and other provisions of this Agreement. Without limiting the foregoing, Seller shall promptly repair or replace, consistent with Prudent Utility Practices, any component of the Facility that does not comply with the foregoing warranties or guarantees. Seller shall at all times exercise commercially reasonable efforts to undertake all recommended or required updates or modifications to the Facility, its equipment and materials, including procedures, programming and software in a timely manner.

(b) **Buyer's Right to Monitor in General.** Buyer shall have the right, upon prior written notice to Seller, and Seller shall permit Buyer and its representatives, advisors, engineers and consultants to, observe, inspect and monitor all operations and activities at the Site, on the condition that (i) such activity does not materially disrupt operations at the Facility, (ii) any such Persons at the Site comply with any Site-specific rules and requirements notified to Buyer in advance, including any applicable Navy access requirements of which Seller notifies Buyer, and (iii) such Persons enter into a right of entry, in form and substance reasonably acceptable to Buyer, wherein risks of being at the Facility will be assumed by such Persons visiting and evidence of insurance will be provided by, or on behalf of, such Persons; *provided*, that any such right of entry shall not abridge, modify, supersede, or otherwise affect the indemnification obligations of Seller hereunder, which shall apply to any such inspections by Buyer and its representatives, advisors, engineers and consultants.

**Section 5.2 Compliance with Standards.** Seller shall cause the Facility and all parts thereof to be operated and maintained to meet (a) all of the requirements of this Agreement, (b) all applicable standards and requirements of the latest revision of standards or requirements of the ASTM, ASME, ASCE, AWS, EPA, EEL, IEEE, ISA, National Electric Code, National Electric Safety Code, OSHA, Cal-OSHA, Uniform Building Code, Uniform Plumbing Code, Underwriters Laboratory Standards, the local County Fire Department Standards of the applicable county, and applicable National Fire Protection Agency standards and requirements, (c) all FERC-approved NERC Reliability Standards, (d) any other material codes, standards, and operations and maintenance requirements applicable to the services, equipment, and work, as generally shown in this Agreement, and (e) all applicable Requirements of Law not specifically mentioned in this Section 5.2. If Seller contracts with another Person to operate or maintain the Facility, Seller shall cause such contract to provide that such Person shall operate or maintain, as applicable, the Facility in compliance with the laws, regulations, standards and other requirements identified in clauses (a) through (e) of the prior sentence.

**Section 5.3 Quality Assurance Program.** No later than the occurrence of the Commencement Date, Seller shall develop and initiate a written quality assurance policy, in form and substance reasonably satisfactory to Buyer (the "**Quality Assurance Program**"). Seller shall maintain and comply with said Quality Assurance Program throughout the Delivery Term, and Seller shall cause all work performed on or in connection with the Facility to comply with said Quality Assurance Program.

**Section 5.4 Security Provided by Seller.**

(a) Seller shall execute and deliver to Buyer an Acceptable Form of Performance Security in the amount of the applicable Performance Security Amount no later

than fifteen (15) days following the Effective Date and no later than fifteen (15) days following each Performance Security Adjustment Date thereafter, which Acceptable Form of Performance Security shall, at all times, be subject to replenishment as set forth in Section 5.4(c) below and shall guarantee Seller's obligations under this Agreement for the Agreement Term (the "***Performance Security***").

(b) If this Agreement terminates prior to the occurrence of the Commencement Date while the Performance Security is outstanding and no damages or other amounts are due and owing to Buyer under this Agreement, then Seller is no longer required to maintain the Performance Security; *provided*, that Buyer may draw on such Performance Security in accordance with Section 5.4(c).

(c) Buyer may draw on the Performance Security for any amount due and owing to Buyer due to Seller's obligations under this Agreement, including any liquidated damages, Shortfall Damages, and Daily Delay Damages. Promptly, and in no event more than five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn on the Performance Security such that the amount of the Performance Security is restored to the full amount required at such time, as set forth in Section 5.4(a).

(d) Seller shall, from time to time as requested by Buyer or 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 applicable law the Performance Security contemplated by this Agreement and the Ancillary Documents and the rights, Liens and priorities of Buyer with respect to such credit support.

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event with respect to an issuer of Performance Security, which notice shall be given by Seller within five (5) Business Days of obtaining knowledge of the occurrence of such event. If, at any time, (i) there shall occur a Downgrade Event with respect to an issuer of a Performance Security consisting of a letter of credit, or (ii) Buyer elects to terminate any relationship with such issuer pursuant to directives from any Governmental Authorities applicable to Buyer or a Participating Member, then Buyer may require that Seller replace the Performance Security from the issuer that has suffered the Downgrade Event or with whom the relationship has been terminated by Buyer with Performance Security from a Qualified Issuer within ten (10) Business Days of notice from Buyer to Seller requesting such replacement Performance Security.

(f) If the Performance Security consists of a letter of credit that expires before the end of the Agreement Term, Seller shall (i) cause the term of such letter of credit to be renewed or extended for additional consecutive terms of three hundred sixty (360) days or more (or, if shorter, the remainder of the Agreement Term) no later than thirty (30) days prior to each such expiration date, and (ii) provide written proof of such renewal or extension to Buyer as soon as practicable thereafter, but in no event later than fifteen (15) days prior to the applicable expiration date. If Seller fails to comply with the foregoing sentence, Buyer may immediately draw upon the entire outstanding amount of the letter of credit and, at

Seller's cost and with Seller's funds, place such amount in an account controlled by Buyer until Seller provides substitute Performance Security meeting the requirements of this Section 5.4.

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

**Section 5.5 Effect of Review by Buyer.** Any review by Buyer of the operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review or observation with Seller, nor shall any such review or observation or the results thereof (whether or not the results are shared with Seller), nor any failure to conduct any such review, relieve Seller from any of its obligations under this Agreement. By making any such review, 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 of the Facility, including any review of the operation or maintenance of the Facility by Buyer, 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.

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

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

(a) On and after the Commencement Date and continuing for the Delivery Term, Seller shall sell, and Buyer shall purchase, all Delivered Energy for the Contract Price, except as described in Section 6.1(b), Section 6.5, Section 8.5(b), or Section 8.7.

(b) Seller shall not be obligated to sell to Buyer, and Buyer shall not be obligated to purchase, (i) any Excess Energy, or (ii) any Energy in any hour that exceeds the then-applicable Generation Hourly Cap. If Seller elects to offer any such Energy to Buyer, and Buyer elects, in its sole discretion, to purchase such Energy, then the price for such Energy shall be the Excess Energy Price.

(c) For each hour during which Buyer pays Seller the Contract Price or the Excess Energy Price for Forecasted Energy pursuant to Section 6.1(a) or Section 6.1(b), Seller shall issue a credit to Buyer equal to the product of (i) CAISO's Day-Ahead LMP at the Point of Delivery for such hour, and (ii) the MWh of Forecasted Energy during such hour.

**Section 6.2 Point of Delivery.** Subject to Section 6.1(b), Seller shall use commercially reasonable efforts to cause the quantity of Scheduled Energy during each hour to be equal to the quantity of Buyer's Share of Facility Energy and Replacement Energy during such hour. To the extent Buyer's Share of Facility Energy (a) is associated with Excess Energy that Buyer elects not to purchase or (b) would cause the Scheduled Energy to exceed the then-

applicable Generation Hourly Cap: (i) Seller shall not Schedule such Energy for Buyer's benefit notwithstanding the previous sentence, (ii) Seller may sell the applicable MWh of Buyer's Share of Facility Energy to a third party, (iii) Seller shall not be obligated to deliver to Buyer the Environmental Attributes associated with the MWh of Buyer's Share of Facility Energy sold to such third party, and (iv) such MWh of Buyer's Share of Facility Energy sold to a third party shall not be included in the calculation of the REC Shortage pursuant to Section 8.5(b).

**Section 6.3 Energy to Come Exclusively from Facility.** 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.

**Section 6.4 Sales to Third Parties.** Except for deliveries of Facility Energy and Replacement Energy into the CAISO, any Facility Energy that is not Buyer's Share of Facility Energy and any Excess Energy not purchased by Buyer pursuant to this Agreement, Seller shall not sell or otherwise transfer any Facility Energy, Replacement Energy, Capacity Rights or Environmental Attributes, in each case, associated with Delivered Energy required to be delivered to Buyer under this Agreement to any Person other than Buyer during the Agreement Term. Any purported sale or transfer in violation of this provision shall be null and void at inception and of no force or effect.

**Section 6.5 Right of First Refusal.**

(a) If, at any time during the Agreement Term, Seller makes a written proposal to sell any portion of the Facility Energy (other than Buyer's Share of the Facility Energy), together with the associated Environmental Attributes and Capacity Rights, to any third-party purchaser for a period of ten (10) years or more, then Seller shall deliver notice thereof to Buyer at least thirty (30) days prior to the date that Seller intends to enter into the agreement with such third party, which notice shall include (i) the percentage of the Facility Energy and the quantity of RA Capacity to be covered by such agreement and the corresponding updated numbers for Buyer's Share, the Expected RA Capacity, the Expected Annual Generation, and the Guaranteed Annual Delivered Energy for the then-current Contract Year and each Contract Year for the Remaining Term should Buyer elect to exercise its ROFR, if Buyer has the right to do so, in accordance with Section 6.5(b), (ii) the negotiated price in such agreement, (iii) the term of such agreement, and (iv) the point of delivery for such agreement (the "**Third Party Agreement Notice**"). Seller shall have a reasonable period of time to review the Third Party Agreement Notice and (i) if the aggregate price contemplated therein is equal to or lower than the Contract Price and (ii) Seller determines in its reasonable discretion that the other material commercial terms are comparable to the terms under this Agreement, then (x) the Third Party Agreement Notice shall constitute a "**Qualifying Third Party Agreement Notice**" and (y) the Contract Price shall automatically be reduced to the price set forth in the Qualifying Third Party Agreement Notice, effective as of the date of delivery of the Qualifying Third Party Agreement Notice. Seller shall provide such other additional information concerning the third party agreement as Buyer may reasonably request in order to make the determination as to whether a Third Party Agreement Notice constitutes a Qualifying Third Party Agreement Notice. For purposes of this Section 6.5(a), if the pricing structure under the third party agreement includes a capacity payment or

any other payment in addition to, or in lieu of, a per-MWh price, the Parties shall work together in good faith to determine a per-MWh equivalent price.

(b) If Seller delivers a Qualifying Third Party Agreement Notice, Buyer shall have a right of first refusal (the “**ROFR**”) to increase Buyer’s Share and the Expected RA Capacity for the remainder of the Delivery Term to cover any or all of such portion of the Facility Energy and associated Environmental Attributes and Capacity Rights. Buyer shall provide notice as to whether Buyer is interested in exercising the ROFR, subject to any city council or other approvals the Participating Members may require (an “**Election Notice**”) within thirty (30) days after receipt of the Qualifying Third Party Agreement Notice. If Buyer delivers an Election Notice, then Buyer’s Share, the Expected RA Capacity, the Expected Annual Generation, and the Guaranteed Annual Delivered Energy under this Agreement shall automatically be increased to the applicable numbers specified in the Qualifying Third Party Agreement Notice, effective as of the first day of the month following Buyer’s notice to Seller that Buyer and the Participating Members have obtained all required city council and other approvals. If Buyer does not deliver an Election Notice within such time period, then Seller shall be free to enter into such agreement with such third party, on the condition that such agreement shall be on the terms presented by Seller in such notice. If Seller does not enter into such third party agreement within 120 days after Seller’s delivery of the Qualifying Third Party Agreement Notice, then Seller shall not be entitled to enter into such third party agreement unless Seller delivers a new Third Party Agreement Notice and, if such new Third Party Agreement Notice constitutes a Qualifying Third Party Agreement Notice, Buyer does not timely deliver an Election Notice with respect thereto.

## **ARTICLE VII**

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

**Section 7.1 Transmission and Interconnection.** Seller shall (a) arrange and be responsible for any Transmission Services required to deliver Buyer’s Share of Facility Energy to the Points of Interconnection and Replacement Energy to a point of interconnection with the CAISO grid, and (b) arrange and pay for the interconnection of the Facility to the CAISO grid, including all CAISO Costs associated therewith. The Parties agree to communicate and cooperate as necessary in order to address any Scheduling or settlement issues as they may arise and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

#### **Section 7.2 Forecasting and Scheduling of Energy.**

(a) Except upon the occurrence of a curtailment under Section 7.4, Seller shall (i) Schedule Energy into the Day-Ahead Market using APN Inter-SC Trades (as such term is defined in the CAISO Tariff) (“**IST**”) at the Point of Delivery in accordance with the CAISO Tariff, any other applicable guidelines, and the Scheduling Procedures, (ii) pay all CAISO Costs (except for CAISO Costs that result from Buyer’s failure to submit an IST for any hour that matches the aggregate MWh of Facility Energy and Replacement Energy forecasted by Seller for such hour pursuant to Section 7.2(c)(4), which shall be timely paid by Buyer or promptly reimbursed by Buyer to Seller), and (iii) install metering, telemetry, and control equipment in accordance with Section 11.7 and the CAISO Tariff so as to be able



to deliver Facility Energy to the Points of Interconnection, Schedule Delivered Energy, and respond to CAISO, Transmission Provider, or reliability coordinator's dispatch orders.

(b) Buyer is responsible for any required Scheduling of Delivered Energy after the Point of Delivery. Each Party shall perform all Scheduling activities hereunder in compliance with the CAISO Tariff, WECC scheduling practices, and Prudent Utility Practices.

(c) Seller or Seller's Authorized Representative shall provide the following non-binding forecasts, and any updates to such forecasts, to Buyer based on the most current forecast of Buyer's Share of Facility Energy and Replacement Energy:

(1) At least (A) one-hundred twenty (120) days before the anticipated Commencement Date and (B) one-hundred twenty (120) days before the beginning of each Contract Year thereafter, a non-binding forecast of each month's average-day quantities of Buyer's Share of Facility Energy and Replacement Energy for the following eighteen (18) months.

(2) 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 quantities of Buyer's Share of Facility Energy and Replacement Energy for such month.

(3) 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 quantities of Buyer's Share of Facility Energy and Replacement Energy for the following month.

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

(5) By 5:30 AM PPT on the Business Day immediately preceding each day of delivery of Buyer's Share of Facility Energy and Replacement Energy during the Delivery Term, a copy of a non-binding hourly (or as then appropriate) forecast of quantities of Buyer's Share of Facility Energy and Replacement Energy for each hour of the immediately succeeding day. Any forecast provided on a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller or Seller's Authorized Representative shall, by 9:00 AM PPT, provide a copy of any updates to such forecast indicating a change in forecasted Buyer's Share of Facility Energy or Replacement Energy from the then-current forecast.

(6) Prior to 12:00 PM PPT 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), a non-binding pre-schedule forecast of Buyer's Share of Facility Energy and Replacement Energy via email. The pre-scheduled amounts of Buyer's Share of Facility Energy and Replacement Energy

shall be the good faith estimate of Seller or Seller's Authorized Representative of the anticipated quantities of Buyer's Share of Facility Energy and Replacement Energy at the time. Any forecast provided on 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 Authorized Representative 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 use commercially reasonable efforts to operate the Facility with the objective that, for each hour scheduled, the actual Facility availability shall be maintained in accordance with the pre-schedule plan.

(7) Seller or Seller's Authorized Representative shall use commercially reasonable efforts to notify Buyer via email, followed by a telephone call, or other mutually acceptable method, of any hourly changes due to a change in Facility availability or an anticipated outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour, or such other limit as specific in the CAISO Tariff. Seller or Seller's Authorized Representative shall notify Buyer of other unanticipated changes in availability by email or telephone as promptly as reasonably possible. Any notice delivered under this Section 7.2(c)(7) shall include the reason for the outage and an estimated duration of the outage. Once the outage has ended, Seller or Seller's Authorized Representative shall notify Buyer that the outage has ended, the cause of the outage, and the actions taken to resolve the outage in order for the CAISO outage report to be updated accordingly.

(d) Seller shall develop and install all communications systems necessary for the operation of the Facility in accordance with Prudent Utility Practices, including communications systems that provide for the receipt and following of automated dispatch instructions from the CAISO. Throughout the Delivery Term, Seller shall provide to Buyer the following data on a real time basis, with minimal lag time, and in a format that reasonably allows Buyer to copy, paste or otherwise use such data:

(1) Read only access via secure log-in credentials to Facility Energy output information collected by the supervisory control and data acquisition ("**SCADA**") system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon request from Buyer, Seller shall provide Energy output information to Buyer in four (4) second intervals in the form of a one (1) hour flat file to Buyer through a secure file transport protocol (FTP) system with an e mail back up for each flat file submittal. Seller shall store such information for up to three (3) months after delivery thereof to Buyer; and

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

(e) No later than ninety (90) days before the Guaranteed Commencement Date, the Parties shall mutually develop forecasting and Scheduling procedures in addition to those set forth in this Section 7.2 (collectively with the forecasting and Scheduling procedures set forth in this Section 7.2, the "**Scheduling Procedures**") in order to administer the provisions of this Agreement in compliance with all applicable Prudent Utility Practices,



Requirements of Law and requirements of the Transmission Provider, CAISO, NERC, WECC, and any balancing authority involved in the Scheduling of Energy under this Agreement. The Parties shall promptly cooperate to make any reasonably necessary and appropriate modifications to the Scheduling Procedures (including, if necessary, by amending this Agreement) as may be required from time to time.

### **Section 7.3 Scheduled Outage.**

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during certain periods of each Contract Year specified by Buyer's Authorized Representative (such periods of time, the "***Major Maintenance Blockout***"), but in accordance with Prudent Utility Practices. No later than one-hundred twenty (120) days prior to the scheduled Commencement 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 minimize its Scheduled Outages during the Major Maintenance Blockout in a manner that is consistent with Prudent Utility Practices. No later than sixty (60) days prior to the scheduled Commencement 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 three (3) calendar years (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 Buyer's maintenance scheduling requests consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (i) the anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (iii) the anticipated MW capacity 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 will use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur 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, in the event of a Forced Outage, Seller shall notify Buyer within two (2) hours after the commencement of the Forced Outage and, within seven (7) days thereafter, provide detailed information concerning the 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 capacity 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.

## Section 7.4 Curtailments.

(a) Subject to Section 7.4(b), Seller shall reduce deliveries of all or any portion of Buyer's Share of Facility Energy and scheduling of associated Delivered Energy after receiving notice from Buyer, the CAISO, a Transmission Provider, or any reliability entity at any time and for the duration specified in such notice, including for curtailments required due to (i) a System Emergency, (ii) an event of Force Majeure, (iii) an order by the CAISO, any Transmission Provider, or any reliability entity (curtailments under subsections (i), (ii), and (iii), "***Non-Compensable Curtailments***"), or (iv) any economic, operational, or other reason (curtailments under subsections (iv), "***Compensable Curtailments***"). Curtailments shall be measured in a manner that is consistent with the Scheduling Procedures.

(b) Buyer shall notify Seller of any Buyer-directed curtailment no later than two (2) hours before the CAISO Day-Ahead Market closes for matching ISTs for the applicable day. Buyer may not direct a Compensable Curtailment for less than 12 continuous hours in any day and may only direct Compensable Curtailments on up to 45 days for each Participating Member's share of Delivered Energy during any Contract Year.

(c) The Parties shall reasonably estimate the amount of Buyer's Share of curtailed Facility Energy that would have been delivered to the Points of Interconnection during each curtailment under this Section 7.4 had the curtailment not occurred, which shall include Buyer's Share of Facility Energy actually generated during such curtailment but for which Delivered Energy was not delivered to Buyer ("***Deemed Delivered Energy***"). Buyer shall pay Seller for Deemed Delivered Energy during Compensable Curtailments as if such Deemed Delivered Energy were Delivered Energy, except to the extent such Deemed Delivered Energy would have been Excess Energy had it been delivered, unless Buyer has elected to purchase such Excess Energy pursuant to Section 6.1(b). Buyer shall not be obligated to pay Seller for any Deemed Delivered Energy (i) that would have been Excess Energy had it been Scheduled during any Compensable Curtailment unless Buyer has elected to purchase such Excess Energy pursuant to Section 6.1(b), or (ii) that accrues during any Non-Compensable Curtailment.

(d) If Seller sells Buyer's Share of Facility Energy to a third party during any Compensable Curtailment or Non-Compensable Curtailment, then (i) Seller shall not be obligated to deliver to Buyer the Environmental Attributes associated with the MWh of Buyer's Share of Facility Energy sold to such third party, (ii) such MWh of Buyer's Share of Facility Energy sold to a third party shall not be included in the calculation of the REC Shortage pursuant to Section 8.5(b), and (iii) to the extent such MWh of Buyer's Share of Facility Energy were sold during a Compensable Curtailment, Seller shall credit the amount paid by such third party for such MWh against amounts that Buyer would otherwise have owed for such MWh pursuant to Section 7.4(c).

(e) In the event of any inconsistency between the provisions in this Section 7.4 and any applicable requirements of CAISO, the provisions of CAISO shall govern.

**Section 7.5 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 (a) all Energy generated by the Facility prior to and at the Points of Interconnection and (b) all Replacement Energy prior to and at the point of delivery thereof into the CAISO grid. Seller shall deliver all Delivered Energy, Capacity Rights and Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to all Scheduled Energy shall pass from Seller to Buyer at the Point of Delivery effective upon the close of the Day-Ahead Market. Title to all RAR Attributes shall pass from Seller to Buyer upon Seller's submission of a Supply Plan therefor to the CAISO that is accepted by the CAISO. Title to all Environmental Attributes and Capacity Rights (other than RAR Attributes) shall pass from Seller to Buyer upon the creation thereof.

## **ARTICLE VIII ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE**

**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 Delivered 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, free and clear of all Liens, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term. Seller agrees to transfer and make available to Buyer such Environmental Attributes to the fullest extent allowed by applicable law immediately 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 will not in the future 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 Contract Price and Excess Energy Price. If at any time Seller becomes obligated to obtain pollution or environmental credits or offsets in order to own, operate or maintain the Facility in compliance with the Requirements of Law, Seller shall ensure that such credits or offsets are obtained in Seller's own name and at Seller's sole cost and expense. In no event shall Seller use any Environmental Attributes to satisfy the foregoing obligation.

**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 all 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.

**Section 8.4 Use of Accounting System to Transfer Environmental Attributes.** In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS to evidence the transfer of any Environmental Attributes under applicable laws or any voluntary program (“*WREGIS Certificates*”), in accordance with WREGIS reporting protocols and shall cause the Facility to remain registered with WREGIS. After the Commencement Date, at the option of Buyer’s Authorized Representative, Seller shall transfer WREGIS Certificates associated with Buyer’s Share of Facility Energy (subject to Section 6.2 and Section 7.4(d)) and Replacement Energy using the Forward Certificate Transfer method, as described in WREGIS Operating Rules, from Seller’s WREGIS account (or, with respect to Replacement Energy, from a third party’s WREGIS account) to up to three WREGIS accounts, as designated by Buyer’s Authorized Representative. Seller shall be responsible for the WREGIS expenses associated with maintaining registration of the Facility, maintaining its account, WREGIS Certificate issuance fees and transferring WREGIS Certificates to Buyer or Buyer’s Agent, or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates. Buyer is not a QRE as defined by the WREGIS Operating Rules for Seller. 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 the event that WREGIS is not in operation, or WREGIS does not track Seller’s transfer of WREGIS Certificates to Buyer, Buyer’s Agent or Buyer’s designees for purposes of any Environmental Attributes attributed, accrued, realized, generated, produced, recognized or validated relative to Buyer’s Share of Facility Energy or Replacement Energy, Seller shall document the production and transfer of Environmental Attributes under this Agreement by delivering to Buyer an attestation for the Environmental Attributes associated with Buyer’s Share of Facility Energy or Replacement Energy, measured in whole MWh, or by such other method as Buyer or Buyer’s Authorized Representative shall designate. If any of the foregoing is or becomes inconsistent with the WREGIS rules, the Parties shall reasonably cooperate to amend the foregoing procedures in a manner reasonably requested by Buyer consistent with the then effective WREGIS rules.

**Section 8.5 Further Actions Regarding Environmental Attributes.**

(a) If WREGIS (or any successor thereto) is no longer available to provide the services described in Section 8.4, Seller shall, until such time as a substitute provider reasonably acceptable to both Parties is available to provide such services, continue to document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation and bill of sale (on the form set forth in Appendix D) for Environmental Attributes related to Buyer’s Share of Facility Energy and Replacement Energy during the preceding month. At the request of Buyer or Buyer’s Authorized Representative, 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 the Environmental Attributes. 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, the Parties 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.

(b) If, for any REC Period, the aggregate quantity of Buyer's Share of Facility Energy (subject to Section 6.2 and Section 7.4(d)) and Replacement Energy is less than the aggregate quantity of Delivered Energy (such difference, the "**REC Shortage**"), then Seller shall pay to Buyer an amount equal to (i) the aggregate Replacement Green Attributes Prices for the REC Shortage less (ii) the aggregate WREGIS Withholding Amounts withheld by Buyer with respect to the REC Shortage during such REC Period; *provided, however*, that if such calculation results in a negative number, then no amount shall be owed by either Party with respect to the REC Shortage. The Parties agree that (x) it is impractical or extremely difficult to determine actual damages to which Buyer would be entitled in the foregoing circumstance, and (y) the damages provided for in this Section 8.5(b) are a fair and reasonable calculation of actual damages to Buyer and are not a penalty in such a circumstance. Buyer shall use commercially reasonable efforts to minimize the amount of the Replacement Green Attributes Price.

**Section 8.6 RPS and EPS Compliance.** Seller warrants and guarantees that, upon the achievement of the Commencement Date and at all times thereafter, the Facility will be both RPS Compliant and EPS Compliant (the "**Compliance Standards**"). Subject to the Compliance Expenditure Cap set forth in Section 8.7, Seller shall be responsible for all costs and charges associated with maintaining the Compliance Standards should the Facility not be RPS Compliant and EPS Compliant after the Commencement Date and throughout the Delivery Term. From time to time and at any time requested by Buyer or Buyer's Authorized Representative, Seller will furnish to Buyer, Governmental Authorities, or other Persons designated by Buyer, all certificates and other documentation reasonably requested by Buyer or Buyer's Authorized Representative in order to establish compliance with the preceding sentence.

#### **Section 8.7 Change in Law.**

(a) Notwithstanding the foregoing, if at any time during the Delivery Term a change in law occurs that causes the Facility to fail to comply with the Compliance Standards, then Seller shall use commercially reasonable efforts to bring the Facility into compliance with the Compliance Standards; *provided, however*, that Seller's obligation to incur costs and expenses in connection with satisfying the Compliance Standards due to a change in law shall not exceed one million dollars (\$1,000,000) per occurrence and two million five hundred thousand dollars (\$2,500,000) in the aggregate over the Delivery Term (collectively, the "**Compliance Expenditure Cap**"). During all times in which the Facility fails to meet the Compliance Standards, including when Seller is using commercially reasonable efforts to bring the Facility into compliance with the Compliance Standards, Buyer shall pay the Interim Non-Compliant Price for Delivered Energy. The Interim Non-Compliant Price shall remain in place until such time as the Facility is brought back into compliance with the Compliance Standards, subject to Section 8.7(b).

(b) If, at any time during the Delivery Term, (i) the RPS Law or EPS Law ceases to be effective and is not replaced with a functionally equivalent law, (ii) Buyer determines, in its reasonable discretion, that it is impossible notwithstanding Seller's



commercially reasonable efforts, including expenditures (including all of Seller's prior costs and expenses in connection with satisfying the Compliance Standards due to such change in law) up to the Compliance Expenditure Cap, for Seller to bring the Facility into compliance with the Compliance Standards, or (iii) despite Seller's commercially reasonable efforts and expenditure of funds in an amount equal to or exceeding (including all of Seller's prior costs and expenses in connection with satisfying the Compliance Standards due to such change in law) the Compliance Expenditure Cap, the Facility remains not in compliance with the Compliance Standards, then Buyer may elect by notice to Seller, to the extent permitted by applicable laws, rules, and regulations, to either (x) terminate the Agreement, or (y) for the remainder of the Delivery Term, replace the Contract Price with the Final Non-Compliant Price.

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

**Section 9.1 Makeup of Shortfall.** If in any Contract Year the amount of Delivered Energy (excluding Makeup Energy and Delivered Energy associated with Replacement Energy delivered during such Contract Year) and Deemed Generated Energy is less than the Guaranteed Annual Delivered Energy for such Contract Year, then Seller shall make up such shortfall of Delivered Energy ("**Shortfall Energy**") in accordance with this Article IX.

**Section 9.2 Makeup Energy and Replacement Energy.** During any Contract Year (the "**Shortfall Cure Period**") immediately following a Contract Year in respect of which there is Shortfall Energy due to Buyer, Seller shall make up such Shortfall Energy by delivering (a) Delivered Energy associated with Buyer's Share of Facility Energy in excess of the Guaranteed Annual Delivered Energy (such Delivered Energy up to the amount of the Shortfall Energy, "**Makeup Energy**") or (b) Delivered Energy associated with Replacement Energy; *provided, however*, that any Delivered Energy associated with Replacement Energy shall be Scheduled in accordance with Section 7.2(a) on the delivery schedule specified by Buyer or Buyer's Authorized Representative and shall be subject to the limitation set forth in clause (ii) of Section 6.1(b). Seller shall also provide to Buyer the associated Environmental Attributes and Capacity Rights. Notwithstanding this Section 9.2, if (x) the Contract Year in which Shortfall Energy accrues is the last year of a CEC Compliance Period, Seller shall not have the right or obligation to make up such Shortfall Energy through the delivery of Makeup Energy or Replacement Energy and shall instead pay Shortfall Damages as provided in Section 9.3, or (y) the Contract Year in which Shortfall Energy accrues is the penultimate year of a CEC Compliance Period, then Seller's right and obligation to make up such Shortfall Energy through the delivery of Makeup Energy or Replacement Energy shall only apply through the date that is one hundred twenty (120) days prior to the expiration of the CEC Compliance Period.

**Section 9.3 Energy Replacement Price.** If Seller fails to make up the full amount of any Shortfall Energy by the end of the applicable Shortfall Cure Period or such earlier date as set forth in clause (y) of Section 9.2 (the "**Makeup Deadline**"), or the Contract Year during which Shortfall Energy accrues is the last year of a CEC Compliance Period, then within sixty (60) days after the Makeup Deadline or the last day of the relevant Contract Year, as applicable, Seller shall pay to Buyer an amount equal to (a) the aggregate Energy Replacement Prices for the remaining Shortfall Energy at the expiration of the Shortfall Cure Period, minus (ii) the product

of the Contract Price and the MWh quantity of such remaining Shortfall Energy (collectively, the “**Shortfall Damages**”); *provided, however*, that if such calculation results in a negative number, the Shortfall Damages shall be deemed to equal zero dollars (\$0.00). The Parties agree that (x) it is impractical or extremely difficult to determine actual damages to which Buyer would be entitled in the foregoing circumstance, and (y) the Shortfall Damages provided for in this Section 9.3 are a fair and reasonable calculation of actual damages to Buyer and are not a penalty in such a circumstance. Buyer shall use commercially reasonable efforts to minimize the amount of the Energy Replacement Price.

**Section 9.4 No Limitation on Remedies.** The payment of Shortfall Damages or the delivery of Replacement Energy or Makeup Energy shall not limit Buyer’s rights to exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before or after the failure to meet the Guaranteed Annual Delivered Energy, including a Default under Section 13.1(c).

## **ARTICLE X CAPACITY RIGHTS**

**Section 10.1 Purchase and Sale of Capacity Rights.** 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 the Delivered 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 the Capacity Rights. Buyer and Seller acknowledge and agree that the consideration for the transfer of Capacity Rights is contained within the relevant prices for Delivered Energy. 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 Representation Regarding Ownership of Capacity Rights.** Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and will 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. Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belong to it.

### **Section 10.3 Failure to Provide Expected RA Capacity.**

(a) Seller shall provide Buyer with the Expected RA Capacity by submitting monthly and annual Supply Plans in accordance with the CAISO Tariff. Seller shall deliver notice to Buyer of the RA Capacity that Seller will include in any (i) annual Supply Plan at least one hundred twenty (120) days prior to the CAISO submission deadline for such annual Supply Plan, and (ii) monthly Supply Plan at least ninety (90) days prior to the CAISO’s submission deadline for such monthly Supply Plan (as applicable, the “**Notification Deadline**”). If Seller is unable to provide the entire Expected RA Capacity from the Facility for a given period of time, then except to the extent such inability is a result of Force Majeure, Seller shall replace all or a portion of the Expected RA Capacity with replacement resource adequacy capacity from a generating facility other than the Facility



(“**Replacement RA Capacity**”), provided that such Replacement RA Capacity has equivalent RAR Attributes compared to the Expected RA Capacity not provided by Seller from the Facility. Seller shall notify Buyer prior to the Notification Deadline of Seller’s intent to provide Replacement RA Capacity, including the relevant Supply Plan, the source, volume, and duration, and such other information as may be reasonably requested by Buyer. Seller shall reimburse Buyer for all additional costs of Buyer arising from or related to Seller providing Replacement RA Capacity.

(b) If Seller fails to provide any portion of the Expected RA Capacity in accordance with Section 10.3(a) and does not provide Replacement RA Capacity for such Expected RA Capacity in accordance with Section 10.3(a), then in either case, Seller shall pay to Buyer an amount equal to the aggregate RA Replacement Prices for the RA Shortfall. The Parties agree that (A) it is impractical or extremely difficult to determine actual damages to which Buyer would be entitled in the foregoing circumstance, and (B) the damages provided for in this Section 10.3(b) are a fair and reasonable calculation of actual damages to Buyer and are not a penalty in such a circumstance. Buyer shall use commercially reasonable efforts to minimize the amount of the RA Replacement Price.

(c) Seller shall reimburse Buyer for any penalties or fines assessed against Buyer or any Participating Members to the extent resulting solely from the Expected RA Capacity not provided by Seller or replaced by Seller with Replacement RA Capacity.

**Section 10.4 Further Action by Seller Regarding Capacity Rights.** Seller shall execute and deliver such documents and instruments and take such other action as Buyer or Buyer’s Authorized Representative may request to effect recognition and transfer of the Capacity Rights to Buyer. Each Party shall bear its own costs associated therewith.

## **ARTICLE XI**

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

**Section 11.1 Billing and Payment.** Billing and payment for the Energy purchases by Buyer under this Agreement and for any other amounts due and payable by Buyer hereunder shall be as follows:

(a) On or before the tenth (10th) day of the month following a month in which transactions occur hereunder, Seller shall render an invoice (including the name of the Facility, Seller’s address and the contact information of the preparer) to Buyer showing the following for the preceding month, as applicable:

- (1) The total amount of Delivered Energy during such month;
- (2) The total amount of Makeup Energy included in the Delivered Energy during such month, if any;
- (3) The total amount of Delivered Energy associated with Replacement Energy during such month, if any;

(4) An accounting of the amount of the Guaranteed Annual Delivered Energy delivered as of such date for the applicable Contract Year and any new or made-up Shortfall Energy;

(5) Excess Energy delivered during such month and billed pursuant Section 6.1(b) at the Excess Energy Price;

(6) Seller's reasonable calculation of the amount of Deemed Delivered Energy during such month and amounts owed by Buyer in accordance with Section 7.4(c);

(7) The aggregate credits owed to Buyer for Forecasted Energy during such month pursuant to Section 6.1(c);

(8) The amount of Buyer's Share of Facility Energy and Replacement Energy during such month;

(9) Any other payments due to Buyer or Seller under this Agreement;

(10) The total quantity of WREGIS Certificates Seller confirms to have been uploaded by Seller to the WREGIS system during such month; and

(11) The WREGIS Withholding Amounts that Buyer is entitled to withhold with respect to such month or that Buyer is required to release to Seller in accordance with Section 11.3.

(12) Seller's reasonable calculation of the amount of Deemed Generated Energy during such month.

(b) Monthly invoices shall be sent to the address set forth in Appendix C or such other address as is provided by Buyer in writing.

(c) If required pursuant to Section 8.4, attestations of Environmental Attribute transfers to Buyer pursuant to Section 8.5(a) shall accompany monthly invoices.

(d) Confirmation of Seller's compliance with the terms and conditions of this Agreement shall accompany monthly invoices.

**Section 11.2 Payment.** Subject to the provisions of Section 11.4, Buyer shall pay the amounts set forth in each monthly invoice by wire transfer to the accounts designated on the invoice rendered by Seller on or before the thirtieth (30th) day after receipt by Buyer of the applicable invoice. Bills or portions of bills which are not paid by the due date shall thereafter accrue interest at the Interest Rate, from and including the date payment was due until the date such payment is made. Seller shall pay to Buyer any amount owed to Buyer as set forth in Section 11.1(a)(9) with respect to any month at the time Seller submits its next monthly invoice to Buyer, but in no event more than thirty (30) days after the date of the invoice showing any amount is owed to Buyer. Buyer shall not be required to pay any amounts included in an invoice received more than six (6) months after the billing period.

**Section 11.3 WREGIS Withholding.** Buyer shall have the right to withhold from any payment to Seller, for each MWh of Delivered Energy, an amount equal to fifteen dollars (\$15) per MWh (such amount, the “*WREGIS Withholding Amount*”) until the WREGIS Certificate associated with such MWh of Delivered Energy has been delivered to Buyer’s WREGIS account. If at any time after Buyer’s payment of the WREGIS Withholding Amount with respect to a REC, a Governmental Authority determines that such REC did not qualify as “portfolio content category 1” under the RPS Law or as a REC meeting the long-term requirement under Public Utilities Code Section 399.13 (any such REC, a “*Non-Conforming REC*”), Seller shall reimburse Buyer the WREGIS Withholding Amount for each such Non-Conforming REC that was generated during the CEC Compliance Period subject to such Governmental Authority determination, and, without duplication each REC generated during the then-current CEC Compliance Period.

**Section 11.4 Disputed Invoices.** In the event 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. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the 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. “*Interest Rate*” shall mean the lesser of (i) one percent (1%) per month or (ii) the maximum rate permitted by applicable Requirements of Law. Buyer or Buyer’s Authorized Representative may dispute an invoice at any time, *provided* that Buyer or Buyer’s Authorized Representative provides Seller with a notification of such dispute, setting forth the details of such dispute in reasonable specificity.

**Section 11.5 Buyer’s 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, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due Seller from Buyer under this Agreement or otherwise any undisputed amount due Buyer from Seller or any Seller Party under this Agreement or otherwise, including any undisputed amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 7.2, Section 9.3, Section 9.4, Section 11.8, Section 14.7(h), or Section 14.9 if and to the extent paid in the first instance by Buyer.

**Section 11.6 Records and Audits.** Seller shall maintain, and shall cause Seller’s subcontractors and suppliers as applicable to maintain, all records pertaining to the management of this Agreement, related subcontracts and performance of services pursuant to this Agreement (including all billings, costs, metering, and Environmental Attributes), in their original form, including reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred and services performed pursuant to this Agreement. If the Seller, the Seller’s subcontractors or suppliers are required to submit cost or pricing data in connection with this

Agreement, the 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. Buyer and the Authorized Auditors shall have the right to discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than five (5) years following final payment made by the Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at the Seller's offices located at all reasonable times and without charge. The Authorized Auditors shall have the right to reproduce, photocopy, download, transcribe and the like any such records. Any information provided by the Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. The Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller, and the Seller's subcontractors and suppliers, as applicable to the services provided under this Agreement, 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 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 Authority 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, the Seller shall be provided fifteen (15) days to review an Authorized Auditor's examination results or audit and respond to the Buyer's Authorized Representative prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates (i) Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by the Seller to the Buyer within thirty (30) days of notice to the Seller of the identified overpayment or (ii) Seller has been underpaid under a previous payment application, the identified underpayment amount shall be paid by Buyer to Seller within thirty (30) days of notice to the Buyer from the Authorized Auditor of the identified overpayment. Notwithstanding the foregoing, if the audit reveals that the Buyer overpayment to the Seller is more than five percent (5.0%) of the aggregate invoiced amounts in 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. Such examination or audit expenses and costs shall be paid by the Seller to the Buyer within fifteen (15) days of notice to the Seller of such costs and expenses. Any information provided by Seller to the Authorized Auditor and, in turn, from the Authorized Auditor to Buyer, shall be treated as Confidential Information subject to Section 14.21 of this Agreement.

#### **Section 11.7 Electric Metering Devices.**

(a) The Facility Energy shall be measured using CAISO-approved and -polled revenue-quality Electric Metering Devices (in compliance with the CAISO Tariff, the CEC's Renewable Portfolio Standard Guidebook, and all other relevant protocols and

dedicated exclusively to the Facility) procured, installed, owned and maintained by Seller as depicted on Appendix B. All such Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.7. 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 shall cause Buyer to have read-only access to the Facility's Settlement Quality Meter Data (SQMD) directly through the CAISO Market Results Interface-Settlements (MRI-S) or any future replacement system that provides SQMD. Seller shall use commercially reasonable efforts to support any further 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 shall submit revised monthly invoices, in accordance with Section 11.1, 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) Upon Buyer's request, Seller shall provide Buyer and the Participating Members a live, read-only data connection to the Electronic Metering Devices that may be accessed using the Inter-Control Center Communications Protocol, as defined by the International Electrotechnical Commission, which connection will enable the exchange of real-time and historical power system monitoring and control data, including measured values and accounting data.

(c) Seller, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and thereafter in accordance with the CAISO Tariff. 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 or Buyer's Authorized Representative, Seller or Seller's Authorized Representative shall perform additional inspections or tests of any such Electric Metering Devices and shall permit a qualified representative of Buyer to inspect or witness the testing of any such Electric Metering Devices. 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.

(d) 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%), Seller shall make an adjustment to correct all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Buyer's Check Meters or as far as can be reasonably ascertained by Buyer or Buyer's Authorized Representative from the best available data, subject to review and approval by Seller (such approval not to be unreasonably withheld). If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one third of the time elapsed since the preceding test of the Electric Metering Devices. 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 11.7 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 discretion 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.

(e) At Buyer's option, Buyer may install, own and operate Electric Metering Devices at the Facility and/or the Points of Interconnection ("**Buyer's Check Meters**"). Seller shall, and shall cause each of its contractors and subcontractors to grant to Buyer rights of access to the Buyer's Check Meters during normal working hours and subject to Seller's, and Seller's contractors' and/or subcontractors' reasonable requirements and procedures in respect of safety. Throughout the Delivery Term, Buyer shall provide to Seller on a real-time basis read-only access to Buyer's Check Meters. Buyer's Check Meters shall be for check purposes only and shall not be used for the measurement of Facility Energy, except as provided in Section 11.7(c) above. The installation, operation and maintenance of Buyer's Check Meters shall be performed entirely by Buyer at Buyer's sole cost and expense.

**Section 11.8 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 sale or use of Buyer's Share of Facility Energy, Replacement Energy, and Delivered Energy, Capacity Rights and Environmental Attributes and all Taxes related to Seller's income. If Buyer is required under any 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 payments to Seller, Seller shall promptly reimburse Buyer for such amounts promptly upon request. Further, if the Facility is exempt from one or more Taxes at any time and for any reason, and that exemption is lost at any time during the Agreement Term, Seller shall be responsible for any additional Taxes incurred as a result of the loss of that exemption.

## **ARTICLE XII**

### **REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER**

**Section 12.1 Representations and Warranties of Buyer.** Buyer represents and warrants to Seller as of the Effective Date that:

(a) Buyer is a validly existing joint powers authority under the laws of the State of California 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 each Ancillary Document to which it is a party and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all such Ancillary Documents.

(b) The execution, delivery and performance by Buyer of this Agreement and each Ancillary Document to which Buyer is a party have been duly authorized by all necessary action, and do not and will not require any consent or approval of Buyer's Board of Directors or Buyer's Members, other than that which has been obtained.

(c) This Agreement and each of the Ancillary Documents to which the Buyer is a party constitute 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 represents and warrants to Buyer that:

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

(b) The execution, delivery and performance by the Seller Parties 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 the Ancillary Documents, have been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained.

(c) 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 the 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 any Seller Party is a party or by which it or any of its property is bound, 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 Party (except as contemplated hereby), and each Seller Party has obtained, at no expense to Buyer, all Permits, including, to the extent required, any FERC authorization, required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, the Ancillary Documents and all applicable Requirements of Law.



(d) Each of this Agreement and the Ancillary Documents constitutes the legal, valid and binding obligation of each Seller Party which is party thereto 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.

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

(f) None of the Seller Parties is 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 any Seller Party, or the ability of any Seller Party to perform any of its obligations under this Agreement or any Ancillary Document.

(g) The organizational structure and ownership of Seller and the Parent Entity, including a list of each such entity's Principals, is as set forth in Appendix L. Appendix L may be updated from time to time by agreement of Buyer and Seller to account for a Change in Control that has been consented to by Buyer in accordance with this Agreement.

(h) Seller is and has always been a Special Purpose Entity.

(i) The Seller Parties have (i) not entered into this Agreement or any Ancillary Document with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for their respective obligations under this Agreement and the Ancillary Documents. No petition in bankruptcy has been filed against any of the Seller Parties, and none of the Seller Parties nor any of their respective constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(j) None of the Seller Parties has any reason to believe that any of the Permits required to maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law will not be timely obtained in the ordinary course of business.

(k) All Tax returns and reports of each Seller Party 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 the Seller Parties and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. None of the Seller Parties knows of any proposed Tax assessment against any of the Seller Parties that is not being actively contested by it in good faith and by appropriate proceeding.

(l) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any of Buyer's Share of Facility Energy, Environmental Attributes, or Capacity Rights that Seller is required to deliver to Buyer pursuant to this Agreement.

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

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

(o) Seller has Site Control for the Agreement Term.

(p) The Facility is CEC Certified.

(q) All Commencement Date Conditions have been satisfied and shall remain satisfied as of the Commencement Date.

(r) The Facility is not, and for the Agreement Term will not be, subject to the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq.*

(s) As of the Effective Date, the aggregate Facility Debt does not exceed eighty percent (80%) of the Facility Value.

### **Section 12.3 Covenants of Seller Related to Real Property Agreements.**

(a) Seller shall at all times (i) maintain Site Control and (ii) keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, in any case, in all material respects, 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 Real Property Agreements. Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could impair or tend to impair, in any case, in any material respect, the rights of Seller under any Real Property Agreement, or could be grounds for the Lessor to terminate any Real Property Agreement. Seller shall not permit any development or alteration, modification, or amendment of any Real Property Agreements that would materially and adversely affect the Facility,

Buyer's rights and benefits under this Agreement, or Seller's ability to perform its obligations under this Agreement, unless Buyer's prior written consent is obtained.

(b) Seller shall, within five (5) Business Days after obtaining knowledge thereof, give Buyer notice of (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 Real Property Agreement or of the receipt by Seller of any notice from the Lessor thereof, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to any Real Property Agreement. Subject to the Facility Lender's rights under any Real Property Agreement with respect to the events described in (i) and (ii) above, 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 any Real Property Agreement or any development agreement for the Facility to the extent permitted by the applicable Real Property Agreement or development agreement. 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.

(c) In the event of the termination, rejection, or disaffirmance by Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under any Real Property Agreement pursuant to the Bankruptcy Code, and subject to the Facility Lender's rights under any such agreement with respect to the termination, rejection, or disaffirmance by Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) of such agreement, 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) without the prior written consent of the Buyer (not to be unreasonably withheld, conditioned or delayed), and Seller agrees that any such election, if made by Seller without the prior written consent of Buyer 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 (not to be unreasonably withheld, conditioned or delayed), elect to treat any Real Property Agreement or the leasehold estate created thereby as terminated under Section 365 of the Bankruptcy Code, after rejection or disaffirmance of a Real Property Agreement 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 Section 12.3.

(d) In the event there is a termination, rejection, or disaffirmance by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor pursuant to the Bankruptcy Code and Buyer, subject to Facility Lender's consent (not to be unreasonably withheld, conditioned or delayed), elects to have Seller remain in possession under any legal right Seller may have to occupy the property pursuant to the affected Real Property Agreement, then Seller shall remain in such 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 such Real Property Agreement or otherwise.

(e) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller and Seller or any trustee of Seller shall decide to reject or disaffirm a Real Property Agreement pursuant to the Bankruptcy Code (or allow same), Seller shall give Buyer at least ten (10) days' prior notice of the date on which application shall be made to the court for authority to reject or disaffirm such Real Property Agreement or such Real Property Agreement will be otherwise rejected. Buyer shall have the right, but not the obligation, to serve upon Seller or such trustee within such ten (10) day period a notice stating that (i) Buyer, subject to the rights of the Facility Lender's rights, demands that Seller (whether as debtor in possession or otherwise) or such trustee assume and assign such Real Property Agreement to Buyer pursuant to the Bankruptcy Code, and (ii) Buyer covenants to cure, or to provide adequate assurance of prompt cure of, all defaults (except defaults of the type specified in Section 365(b)(2) of the Bankruptcy Code and any successor provision) and to provide adequate assurance of future performance under such Real Property Agreement. In the event that Buyer serves any such notice as provided above, neither Seller (whether as debtor in possession or otherwise) nor such trustee shall seek to reject or disaffirm such Real Property Agreement, and Seller (whether as debtor in possession or otherwise) and such trustee shall comply with such demand within thirty (30) days after such notice shall have been given, subject to Buyer's performance of such covenant.

(f) Buyer, subject to Facility Lender's consent (not to be unreasonably withheld, conditioned or delayed), may elect to make any payment under any Real Property Agreement to cure any default of Seller or the Lessor thereunder and thereby prevent termination of the Real Property Agreement or the exercise of any other remedy of the other party or parties thereunder arising out of such default, Seller, as such lessee, within ten (10) days following receipt of notice from Buyer that it made such payment, shall pay 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 payment by the Seller. Buyer shall be entitled to offset amounts otherwise due Seller by the amount of such cure payment or remedy cost until Buyer has been fully repaid.

#### **Section 12.4 Covenants of Seller Related to Tax Equity Financing.**

(a) Seller shall provide Buyer with at least one hundred twenty (120) days' prior written notice of the reasonably likely occurrence of any consolidation, merger, or reorganization or other similar transaction, or series of similar transactions, involving Seller or the Parent Entity.

(b) Seller shall provide Buyer with at least one hundred twenty (120) days' prior written notice of the reasonably anticipated consummation of a Tax Equity Financing, which notice shall include (i) introductory and contact information about and for any potential Tax Equity Investors, (ii) a reasonable summary of the anticipated provisions related to, and the structure surrounding, the power to Control the management and policies of Seller, and any entity that is jointly-owned by the Parent Entity and such Tax Equity Investor arising in connection with the Tax Equity Financing and (iii) a statement of the

anticipated circumstances under which such provisions and structure could be modified by such Tax Equity Investor. Such notice shall be in addition to, and not in lieu of, any notice required under Section 14.7.

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

(a) Seller shall be a Special Purpose Entity at all times during the Agreement Term.

(b) Seller shall not cause or permit the stock or equity ownership interest in Seller to be pledged or assigned as collateral, except in connection with a Financing Agreement or Tax Equity Financing in accordance with Section 12.4.

(c) Seller shall immediately notify Buyer of the occurrence of any event of default on the part of Seller under any Financing Agreement.

(d) Seller shall not, at any time, incur or permit Facility Debt in an amount that, in the aggregate, exceeds eighty percent (80%) of the Facility Value at the time such Facility Debt is incurred. Seller shall obtain an Appraisal and provide a copy of such Appraisal to Buyer prior to the incurrence of Facility Debt.

(e) Seller shall provide to Buyer within fifteen (15) days after the end of each calendar quarter during the Agreement Term, a certificate of an authorized officer of Seller substantially in the form attached hereto as Appendix M (each, a “**Quarterly Certificate**”), (i) certifying that there exists no Default or any event that, after notice or with the passage of time or both, would constitute a Default, (ii) certifying that the representations and warranties set forth in this Agreement remain true and correct as of the date of such Quarterly Certificate, and (iii) to the extent Facility Debt was incurred during such calendar quarter, attesting to the Facility Debt as being equal to or less than eighty percent (80%) of the Facility Value as of such date the Facility Debt was incurred, which Quarterly Certificate shall be accompanied by supporting documentation in reasonable detail, including Seller’s most recent annual and quarterly financial statements, a statement of the Facility’s then-current Facility Debt, and a copy of the most recent Appraisal obtained by Seller. If a Default or any event that, after notice or with the passage of time or both, would constitute a Default as of the date of a Quarterly Certificate, Seller shall list, in detail, the nature of the event, the period during which it has existed, and the actions that Seller has taken, is taking, or proposes to take with respect to such event or Default.

(f) Seller shall inform all investors in the Seller of the existence of this Agreement and all Ancillary Documents on or before the date of such investment in the Seller.

**Section 12.6 Additional Related Projects.** Seller shall use best efforts to cause the Facility to receive preference and priority in transmission and interconnection rights over new facilities developed by Seller or any Affiliate of Seller using the Points of Interconnection. Seller and its Affiliates shall not share infrastructure, land, equipment or any other rights owned by it in connection with its ownership or operation of the Facility with any other entities without Buyer’s prior written consent, not to be unreasonably withheld, conditioned or delayed.



**Section 12.7 Storage Technology and Shared Facilities.** In recognition of emerging technologies and opportunities that will continue to evolve during the Agreement Term, Seller shall have the right to incorporate the use of storage technologies into the Facility only upon Buyer's prior written consent, which shall not be unreasonably withheld. If Seller intends to use any shared facilities or enter into any shared facilities agreements in connection with the Facility or Seller's performance of its obligations hereunder, Seller shall ensure that such shared facilities and shared facilities agreements do not diminish or modify Buyer's rights and benefits or Seller's obligations hereunder and that all such arrangements, including any and all related rights, liabilities, obligations and financings (including any pledge or collateral assignments in connection with such arrangements) are consistent with, not in conflict with, and do not give rise to any default under, this Agreement. The Parties shall cooperate with one another as may be reasonably requested by the other Party to provide such further approvals, consents, estoppels or acknowledgements in connection with this Section 12.7; *provided*, that any such approvals, consents, estoppels or acknowledgements are consistent with this Agreement.

### **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 either Party to pay any amount when and as due under this Agreement which is not cured within thirty (30) days after receiving written notice thereof from the other Party.

(b) *Buyer Performance Default.* Except to the extent caused by a Default of Seller under this Agreement, failure by Buyer to perform any of its duties or obligations under this Agreement or any of the Ancillary Documents (other than any failure described in Section 13.1(a)) when and as due which is not cured within thirty (30) days after receipt of notice thereof from the Seller.

(c) *Seller Performance Default.* Except to the extent caused by a Default of Buyer under this Agreement, failure by any Seller Party to perform any of its other duties or obligations under this Agreement or any of the Ancillary Documents when and as due (other than (i) any failure described in 9.2, 9.3, 11.7 or 13.1(a) or (f) through (p), and (ii) any failure described in an Ancillary Document with a specified cure period), which is not cured within thirty (30) days after receipt of notice thereof from the Buyer.

(d) *Buyer Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by the Buyer herein or in any Ancillary Document that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof.

(e) *Seller Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by Seller herein or in any Ancillary Document that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof.



(f) *Buyer Bankruptcy.* Bankruptcy of the Buyer.

(g) *Seller Party Bankruptcy.* Bankruptcy of any Seller Party.

(h) *Performance Security Failure.* The failure of Seller to (i) obtain and maintain the Performance Security in compliance with Section 5.4, (ii) replenish the Performance Security within the period provided under Section 5.4(c) or (iii) replace such Performance Security within the applicable time period set forth Section 5.4 and, in any event, at least thirty (30) days prior to its expiration, unless an alternative Performance Security that complies with the requirements of Section 5.4 is provided within ten (10) Business Days after notice sent by Buyer of any such failure; or, with respect to any obligor providing the Performance Security for the benefit of Buyer:

(1) the failure of such obligor to honor a drawing or make a payment thereunder;

(2) such obligor fails to meet the acceptance of Buyer or there shall have occurred a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of such obligor;

(3) the Performance Security issued by such obligor shall fail to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement and each of the Ancillary Documents; or

(4) such obligor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its Performance Security and in any such event, Seller fails to provide a replacement Performance Security.

(i) *Facility Debt Default.* An event of default on the part of Seller in respect of any Facility Debt has occurred and is continuing.

(j) *Real Property Agreement Default.* Any Real Property Agreement fails to be in effect, a default under a Real Property Agreement has occurred or a Real Property Agreement is terminated for any reason or amended in any material respect without mutual agreement of the Parties.

(k) *Insurance Default.* The failure of Seller to maintain and provide acceptable evidence of the Insurance for the required period of coverage as set forth in Appendix F.

(l) *Fundamental Change of Seller.* Except as permitted by Section 14.7, (i) Seller makes an assignment of its rights or delegation of its obligations under this Agreement or any Ancillary Documents, including any Real Property Agreement, or (ii) a Change