RATE AGREEMENT
– RE SLATE SOLAR PROJECT –

This **Rate Agreement – Recurrent Energy Slate Solar Project** ("SLT Rate Agreement"), effective as of date described in Section 2.1, is made and entered into by and among the **Power and Water Resources Pooling Authority** ("PWRPA") and those public agencies that have executed this SLT Rate Agreement ("Participating Customers") and thereby have affirmatively elected to pay rates reflecting costs, energy, and environmental attributes associated with PWRPA's generation entitlement share in the SLT Solar Project.

RECITALS

1. PWRPA operates as a publicly owned electric utility and provides retail electric service to certain public agencies ("Project Participants") pursuant to the Aggregation Services Agreement ("ASA") and rates, terms and conditions adopted by PWRPA's Board of Directors, which administers the ASA and serves as the Local Regulatory Authority ("LRA") for PWRPA.
2. As generally described in the PWRPA First Amended Joint Powers Agreement ("JPA"), PWRPA Cost Sharing Agreement ("CSA") and ASA, Project Participants may develop, install, own, operate or purchase electricity products from specific electric resource projects for the benefit of certain or all Project Participants.
3. PWRPA is participating in the development of the Recurrent Energy Slate Solar Project ("SLT"). SLT will be owned and operated by Recurrent Energy ("Seller"). PWRPA will execute a separate power purchase agreement, ("SLT PPA") with Seller relating to the sale and purchase of electrical output and associated Environmental Attributes from SLT.
4. Under the SLT PPA, PWRPA, will, among other things, receive: (a) an SLT generation entitlement share, which shall be expressed in megawatts and shall reflect PWRPA's right to a corresponding amount of the electrical output of the SLT ("PWRPA's Generation Entitlement Share"), and (b) all right, title, and interest in and to all Environmental Attributes associated with PWRPA's Generation Entitlement Share.
5. PWRPA and the Participating Customers desire to enter into this SLT Rate Agreement in order to specify: (1) the Project Participants that have elected to become Participating Customers; (2) each Participating Customer's share associated with PWRPA's Generation Entitlement Share; and (3) the rates, terms and conditions for costs and energy and Environmental Attributes Value associated with PWRPA's Generation Entitlement Share.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, PWRPA and the Participating Customers agree as follows:

ARTICLE 1
CONTRACT DOCUMENTS

1.1 **Definitions:** Capitalized terms used in this SLT Rate Agreement without other definition herein shall have the meanings given to such terms in the JPA, CSA, ASA and the SLT PPA.

1.2 **Relation to other PWRPA Agreements**: This SLT Rate Agreement consists of this document, as it may be amended from time to time pursuant to Section 1.4. Consistent with JPA Section 7.1, CSA Section 3.5 and ASA Sections 4.5, 4.6 and 7.7, this SLT Rate Agreement is a separate agreement that sets forth the terms and conditions associated with the purchase and integration of electricity products from SLT. These relevant sections of PWRPA's formation documents are shown in Exhibit A. In the event of any conflict between this document and the JPA, CSA or ASA, this document shall control.

1.3 **SLT PPA**: As described further in Section 3.3, the SLT PPA shall not be incorporated into and made a part of this SLT Rate Agreement. However, in light of the importance of the SLT PPA in regard to the administration of this SLT Rate Agreement, the SLT PPA is attached hereto as Attachment 1 for reference purposes. PWRPA has provided the Participating Customers a copy of the final, effective SLT PPA.

1.4 **Amendments**: This SLT Rate Agreement may be amended only by written instrument executed by PWRPA and a Supermajority of Participating Customers. "Supermajority" shall mean the number of Participating Customers that both: (1) comprise at least 65% of all Participating Customers; and (2) represent at least 75% of SLT Rate Percentages (as defined in Section 2.2). PWRPA shall provide notice to the Participating Customers of the amendment of this SLT Rate Agreement.

ARTICLE 2
EFFECTIVE DATE AND PARTICIPATION

2.1 **Effective Date**: This SLT Rate Agreement shall be effective on the first day when all of the following shall have occurred: (a) this SLT Rate Agreement shall have been executed and delivered by Participating Customers agreeing to SLT allocations equaling, in the aggregate, at least 26 megawatts for the full PPA term; (b) PWRPA shall have executed the SLT PPA and delivered the SLT PPA to Seller; and (c) Seller shall have executed the SLT PPA and provided notice to PWRPA of the establishment of the effective date under the SLT PPA ("Effective Date"). PWRPA shall provide written notice to the Participating Customers of the establishment of the Effective Date; provided, however, the failure to provide such notice shall not affect the establishment of the Effective Date.

2.2 SLT Rate Percentages:

2.2.1 General: The Participating Customers' respective allocation of energy, Environmental Attributes Value and costs under this SLT Rate Agreement shall be determined with reference to the SLT Rate Percentages (as defined and further described in Section 2.2.3).

2.2.2 PWRPA's Generation Entitlement Share ("GES"): PWRPA's current Generation Entitlement Share in the SLT is 26 megawatts ("MW").

2.2.3 Specified SLT Rate Percentages: In accordance with the procedures previously adopted by PWRPA's Board, each Participating Customer has expressed its intent to participate in this SLT Rate Agreement and specified its participation level in MW. The respective MW level divided by PWRPA's GES, expressed as a percentage, represents each Participating Customer's allocation of energy, Environmental Attributes Value, and costs from the SLT ("SLT Rate Percentages").

2.2.4 Notification and Applicability: PWRPA's GES shall be specified in the final, effective SLT PPA (as described in recital paragraph 4, above). The final SLT Rate Percentages are set forth in Exhibit B.

2.3 Notices:

2.3.1 Notice Procedures: The notice provisions described in JPA Sections 8.8 and 8.9 are incorporated by reference into this SLT Rate Agreement. These relevant sections are included in Exhibit A.

2.3.2 Notice of SLT Status and Major Activity: PWRPA shall provide notice of the occurrence of major activity relating to permitting, financing, construction and operation of the SLT, including notification of PWRPA's Generation Entitlement Share under the final, effective SLT PPA.

ARTICLE 3
SCOPE AND RELATIONSHIP

3.1 General: PWRPA operates as a publicly owned electric utility and provides full requirements retail electric service to the Project Participants. In accordance with JPA Section 7.1, CSA Section 3.5 and ASA Sections 4.5 and 7.7, this SLT Rate Agreement shall govern the funding, participation and withdrawal of participation in SLT.

3.2 Local Regulatory Authority: As described in Section 5.1 of the ASA, the Board is the LRA for PWRPA and, among other things, establishes rates and adopts policies for retail electric service provided by PWRPA to the Project Participants consistent with the ASA and subject to the following:

3.2.1 Rates: The Board shall establish rates to ensure recovery of the SLT Costs (as defined below) from the Participating Customers pursuant to or not otherwise in conflict with the terms of this SLT Rate Agreement. As described in Section 4.1, the intent of SLT Participating Customers is to ensure that all costs incurred by PWRPA directly related to SLT will be paid only by SLT Participating Customers.

3.2.2 Policy Changes: The Board may adopt policies relating to or affecting PWRPA's Generation Entitlement Share of the SLT as may be reasonably necessary in the exercise of the Board's role as LRA for PWRPA; provided, however, such policies shall not conflict with the terms of this SLT Rate Agreement unless a Supermajority of Participating Customers consent to such change in writing.

3.3 SLT Agreements: Consistent with its administration of other power resources, only PWRPA, and not the Participating Customers, shall have privity of contract with respect to the SLT PPA and other agreements relating to PWRPA's Generation Entitlement Share.

3.4 Reimbursement of Development Costs: PWRPA does not anticipate that any development costs consisting mostly of attorney costs to review and implement the SLT PPA will be reimbursed to PWRPA from the Seller. However, pursuant to JPA Section 4.4 and CSA Section 3.4, all development costs that PWRPA determines are not General and Administrative Costs shall be reimbursed by PWRPA to all Project Participants that are not Participating Customers.

ARTICLE 4
RATE PROVISIONS

4.1 Participating Customer Liability for SLT Costs: By executing this SLT Rate Agreement, the Participating Customers agree to pay rates established by the Board that reflect, among other things, all costs reasonably associated with PWRPA's Generation Entitlement Share, as further described below.

4.1.1 General: Each Participating Customer shall pay through rates its share (as determined by its respective SLT Rate Percentage) of PWRPA's costs associated with PWRPA's Generation Entitlement Share, which shall include (a) all costs paid by PWRPA under the SLT PPA and (b) such other costs determined by the Board from time to time to be reasonably related to PWRPA's administration and operation of the SLT PPA and this SLT Rate Agreement ("SLT Costs").

4.1.2 Take-or-Pay Obligation for the Term of the SLT PPA: The Participating Customers acknowledge and agree as follows:

(a.) the term of the SLT PPA is expected to continue for the duration of the PPA, which is 20 years;

(b.) under the SLT PPA, PWRPA's Generation Entitlement Share of the SLT may not be increased without the written consent of PWRPA;

(c.) The Contract Price, in dollars per MWh, applicable to PWRPA under the SLT PPA is a Fixed Rate without escalation;

(d.) CAISO market settlement revenues and charges for PWRPA's share of SLT energy delivered to the CAISO markets accrue to PWRPA;

(e.) PWRPA is not obligated under the SLT PPA to provide ongoing contribution to various SLT costs, those costs are the sole responsibility of the Seller;

(f.) the SLT PPA requires PWRPA to pay for all energy generated by SLT up to and including the PWRPA Generation Entitlement Share;

(g.) the Participating Customers' respective payment obligation under this SLT Rate Agreement shall not be affected by the temporary or extended failure of the SLT to generate and/or deliver energy;

(h.) subject to the implementation of the SLT Allocation Policy (as described in Section 4.2), the Participating Customers' respective rate obligation under this SLT Rate Agreement shall not be affected by the fact that during certain conditions and seasons a Participating Customer may not have any load to be served by the Participating Customer's respective allocation of PWRPA's Generation Entitlement Share; and

(i.) the Participating Customers' respective rate obligation under this SLT Rate Agreement shall continue for the term of the SLT PPA and such additional time, if any, as determined by the Board to be necessary for the recovery of all SLT Costs.

4.1.3 Cost Allocation: The SLT Costs shall be allocated among Participating Customers in direct proportion to their respective SLT Rate Percentages, subject to adjustments under the PWRPA Allocation Policy described in Section 4.2.

4.1.4 Billing Statement: PWRPA shall bill each Participating Customer for charges owed under this SLT Rate Agreement for a particular calendar month. Such billing statement shall describe the various cost elements.

4.1.5 Payment: The Participating Customer shall pay the amount set forth in any billing statement on or before 30 days after its receipt of such billing statement.

4.1.6 Disputed Monthly Billing Statement: If a Participating Customer disputes any portion of a billing statement, the Participating Customer shall nevertheless pay PWRPA the full amount of such billing statement and, provide, under separate cover, a letter to PWRPA specifying the amount in dispute and a detailed explanation of the basis for disputing the amount. PWRPA shall consider such dispute and shall advise the Participating Customer of PWRPA's position relative thereto within 30 days following receipt of the letter. Upon determination of the correct amount, the difference between the correct amount and the full amount paid by the Participating Customer, if any, will be credited to the Participating Customer after such determination. If PWRPA's determination is not satisfactory to the Participating Customer, the Participating Customer may initiate the dispute resolution procedure described in Section 6.1, below.

4.1.7 Should a Participating Customer fail to pay PWRPA the full amount as required under Section 4.1.6, above, PWRPA shall have the right, after notice

to the Participating Customer, to pay the unpaid amount in the following manner and order of sequence ("Financial Remedial Actions"):

(a.) Withdraw any and all funds available in the Participating Customer's P3-RCA account that was established by the PWRPA RPS Cost of Compliance Rule.

(b.) Withdraw any and all funds available in the Participating Customer's P3 Account, regardless of their categorization.

(c.) Withdraw any and all funds available in the Participating Customer's ARB Allowance Value account established by the PWRPA Cap-and-Trade Cost of Compliance Rule.

(d.) Withdraw any and all funds available in the Participating Customer's Environmental Attribute Value account.

(e.) Increase the rate for all retail electricity sales to the Participating Customer using an RPS Compliance Adder of $26.81/MWh.

4.1.8 Necessary Rate Adjustments to Affect All Participating Customers: This Section shall only apply in the event a Participating Customer's full amount remains unpaid after the application of all Financial Remedial Actions ("Payment Default"). In consideration for certain SLT-related benefits that accrue to all Participating Customers, PWRPA and the Participating Customers agree that, in instances involving a Payment Default by a Participating Customer under this SLT Rate Agreement, the Board may temporarily adjust rates for all Participating Customers until the shortfall is addressed. PWRPA shall provide as much advance notice of adjusted rates as reasonably practicable, but in no event less than fifteen (15) days advance notice.

4.2 PWRPA Allocation Policy: The PWRPA Allocation Policy shall be implemented with respect to this SLT Rate Agreement as follows:

(a) PWRPA's Generation Entitlement Share shall be a defined as a "Specific Project – Renewable."

(b) The access rule and transfer price formula shall be null for PWRPA's Generation Entitlement Share, which shall not enter pooling.

4.3 Withdrawal or Termination; SLT Cost Responsibility Charge: As generally described in Sections 10.2 and 10.3 of the ASA, a Project Participant that withdraws from the ASA or has its participation under the ASA terminated shall, among other things, continue to be responsible for its relative share of the net unavoidable costs of PWRPA's generation resources. In addition to other terms and conditions in the ASA, the Participating Customers agree that a Participating Customer that withdraws from the ASA or has its participation under the ASA terminated ("Departing SLT Customer") shall continue to be responsible for its relative share of the net unavoidable costs associated with its allocation of costs from PWRPA's Generation Entitlement Share ("SLT Cost Responsibility Charge"). The Board, in its role as LRA, shall determine the amount of the SLT Cost Responsibility Charge, it being understood as follows:

(a) The SLT Cost Responsibility Charge is intended to reflect a reasonable approximation of the difference between (i) the Departing SLT Customer's allocation of costs from PWRPA's Generation Entitlement Share and (ii) the market valuation of the Departing SLT Customer's allocation of energy from PWRPA's Generation Entitlement Share, over the expected remaining term of this SLT Rate Agreement.

(b) The Departing SLT Customer's allocation of energy from PWRPA's Generation Entitlement Share shall be valued, for purposes of the SLT Cost Responsibility Charge, at a reasonable approximation of the prevailing market price (as described in Section 4.3(d)).

(c) The Departing SLT Customer's allocation of Environmental Attribute Value from PWRPA's Generation Entitlement Share shall be valued, for purposes of the SLT Cost Responsibility Charge, as set forth in the SLT PPA.

(d) In determining the above-market cost, the Board shall establish a market price proxy (or proxies) for the purpose of reasonably reflecting the expected price at which PWRPA is reasonably likely to resell or reallocate the Departing SLT Customer's allocation of energy and costs from PWRPA's Generation Entitlement Share.

(e) If the determination of the above-market cost, described in Section 4.3(d), reveals that there is no above-market cost over the applicable period (*i.e.,* the net cost associated with the Departing SLT Customer's allocation of energy from PWRPA's Generation Entitlement Share is expected to be equal to or less than the market price proxy or proxies over the applicable period(s) ("SLT Below-Market Credit"), and the Departing SLT Customer otherwise owes PWRPA for costs incurred under the ASA, PWRPA shall offset such cost obligations by an amount up to the SLT Below-Market Credit.

(f) The SLT Cost Responsibility Charge shall normally be a one-time, lump sum payment that reflects an acceleration of all the Departing SLT Customer's future payment obligations under this SLT Rate Agreement; provided, however, at the Board's discretion, and for the benefit of PWRPA in order to mitigate market price uncertainty, the Board may determine the SLT Cost Responsibility Charge on an annual basis for up to ten years, the last year of which shall reflect a final lump sum payment that reflects an acceleration of all remaining future payment obligations under this SLT Rate Agreement.

ARTICLE 5
TERM, DEFAULT, TERMINATION AND ASSIGNMENT

5.1 **Term**: The term of this SLT Rate Agreement shall begin on the Effective Date and, unless earlier terminated, shall continue concurrent with the term of the SLT PPA as it relates to PWRPA, and such additional time as determined by the Board to be necessary for the recovery of all SLT Costs.

5.2 Event of Default: A Party is in default ("Default") hereunder if that Party (the "Defaulting Party") does any of the following (each an "Event of Default"):

5.2.1 fails to make, when due, any payment required under this Agreement, such that a Payment Default occurs, if such failure is not remedied within fifteen (15) business days after written notice of such failure is given to the Defaulting Party;

5.2.2 fails to cure any representation or warranty made by the Defaulting Party in this Agreement that has been shown to have been false or misleading in any material respect when made, if such failure is not cured within fifteen (15) business days of written notice of such failure from the other Party;

5.2.3 fails to perform any material covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), if such failure is not cured within fifteen (15) business days after written notice of such failure is given to the Defaulting Party;

5.2.4 the Defaulting Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors; (iii) has a petition in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors filed against it involuntarily and such proceeding remains undismissed for thirty (30) days; or otherwise becomes bankrupt or insolvent (however evidenced).

5.3 Termination:

5.3.1 Board Action and Consent by the Participating Customers: This SLT Rate Agreement may be terminated by PWRPA at any time upon reasonable advance notice to the Participating Customers upon adoption of a resolution by the Board directing PWRPA to terminate this SLT Rate Agreement; provided, however, (a) such resolution shall not be effective unless a Supermajority of Participating Customers consent to the termination in writing and (b) prior to such termination, and if requested by the Participating Customers, PWRPA shall cooperate with the Participating Customers as may be reasonably necessary to modify or assign the SLT PPA or otherwise provide a means by which the Participating Customers may receive economic benefits from the operation of the SLT comparable to the economic benefits the Participating Customers receive under this SLT Rate Agreement.

5.3.2 Default: In addition to all other remedies provided in this SLT Rate Agreement and under law, PWRPA may terminate this SLT Rate Agreement for any Defaulting Party that fails to timely cure such Default following notice and reasonable opportunity to cure.

5.3.3 Termination for Failure of Condition: Notwithstanding the establishment of the Effective Date pursuant to Section 2.1, any Party shall have the right to terminate this SLT Rate Agreement without liability to either Party arising out of such termination upon notice to the other if the condition set forth in SLT PPA Section 2.2 shall not have been satisfied. Such termination right shall remain available until such condition is satisfied or waived. Upon the

effectiveness of any termination of this SLT Rate Agreement in accordance with this Section 5.2.3, the Parties shall have no further liabilities or obligations to each other hereunder.

5.4 Recovery of All Fees and Costs: PWRPA shall be entitled to recover from a Defaulting Party, in addition to the cost responsibility charge described in Section 4.3, attorneys' fees, expenses and costs reasonably necessary to obtain such determination and to recover amounts due as a result of the Participating Customer's Default.

5.5 Project Participant Assignment: A Participating Customer may assign its rights under this SLT Rate Agreement to another Project Participant with the written consent of PWRPA, which consent shall not be unreasonably withheld or conditioned.

ARTICLE 6
MISCELLANEOUS

6.1 Dispute Resolution: The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. Should such efforts to settle a dispute, after reasonable efforts, fail, said dispute shall be settled by Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the arbitration in accordance with the provisions of this paragraph. Within 30 days after any failure to settle a dispute, as described above, the complaining entity (or entities) shall give written notice to PWRPA (even if the Authority is not a party to the dispute) and to the other entities that it desires arbitration, stating the controversy to be arbitrated. Within 14 days, thereafter, the parties to the dispute shall each select one arbitrator, and within 7 additional days after their selection, the two arbitrators shall select a third arbitrator. If the arbitration will involve multiple entities on either side of the dispute, each respective side of the dispute shall select one arbitrator and the two arbitrators shall select a third arbitrator in the same manner as outlined above. No dispute shall involve more than three arbitrators. The hearing shall be conducted within 21 days after the selection of the third arbitrator and shall be restricted to matters relative to those stated in the notice requesting arbitration. Each respective side to the dispute shall be given an opportunity to be heard and to present evidence. Within 14 days after the conclusion of the hearing, or hearings, the arbitrators shall state their findings of fact, conclusions of law and decision in writing, and shall sign the same and deliver a signed copy thereof to each party to the dispute and to the Authority. The decision shall be final and binding upon the parties to the arbitration. A majority finding shall govern if the arbitrators' determination is not unanimous. The prevailing party, or respective side if there are multiple parties on the prevailing side of the dispute, is entitled to the expenses and costs of arbitration, including an award of reasonable attorneys' fees and costs and arbitrators' fees, which shall be paid by the non-prevailing party, or shared equally by the respective side if there are multiple parties on the non-prevailing side of the dispute.

6.2 Severability: If one or more clauses, sentences, paragraphs or provisions of this SLT Rate Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of this SLT Rate Agreement shall not be affected thereby and shall be treated as lawful and valid, and shall be enforced to the maximum extent possible.

6.3 Further Assurances: The Participating Customers agree to execute and deliver all further instruments and documents and take all further actions that may be reasonably necessary to effectuate the purposes and intent of this SLT Rate Agreement.

6.4 Counterparts: This SLT Rate Agreement may be executed in any number of counterparts, including through facsimile signatures, and upon execution by PWRPA and the Participating Customers, each executed counterpart shall have the same force and effect as an original document and as if PWRPA and the Participating Customers had signed the same document. Any signature page of this SLT Rate Agreement may be detached from any counterpart of this SLT Rate Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this SLT Rate Agreement identical in form but having attached to it one or more signature pages.

ARTICLE 7
SIGNATURE

IN WITNESS WHEREOF, PWRPA and the Participating Customers have executed this SLT Rate Agreement as of date written below.

POWER AND WATER RESOURCES POOLING AUTHORITY

By: _____

Title: _____

Date: _____

PARTICIPATING CUSTOMER

By: _____

Name: _____

Title: _____

Customer: _____

Date: _____

Exhibit A

- Relevant Provisions in Formation Documents –

Joint Powers Agreement

7.1 General: Funding, participation, and withdrawal of participation in any Project undertaken by the Authority shall be governed by a Project Agreement.

8.8 Parties to be Served Notice: Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by facsimile, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (i) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt; (ii) by mail shall be conclusively deemed given 48 hours after the deposit thereof if the sender receives the return receipt; and (iii) by facsimile, upon receipt by sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety and received at the recipient's facsimile number. All Notices shall be addressed as set forth in Exhibit E. Any Party may change its Notice address or may designate additional parties to receive Notices by written notice given in the manner provided herein.

8.9 Stakeholders to be Served Notice: Any notice authorized or required to be given pursuant to this Agreement shall be validly given if served in writing either personally, by facsimile, by deposit in the United States mail, first class postage prepaid with return receipt requested, or by a recognized courier service. Notices given (i) personally or by courier service shall be conclusively deemed received at the time of delivery and receipt; (ii) by mail shall be conclusively deemed given 48 hours after the deposit thereof if the sender receives the return receipt; and (iii) by facsimile, upon receipt by sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent indicating that the facsimile was sent in its entirety and received at the recipient's facsimile number. All Notices shall be addressed as set forth in Exhibit E. Any Stakeholder may change its Notice address or may designate additional parties to receive Notices by written notice given in the manner provided herein.

Cost Sharing Agreement

3.5 No Sharing of Direct Project Costs:

3.5.1 In accordance with Section 7.1 of the Joint Powers Agreement, the respective Project Agreement shall govern the funding, participation, and withdrawal of participation in any Project undertaken by the Authority shall be governed by a Project Agreement.

3.5.2 The shared costs payable by Stakeholders under this Agreement do not include Direct Project Costs. As such, shared costs do not include those incurred by

the Authority directly as a result of any specific Project, any specific Project Agreement, or by the Authority acting as a Project Participant.

3.5.3 The intent of the parties hereto is to ensure that all costs incurred by the Authority that are directly related to any specific Project will be paid only by the Project Participants of that specific Project.

Aggregated Services Agreement

4.5 Supplemental Power: . . . It is anticipated, however, that from time to time the Authority and/or certain or all Project Participants may participate in power contracts with a delivery term longer than one year. The terms and conditions associated with these longer-term power contracts, including the obligations of the Authority and participating Project Participants, shall be set forth in a separate Agreement or amendment to this Agreement.

4.6 Electric Resources: It is anticipated that from time to time the Authority and/or Project Participants may develop, install, own and operate certain electric generating facilities for the benefit of certain or all Project Participants. The terms and conditions associated with the purchase and integration of electricity from these electric generating facilities, including any credit to be given to the host Project Participant or participating Project Participants, shall be set forth in a separate agreement or amendment to this Agreement.

7.7 Scheduling of Long-Term Contracts and Shared Resources: It is anticipated that certain or all of the Project Participants may participate, through a separate agreement, in (a) power contracts with a delivery term longer than one year and/or (b) the development, ownership and operation of an electric generating facility, as described in Sections 4.5 and 4.6, respectively. The Authority shall schedule and dispatch these resources to the account of the participating Project Participants.

Exhibit B

- SLT Rate Percentages –

Participant	Participation %	Participation MW
Arvin Edison WSD	34.615%	9.00
Banta-Carbona ID	7.692%	2.00
Cawelo WD	15.962%	4.15
Glenn-Colusa ID	2.885%	0.75
James ID	0.962%	0.25
Provident/Princeton	0.962%	0.25
Reclamation District 108	1.154%	0.30
Santa Clara Valley WD	5.769%	1.50
Sonoma County WA	3.846%	1.00
The West Side ID	1.154%	0.30
West Stanislaus ID	7.692%	2.00
Westlands WD	15.385%	4.00
Zone 7 WA	1.923%	0.50
Totals	100.00%	26.00

Attachment 1

- DRAFT Copy of the SLT Power Purchase Agreement -
(For Reference Purposes)

Execution Version

POWER PURCHASE AGREEMENT

COVER SHEET

Seller: RE Slate 4 LLC, a Delaware limited liability company

Buyer: Power and Water Resources Pooling Authority, a joint powers authority and public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act.

Description of Facility: A 26 MW AC photovoltaic electric generating facility located in Kings County, California.

Milestones:

Milestone	Completion Date
Site Control	[redacted]
Conditional Use Permit	[redacted]
Phase II Interconnection Study Results	[redacted]
Executed Interconnection Agreement	[redacted]
Financial Close	[redacted]
Expected Construction Start Date	[redacted]
Initial Synchronization	[redacted]
Expected Commercial Operation Date	12/31/2021

Delivery Term: 20 Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	[redacted]
2	[redacted]
3	[redacted]
4	[redacted]
5	[redacted]
6	[redacted]
7	[redacted]
8	[redacted]
9	[redacted]
10	[redacted]
11	[redacted]
12	[redacted]
13	[redacted]
14	[redacted]
15	[redacted]
16	[redacted]
17	[redacted]
18	[redacted]
19	[redacted]
20	[redacted]

Monthly Expected Energy:[1]

Month	Expected Energy (MWh)
January	[redacted]
February	[redacted]
March	[redacted]
April	[redacted]
May	[redacted]
June	[redacted]
July	[redacted]
August	[redacted]
September	[redacted]
October	[redacted]
November	[redacted]
December	[redacted]

Contract Price:

Contract Year	Contract Price ($/MWh)
1-20	[redacted]

1 This table reflects Seller's Expected Energy by calendar month in the first Contract Year, as if the first Contract Year begins on January first. The first Contract Year may begin on another date, per the terms of this Agreement.

Product:

- x Energy
- x Green Attributes:
  - x Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
- x Capacity Attributes
  - ☐ Energy Only Status
  - x Full Capacity Deliverability Status

Scheduling Coordinator: Buyer or Buyer's Agent

[redacted]

[redacted]

[redacted]

Notice Addresses:

Seller:

RE Slate 4 LLC
c/o Recurrent Energy, LLC
3000 Oak Road, Ste. 300
Walnut Creek, CA 94597
Attention: Asset Management
Phone No.: 415.501.9495
Email: Asset_Management@canadiansolar.com

With a copy to:

RE Slate 4 LLC
c/o Recurrent Energy, LLC
3000 Oak Road, Ste. 300
Walnut Creek, CA 94597
Attention: Office of the General Counsel
Phone No.: 415.675.1500
Email: legal@recurrentenergy.com

Scheduling:

RE Slate 4 LLC
c/o Recurrent Energy, LLC
3000 Oak Road, Ste. 300

Walnut Creek, CA 94597
Attention: Asset Management
Phone No.: 415.501.9495
Email: Asset_Management@canadiansolar.com

Buyer:

Power and Water Resources Pooling Authority
3514 W. Lehman Road
Tracy, CA 95304-9336
ATTN: Bruce McLaughlin

Phone No.: 916.531.5566
Email: bcm@cameron-daniel.com

With a copy to:

Cori Bradley
Robertson-Bryan, Inc.
9888 Kent Street
Elk Grove, CA 95624

Phone No.: 916.405.8923
Email: cori@robertson-bryan.com

With a copy to:

Dan Griffiths
Cameron-Daniel, P.C.
950 Reserve Drive, Suite 160
Roseville, CA 95678

Phone No.: 916.471.9518
Email: dg@cameron-daniel.com

[*Signatures on following page.*]

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

SELLER
RE Slate 4 LLC

By: _____

Name: _____

Title: _____

BUYER
Power and Water Resources Pooling Authority

By: _____

Name: _____

Title: _____

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Exhibits:

POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("**Agreement**") is entered into as of February [___], 2019 (the "**Effective Date**"), between Seller and Buyer (each also referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the electric generating facility as described in Exhibit A (the "**Facility**"); and

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

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

ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.13.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit F.

"**Affiliate**" means, with respect to any Person, each Person that directly or indirectly Controls, is Controlled by, or is under common Control with such designated Person.

"**Affiliate Manager**" has the meaning set forth in Section 6.3(a).

"**Agreement**" has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, and the Cover Sheet.

"**Availability Incentive Payment**" has the meaning set forth in the CAISO Tariff.

"**Approved Forecast Vendor**" means (i) the CAISO or the CAISO's designee that provides the VER Forecast or (ii) any vendor reasonably acceptable to both Buyer and Seller for the purposes of providing and verifying the forecasts under Section 4.4(d).

"**Available Capacity**" means the capacity from the Facility, expressed in whole MW, that is available at a particular time to generate Product.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of

action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer Bid Curtailment**" means the occurrence of all of the following:

(a) the CAISO orders, directs, or provides notice (excluding Automated Generation Control notices to return to Schedule that are customarily not followed by renewable generators) to a Party or the Scheduling Coordinator for the Facility, requiring the Party to produce less Energy from the Facility than is reflected in the VER Forecast for the Facility for a period of time;

(b) for the same time period as referenced in (a), Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction;

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the VER Forecast; and

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period.

"**Buyer Curtailment Order**" means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order.

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to or as a result of (i) Buyer Bid Curtailment, (ii) a Buyer Curtailment Order or a (iii) Buyer Scheduling Failure; provided that the Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Buyer Scheduling Failure**" means a material failure by Buyer to perform the Scheduling Coordinator responsibilities in Section 4.3, not resulting from a Force Majeure event or CAISO operating error, provided (i) Seller delivers to Buyer a Notice upon becoming aware of the event; and (ii) the period covering the event shall not exceed sixty (60) days of retroactivity from the date of Notice.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.8(a).

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

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Metered Energy delivered to the Delivery Point.

"**CAISO Charges Invoice**" has the meaning set forth in Section 4.3(d).

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

"**CAISO Operating Order**" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

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

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

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of Energy that the Facility can generate and deliver to the Delivery Point at a particular moment, or any other Facility electric generating capability, that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff) and, subject to Section 3.8(c), reactive power.

"**Capacity Damages**" has the meaning set forth in Exhibit B.

"**CEC**" means the California Energy Resources Conservation and Development Commission or its successor agency.

"**CEC Certification and Verification**" means that the CEC has certified (or, with respected to periods before the date that is up to180 days after the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard, meeting all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Ninth Edition* (or its successor), and that all Energy generated by the Facility and delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

"**CEC Precertification**" means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

"**CEQA**" means the California Environmental Quality Act, California Public Resources Code §§ 21000, et seq. and Chapter 3 of Division 6 of Title 14 of the California Code of Regulations.

"**CEQA Documents**" means any initial study, final environmental impact report, or equivalent document upon which the lead agency issued a final approval for the Facility.

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

"**Change in Control**" means any circumstance in which Seller's Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by its Ultimate Parent indirectly through one or more intermediate entities shall not be counted toward the Ultimate Parent's ownership interest in Seller unless the Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

"**COD Certificate**" has the meaning set forth in Exhibit B.

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

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

"**Commercial Operation Delay Damages**" means a daily amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred eighty (180).

"**Compliance Actions**" has the meaning set forth in Section 3.13.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.13.

"**Confidential Information**" has the meaning set forth in Section 19.1.

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

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

"**Construction Start Delay Damages**" means a daily amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred eighty (180).

"**Contract Price**" has the meaning set forth in the Cover Sheet, as may be adjusted by Section 3.3.

"**Contract Term**" has the meaning set forth in Section 2.1.

"**Contract Year**" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

"**Control**" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

"**Cover Sheet**" means the cover sheet to this Agreement.

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

"**Credit Rating**" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating, in either case by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"**Curtailment Cap**" (measured in MWh) means, for each Contract Year, an amount of Energy equal to the Guaranteed Capacity multiplied by 50 hours.

"**Curtailment Order**" means any of the following:

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

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

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

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

For the avoidance of doubt, if Buyer or Buyer's SC submitted a Self-Schedule and/or an Energy Supply Bid in its final CAISO market participation in respect of a given time period that clears, in full, the applicable CAISO market for the full amount of Energy reflected in the VER forecast for the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"**Damage Payment**" means the dollar amount that is equal to the Development Security amount required hereunder.

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.4(c).

"**Day-Ahead LMP**" means the LMP for the Day-Ahead Market.

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

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

"**Deemed Delivered Energy**" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the VER Forecast expressed in MWh, applicable to the Buyer Curtailment Period, or (b) if there is no VER Forecast available or Seller demonstrates to Buyer's reasonable satisfaction that the VER Forecast does not represent an accurate forecast of generation from the Facility, the result of the equation reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, solar insolation and panel temperature, and wind speed, and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period, in either case less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"**Defaulting Party**" has the meaning set forth in Section 11.1(a).

"**Deficient Month**" has the meaning set forth in Section 4.8(e).

"**Delivery Point**" has the meaning set forth in Exhibit A.

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

"**Development Cure Period**" has the meaning set forth in Exhibit B.

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

"**Early Termination Date**" has the meaning set forth in Section 11.2.

"**Effective Date**" has the meaning set forth on the Preamble.

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point.

"**Eligible Intermittent Resources Protocol**" or "**EIRP**" has the meaning set forth in the CAISO Tariff.

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

"**Energy**" means metered electrical energy, measured in MWh, that is generated by the Facility.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

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

"**Excess MWh**" has the meaning set forth in Section 3.3(c).

"**Expected Energy**" has the meaning set forth in Section 4.7.

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

"**Expected Construction Start Date**" has the meaning set forth on the Cover Sheet.

"**Facility**" means the facility described more fully in Exhibit A attached hereto.

"**FCDS Date**" means the date identified in a Notice from Seller to Buyer (along with corroborating documentation from CAISO confirming that the Facility is eligible for Full Capacity Deliverability Status) as the date that the Facility has attained Full Capacity Deliverability Status.

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

"**FMM"** and "**FMM Schedule**" have the meaning set forth in the CAISO Tariff.

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

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

"**Forward Certificate Transfers**" has the meaning set forth in the WREGIS Operating Rules.

"**Full Capacity Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Future Environmental Attributes**" shall mean any and all generation, emissions, air quality or other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of Energy by the Facility. Future Environmental Attributes do not include production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to

information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, *however*, that "Governmental Authority" shall not in any event include any Party.

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

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

"**Guaranteed Capacity**" means **26** MW AC capacity measured at the Delivery Point.

"**Guaranteed Commercial Operation Date**" means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

"**Guaranteed Construction Start Date**" means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

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

"**Imbalance Energy**" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Metered Energy deviates from the amount of Scheduled Energy.

"**Indemnified Party**" has the meaning set forth in Section 17.1.

"**Indemnifying Party**" has the meaning set forth in Section 17.1.

"**Initial Synchronization**" means the initial delivery of Energy from the Facility to the Delivery Point.

"**Installed Capacity**" means the actual generating capacity of the Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto provided by Seller to Buyer.

"**Interim Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Inter-SC Trade**" or "**IST**" has the meaning set forth in the CAISO Tariff.

"**Interconnection Affiliate**" means the Affiliate of Seller that is a party to the Interconnection Agreement and is recognized as the customer under the CAISO Tariff or has the interconnection queue position used for interconnection of the Facility.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller or the Interconnection Affiliate pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**ITC**" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement, dated as of January 22, 2004 and as amended on December 8, 2015, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree, judgment, permit, tariff, or any interpretation thereof, promulgated or issued by a Governmental Authority.

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

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit K.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

"**Lien**" has the meaning set forth in Section 8.11.

"**Local Capacity Area Resources**" has the meaning set forth in the CAISO Tariff.

"**Locational Marginal Price**" or "**LMP**" has the meaning set forth in the CAISO Tariff.

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

"**Lost Output**" has the meaning set forth in Exhibit F.

"**Master File**" has the meaning set forth in the CAISO Tariff.

"**Metered Energy**" means the Energy generated by the Facility, expressed in MWh, as recorded by the CAISO Approved Meter(s) and net of all Electrical Losses and Station Use.

"**Milestones**" means the development activities for significant permitting, interconnection, financing, and construction milestones set forth in the Cover Sheet.

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MW**" means megawatts measured in alternating current.

"**MWh**" means megawatt-hour measured in AC.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility's PNode is less than zero dollars ($0).

"**Negative LMP Costs**" has the meaning set forth in Section 3.3(c).

"**Net Qualifying Capacity**" or "**NQC**" has the meaning set forth in the CAISO Tariff.

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**Non-Availability Charge**" has the meaning set forth in the CAISO Tariff.

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

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

"**NP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region NP 15 as set forth in the CAISO Tariff.

"**Other Generating Facility(ies)**" means the electric generating facility(ies), other than the Facility, utilizing the Shared Facilities to enable delivery of energy from each such other generating facility to the Facility's point of interconnection, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at each such other generating facility, but (i) with respect to the Shared Facilities, excluding Seller's interests therein and (ii) excluding the real property on which each such other generating facility is, or will be located, land rights and interests in land.

"**Other Seller(s)**" means the seller(s) of energy from any Other Generating Facility.

"**Participating Intermittent Resource Program**" or "**PIRP**" has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

"**Participating Transmission Owner**" means an entity that owns transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas & Electric Co. ("**PG&E**").

"**Participating Transmission Operator**" means an entity that operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Operator is PG&E.

"**PTO**" means either Participating Transmission Owner or Participating Transmission Operator, as applicable.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" has the meaning set forth in Section 4.7.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit, in the amount specified on the Cover Sheet and deposited with Buyer in conformance with Section 8.8.

"**Performance Security End Date**" has the meaning set forth in Section 8.8.

"**Permitted Transferee**" means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

"**Person**" means an individual, corporation, sole proprietorship, limited liability company, limited or general partnership, association, joint venture, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, Governmental Authority, or other entity.

"**PNode**" has the meaning set forth in the CAISO Tariff.

"**Portfolio**" means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing, provided that all such generating assets are located in the United States.

"**Portfolio Content Category**" means PCC1, PCC2 or PCC3, as applicable.

"**Portfolio Content Category 1**" or "**PCC1**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"**Portfolio Content Category 2**" or "**PCC2**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

"**Portfolio Content Category 3**" or "**PCC3**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

"**Portfolio Financing**" means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

"**Portfolio Financing Entity**" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

"**Product**" means (i) Energy, (ii) Green Attributes, (iii) Capacity Attributes, and (iv) any Future Environmental Attributes as applicable in accordance with Section 3.6.

"**Progress Report**" means a progress report including the items set forth in Exhibit G.

"**Prudent Operating Practice**" means the applicable practices, methods and acts required by or consistent with the applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale facilities in the Western United States, that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result consistent with good business practices, reliability, safety, applicable codes, and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale facilities in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

"**PTC**" means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

"**Qualifying Capacity**" has the meaning set forth in the CAISO Tariff.

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.9(b).

"**RA Guarantee Date**" means the Guaranteed Commercial Operation Date.

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.9(b), any month after (and including) the month in which the RA Guarantee Date occurs and before (and including) the month in which the FCDS Date occurs during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month.

"**Real-Time Forecast**" means any Notice of any change to the Available Capacity or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.4(d).

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

"**Remedial Action Plan**" has the meaning in Section 2.4.

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

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, provided in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

"**Replacement Energy**" has the meaning given in Exhibit F.

"**Replacement Green Attributes**" has the meaning given in Exhibit F.

"**Replacement Product**" has the meaning given in Exhibit F.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within the Pacific Gas and Electric Company TAC Area (as described in the CAISO Tariff) and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, located within the same Local Capacity Area. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel, and Seller shall exercise commercially reasonable efforts to provide Replacement RA from hydropower, wind, and solar resources when possible.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any other existing or subsequent CPUC ruling or decision or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority including the CAISO, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term, and shall include any local, zonal or otherwise locational attributes associated with the Facility.

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

"**Schedule**" has the meaning set forth in the CAISO Tariff.

"**Scheduled Energy**" means the Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule, and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff and protocols.

"**Scheduled Maintenance**" means a planned interruption or reduction of the Facility's generation required for inspection, or preventive or corrective maintenance, in accordance with Prudent Operating Practice.

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

"**Security Interest**" has the meaning set forth in Section 8.4.

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller Permitted Party**" means any actual or potential: (i) Lender, (ii) direct or indirect purchaser of all or any part of Seller or the Facility, (iii) engineering, procurement, and construction contractor, and (iv) operation and maintenance provider.

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.8(a).

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

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

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

"**Shared Facilities**" means the gen-tie lines, transformers, substations, switchyards, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from Seller's Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with Other Seller(s), as applicable.

"**Shared Facilities Agreement**" has the meaning set forth in Section 6.3(a).

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

"**Site Control**" means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

"**Station Use**" means:

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

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

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

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

"**Tax Credits**" means the PTC, ITC, and any other state, local, and/or federal tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

"**Terminated Transaction**" has the meaning set forth in Section 11.2.

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

"**Test Energy**" means the Metered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

"**Ultimate Parent**" means Canadian Solar Inc., or any successor ultimate parent of Seller that is approved by Buyer in accordance with Article 14.

"**Variable Energy Resource**" or "**VER**" has the meaning set forth in the CAISO Tariff.

"**Variable Energy Resource Forecast**" or "**VER Forecast**" means, for a given period, the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

"**WECC**" means the Western Electricity Coordinating Council or its successor.

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

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8(e).

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

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

(j) references to any amount of money shall mean a reference to the amount in United States Dollars, and references to a LMP shall mean the LMP at the Delivery Point unless expressly provided otherwise;

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.7, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement. If an audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) days of notice to Seller of the identified overpayment.

2.2 **Conditions Precedent; Termination for Failure of Condition**. The Delivery Term shall not commence, unless, on or before August 31, 2019, Seller shall have delivered to Buyer:

(i) a copy of all environmental impact reports, studies or assessments prepared by or obtained by Seller or its Affiliates and used to obtain the conditional use permit for the Facility;

(ii) the conditional use permit or other principal land use approval for the Facility, and requisite CEQA Determinations; and

(iii) a certificate signed by an authorized representative of Seller stating that Seller is in compliance with the requirements of the conditional use permit or other principal land use approval, to the extent such requirements can be complied with as of the date of such certification.

Either Party shall have the right to terminate this Agreement without liability to either Party arising out of such termination upon notice to the other if the condition set forth in this Section 2.2 shall not have been satisfied or waived by Buyer as of the date specified herein. Such termination right shall remain available until such condition is satisfied or waived. Upon the effectiveness of any termination of this Agreement in accordance with this Section 2.2, the Parties shall have no further liabilities or obligations to each other hereunder.

2.3 **Commercial Operation**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1; and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

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

(d) Seller shall have delivered to Buyer a certificate signed by an authorized representative of Seller stating that Seller is in compliance with any mitigation plans, monitoring programs or other requirements of the conditional use permit or other principal land use approval, to the extent such requirements can be complied with as of the date of such certification;

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

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer; and

(h) Seller has paid Buyer for all amounts owing under this Agreement, including Construction Start Delay Damages and Commercial Operation Delay Damages, owing under this Agreement, if any.

2.4 **Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit G. Seller shall also provide Buyer with any reasonable requested documentation directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.5 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the ninetieth (90^{th}) day after the missed Milestone completion date, as applicable), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or

any other factor), and Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B and Section 11.1(b)(ii), so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing Milestone(s).

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller at the Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Except for Deemed Delivered Energy, Buyer has no obligation to pay Seller for any Product that is not delivered to the Delivery Point as a result of any circumstance, including an outage of the Facility, a Force Majeure Event, or a Curtailment Order. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA and Replacement Product.

3.2 **Sale of Green Attributes**. Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced by the Facility during the Delivery Term, and any Green Attributes associated with Test Energy.

3.3 **Compensation**. Buyer shall compensate Seller for the Product in accordance with this Section 3.3.

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year but is less than one hundred twenty-five percent (125%) of the Expected Energy for such Contract Year, for each additional MWh of Metered Energy (but not Deemed Delivered Energy, for which no additional compensation shall be paid), if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead LMP for the applicable Settlement Interval; provided that if there is a Negative LMP during such Settlement Interval, then the price

applicable to all such additional MWh of Metered Energy in such Settlement Interval shall be zero dollars ($0).

(c) If during any Settlement Interval, Seller delivers Product in amounts, as measured by the amount of Metered Energy, in excess of the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times the number of such Excess MWh ("**Negative LMP Costs**").

(d) Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of Metered Energy, plus Deemed Delivered Energy, exceeds one hundred twenty-five percent (125%) of the Expected Energy for such Contract Year, the price to be paid for additional Metered Energy and/or Deemed Delivered Energy shall be zero dollars per MWh ($0.00/MWh).

(e) Test Energy is compensated in accordance with Section 3.7.

(f) The Parties agree that neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Energy and other Product, shall be effective regardless of whether the sale of Energy is eligible for, or receives Tax Credits during the Contract Term.

3.4 **Imbalance Energy**.

(a) Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Subject to Section 3.4(b), to the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

(b) If Seller is not in compliance with EIRP or the scheduling or forecasting provisions of Section 4.4(d), then Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, net of the aggregate Imbalance Energy revenues earned, during such period of noncompliance and reasonably attributable to such noncompliance within the applicable Contract Year. At Buyer's request, Seller will cooperate with Buyer to develop a written administrative protocol to effectuate the Parties' agreement with respect to Imbalance Energy and scheduling.

3.5 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable

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

3.6 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes without any adjustment to the Contract Price paid by Buyer under this Agreement, subject to Sections 3.6(b) and 3.13. Subject to Section 3.13, Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any incremental expenses incurred by Seller associated with providing such Future Environmental Attributes (subject to Section 3.13); *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Green Attributes and Capacity Attributes on an as-available basis. As compensation for any such Test Energy, Green Attributes, and Capacity Attributes, Buyer shall pay Seller an amount ("**Test Energy Rate**") equal to: (a) for up to ninety (90) days from the first delivery of Test Energy, seventy five percent (75%) of the Contract Price and (b) from the ninety-first (91st) day after the first delivery of Test Energy until the Commercial Operation Date, fifty percent (50%) of the Contract Price. For the avoidance of doubt, the conditions precedent in Section 2.3 are not applicable to the Parties' obligations under this Section 3.7.

3.8 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term, and any Capacity Attributes associated with any Test Energy.

(b) Throughout the Delivery Term, subject to Section 3.13, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, subject to Section 3.13, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) Subject to Section 3.13, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.9 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. The Parties acknowledge and agree that if Seller is unable to obtain Full Capacity Deliverability Status by the RA Guarantee Date, then Seller shall either pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied by [redacted].; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is delivered to Buyer along with a written Notice substantially in the form of Exhibit M at least fifty (50) calendar days before the applicable operating month for the purpose of monthly RA reporting.

3.10 **CEC Certification and Verification**. Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Precertification and CEC Certification and Verification for the Facility, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Precertification or CEC Certification and Verification for the Facility.

3.11 **Eligibility**. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies

under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.

3.12 **California Renewables Portfolio Standard**. Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by California statute or by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap**. If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller's cost to perform its obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product, then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at [redacted] cumulatively during the Delivery Term ("**Compliance Expenditure Cap**").

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller.

3.14 **Available Option for Energy Storage Facility**. At any time on or before August 31, 2019, Buyer may provide Seller with a written request ("**Energy Storage Request**") to review and evaluate the development of an energy storage facility or facilities capable of storing up to 7.8 MW capacity and 31.2 MWh duration located on the Site ("**Energy Storage Facility**"). The Energy Storage Request may ask Seller to develop a detailed proposal, or may include a detailed proposal (or a combination thereof) for the development of the Energy Storage Facility that may include lithium ion battery storage. Upon receipt of an Energy Storage Request, Seller will in

good faith review and evaluate the feasibility of development of the Energy Storage Facility, and respond within sixty (60) days. Seller's response to Buyer shall indicate the key terms and conditions, supporting documentation, financing, and such other information and requirements under which Seller would provide such development. Upon receipt of Seller's response by Buyer, the Parties shall enter into good faith discussions concerning the potential development of the Energy Storage Facility. Buyer shall have the option to seek independent third-party review of Seller's response, and Buyer and Seller agree to equally share the reasonable costs of an independent third party mutually agreed-to by both Parties to verify that such response is consistent with the current market rate offered by similarly sized sellers for a similarly sized energy storage facility. Nothing in this Section 3.14 shall require or obligate either Party in any way to agree to such storage unit(s) at the Site unless and until Seller and Buyer, in their sole and absolute discretion, agree on the technical, commercial and financial terms of the development of the Energy Storage Facility, including any appropriate amendments to this Agreement or negotiation of a separate energy storage development agreement, the compensation to be paid to Seller related to the services to be provided by such Energy Storage Facility, and any other requirements of Seller's Lenders.

3.15 **General Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy related to an Energy Storage Facility; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Subject to the provisions of this Agreement, Buyer shall be responsible for costs, charges, and penalties, if any, imposed in connection with the delivery of Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator).

(b) Green Attributes. All Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller hereby provides and conveys all Green Attributes associated with the Facility as part of the Product being delivered, with the associated Renewable Energy Credits delivered to Buyer via WREGIS pursuant to Section

4.8. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss**.

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Scheduling Coordinator Responsibilities**.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Test Energy, if any, and applicable Products at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer, or upon the expiration or earlier termination of the Delivery Term. Buyer (as SC for the Facility) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Test Energy and Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, Forced Facility Outages, Forced Facility Outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Sections 3.4(b) and 3.7, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and

shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties or fees resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility), including for RA plans. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to any violation of CAISO rules by Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement, including Section 3.4(b). CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be

unreasonably withheld.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance, with NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

4.4 **Forecasting**. Seller shall provide the forecasts described below. Seller's Available Capacity forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity and expected Metered Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Expected Metered Energy. No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity and the hourly expected Metered Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.4(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in Available Capacity or hourly expected Energy, in each case whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must

notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.4(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Facility, multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.13, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.5 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that any Buyer Curtailment Order or notice received from CAISO in respect of a Buyer Bid Curtailment shall be consistent with the operational characteristics set forth in Exhibit L. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, or for any Product that could not be delivered due to Force Majeure.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail

deliveries of Energy from the Facility to the Delivery Point through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy in excess of the Curtailment Cap at the applicable Contract Price.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Cost, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller's obligations under this Section 4.4(d) shall be subject to the limitations expressly set forth in Section 3.13. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

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

(a) Facility Maintenance. Seller will provide to Buyer written schedules for Scheduled Maintenance for the Facility for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days of receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Scheduled Maintenance no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to reduce deliveries of Product during any period of Scheduled Maintenance on the Facility.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage in accordance with Section 4.4(d).

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period, or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

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

4.7 **Expected Energy and Guaranteed Energy Production**. The quantity of Product, as measured by Metered Energy, that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet ("**Expected Energy**"). Seller shall be required to deliver to Buyer an amount of Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the average Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent that Seller was unable to deliver Energy as a result of any Force Majeure Events, System Emergency, Buyer Scheduling Failure, Curtailment Periods and Buyer Curtailment Periods; to effectuate the foregoing excuses, Seller shall be deemed to have generated (1) the Deemed Delivered Energy in respect of Buyer Curtailment Periods, and (2) an amount of Energy determined in accordance with Exhibit F in respect of Lost Output. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP-15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer that are not reimbursed by Seller; provided further that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification, issuance, and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (**"Seller's WREGIS Account"**), which

Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the accounts of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Subject to Section 3.13, Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause itself or its agent to be designated as the "Qualified Reporting Entity" (as that term is defined by WREGIS) for the Facility. Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Because WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Metered Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates issued to Buyer for a calendar month as compared to the Metered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit is caused by Seller, or is the result of any action or inaction by Seller, then the amount of Metered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller provides Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP-15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Deficient Month, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. Seller shall use commercially reasonable efforts to rectify any WREGIS Certificate Deficit as expeditiously as possible.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause

and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Metered Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits to be issued to Buyer and tracked in WREGIS will be taken prior to the first delivery under the Agreement.

4.9 **[Removed]**

4.10 **Access to Data and Installation and Maintenance of Weather Station**

(a) Commencing on the Commercial Operation Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Delivery Term, which changes Buyer determines are necessary to forecast output from the Facility, and/or comply with Law:

(i) read-only access to meteorological measurements, transformer availability, any other Facility availability information, and, if applicable, all parameters necessary for use in the equation under item (vii) of this list;

(ii) read-only access to 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 written request from Buyer, Seller shall provide energy output information and meteorological measurements to Buyer in 1 minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

(iii) read-only access to the Facility's CAISO revenue meter and all Facility meter data at the Site;

(iv) full, real time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system;

(v) net Facility electrical output at the CAISO revenue meter;

(vi) instantaneous data measurements at sixty (60) second or increased frequency for the following parameters, which measurements shall be provided by Seller to Buyer in a consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup: (i) back panel temperature, (ii) global horizontal irradiance, (iii) plane of array irradiance (if the panels are fixed) or direct normal irradiance (if the panels are tracking), (iv) wind speed, (v) peak wind speed (within one minute), (vi) wind direction, (vii) ambient air temperature, (viii) dewpoint air temperature or relative humidity, (ix) horizontal visibility, (x) precipitation (rain rate), (xi) precipitation (running 30 day total), and (xii) barometric pressure; and

(vii) an equation, updated on an ongoing basis to reflect the potential generation of the Facility as a function of insolation (and, if applicable, other weather factors). Such equation shall take into account the expected availability of the Facility. Seller shall reasonably cooperate with any request from Buyer to adjust the equation due to results that are inconsistent with the observed Facility output.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Facility's monthly actual available capacity in a form reasonably acceptable to Buyer.

Buyer's access to the Facility's SCADA system shall be subject to Buyer's compliance with Seller's reasonable cyber-security policies and procedures and applicable Law, including NERC rules and regulations.

(b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.10(a), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) Installation, Maintenance and Repair.

(i) Seller, at its own expense, shall install and maintain at least one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 4.10(a) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.10(a) of this Agreement.

(ii) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; provided further that Seller shall not be relieved from liability for any Imbalance Energy costs incurred under Section 3.4(b) during this additional period for repair or replacement.

(iv) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate

means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(d) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for Seller, including from the PTO. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from the PTO information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.

(e) No later than ninety (90) days before the Commercial Operation Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (i) the parameters (other than back panel temperature) identified in Section 4.10(a)(vi) above (all data, except peak values, should be 1-second samples averaged into 10-minute periods); (ii) elevation, latitude and longitude of the weather station; and (iii) any other data reasonably requested by Buyer.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy or other Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6
MAINTENANCE OF THE FACILITY

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

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

6.3 **Shared Facilities**.

(a) Seller shall obtain and maintain throughout the Delivery Term any and all interconnection and transmission service rights and permits required to effect delivery of the Energy to the Delivery Point. During the Delivery Term, the Interconnection Agreement shall provide for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity. The Parties acknowledge that ownership and use of any Shared Facilities (including the Interconnection Agreement itself) may be subject to a co-tenancy or similar sharing agreement (collectively, "**Shared Facilities Agreement(s)**"), under which Shared Facilities Agreements an Affiliate of Seller may act as a manager on behalf of Seller under the Interconnection Agreement ("**Affiliate Manager**"). Seller shall ensure that, during the startup period of the Facility and throughout the Delivery Term, Seller shall have sufficient interconnection capacity and rights under or through the Interconnection Agreement and the Shared Facilities Agreements, if any, to interconnect the Facility with the CAISO Grid and fulfill its obligations under this Agreement. In connection with the Interconnection Agreement and the Shared Facilities Agreements, if any, the following shall apply:

(i) The Shared Facilities Agreements shall provide that:

(A) the Other Seller(s), the Affiliate Manager and the Interconnection Affiliate (if different from the Seller or Other Seller(s)) shall fully indemnify Seller for any liability arising out of its respective acts or omissions in regards to its respective performance obligations under the Interconnection Agreement and any Shared Facilities Agreement in which such party is a counterparty with Seller,

(B) Seller shall have the right to correct, remedy, mitigate, or otherwise cure any omission, failure, breach or default by Other Seller, Affiliate Manager, or Interconnection Affiliate (if different from the Seller or Other Seller(s)) that would negatively impact Seller's obligations under this Agreement, under the Interconnection Agreement, or under any Shared Facilities Agreement in which Seller is a counterparty, and

(C) any instruction from the CAISO or the PTO to curtail energy deliveries shall be allocated between the Facility and any Other Generating Facility(ies) that have achieved commercial operation on a pro rata basis based upon their respective energy delivery forecasts for the applicable period, except (A) when such pro rata allocation would be in violation of the applicable curtailment instruction, or (B) to the extent that the need for the curtailment can be attributed to the Facility or any Other Generating Facility.

(ii) Seller shall, or shall cause the Interconnection Affiliate (if different from Seller) to, apply for and expeditiously seek FERC's acceptance of any Shared Facilities Agreement(s), if required.

(iii) Except with respect to an assignment or collateral assignment of the Interconnection Agreement, Shared Facilities or Shared Facilities Agreement(s) to a Person to which this Agreement is assigned pursuant to Article 14 or Article 15, Seller shall not assign or transfer Seller's rights or obligations under the Interconnection Agreement or any Shared Facilities Agreement to any Person without the prior written consent of Buyer, which consent shall not be unreasonably withheld.

(b) As between Buyer and Seller under this Agreement, Seller shall be responsible for all costs and charges directly caused by, associated with, or allocated to Seller, the Interconnection Affiliate, the Affiliate Manager, or the Other Seller(s) under the Interconnection Agreement, the Shared Facilities Agreement, if any, and the CAISO Tariff, in connection with the interconnection of the Facility to the Participating Transmission Owner's electric system and transmission of electric energy from the Facility to the Participating Transmission Owner's electric system.

(c) Seller shall, or shall cause the Interconnection Affiliate, as applicable, to comply with the CAISO Tariff, including securing and maintaining in full force and effect all required CAISO agreements, certifications and approvals.

(d) Seller shall, or shall cause the Interconnection Affiliate, as applicable, to secure through the CAISO the CAISO Resource ID that is to be used solely for this Facility.

(e) Seller shall, or shall cause the Interconnection Affiliate, as applicable, to comply with the requirements of Appendix H to Appendix CC of the CAISO Tariff, or its equivalent successor.

6.4 **Decommissioning Facility and Other Costs**. Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition. Seller agrees to indemnify Buyer for any costs incurred by Buyer if and to the extent that Seller's actions or inactions causes any or all of them become required, whether statutorily or otherwise, to bear the cost of any decommissioning or demolition of the Facility or any environmental or other liability associated therewith.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Energy produced by the Facility using a CAISO Approved Meter, using a CAISO-approved methodology, which will be subject to adjustment in accordance applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval, no to be unreasonably withheld. Such meter shall be installed on the low or high side of the Seller's transformer and maintained and updated at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility. Buyer, at its sole cost and expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Output delivered under this Agreement, provided the referenced equipment does not interfere with Seller's metering equipment.

7.2 **Meter Verification**. If Seller has reason to believe there may be a meter malfunction, Seller shall test the meter. Seller shall also test the meter annually. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than plus or minus one percent (1%), an adjustment shall be made to correct all measurements made by the inaccurate or defective meter for both the amount of the inaccuracy and the period of the inaccuracy. If the period of inaccuracy cannot be reasonably ascertained, then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-third of such period. If the difference of inaccuracy is a positive number, the balance shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the direction of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer for Product no later than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Energy in MWh produced by the Facility as read by the CAISO Approved Meter, the amount of Replacement RA and Replacement Product

delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product; and (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement and such records as may be required by Prudent Operating Practice, for a period of at least two (2) years or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall

be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a party other than the Party seeking the adjustment and such party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7 **Seller's Development Security**. To secure Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days after the Effective Date. Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or if Seller fails to pay a Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is provided in the form of a Letter of Credit, it shall be substantially in the form set forth in Exhibit K. Seller shall maintain the Performance Security in full force and effect and Seller shall replenish the Performance Security in the event Buyer collects or draws

down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the date on which the following have occurred ("**Performance Security End Date**"): (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Performance Security End Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

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

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

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

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

surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 9
NOTICES

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

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (b) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or United States mail, at the time indicated by the time stamp upon electronic delivery; or (c) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; windstorm; hailstorm; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the

Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event of the type expressly described in Section 10.1(b); (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

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

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has caused either Party to claim and receive relief for such inability to perform, and such relief has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party experiencing the Force

Majeure Event. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for (1) failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.9, (2) Buyer Scheduling Failure, the exclusive remedies for which are contained in Section 4.7 and the payment and other credit Seller receives for Deemed Delivered Energy and Lost Output in accordance with this Agreement, and (3) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.7), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such failure within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.1 or 14.2, as applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement energy that was not generated by the Facility, except for Replacement Product;

(ii) [redacted];

(iii) the failure by Seller to timely obtain CEC Certification and Verification in accordance with Section 3.10.

(iv) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for that Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment, if such failure is not remedied within ten (10) Business Days after Notice thereof;

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

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

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

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

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit, including failure to honor a request due to sanctions specified in Exhibit K;

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

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

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

(vii) the occurrence of six (6) consecutive months in which a WREGIS Certificate Deficit was caused, or was the result of any action or inaction, by Seller; provided that if Seller is taking reasonable steps to prevent subsequent WREGIS Certificate Deficits and is reasonably likely to succeed in preventing the occurrence in the seventh (7th) consecutive month, then an Event of Default shall not be deemed to have occurred until the seventh (7th) consecutive month.

(viii) the failure by Seller to maintain and provide acceptable evidence of insurance as set forth in Section 18.1(a)-(g) that is not cured within ten (10) Business Days after receipt of Notice of such failure from Buyer.

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller under Section 11.1(b)(ii), subject to the limitation in Section 7 of Exhibit B, if applicable) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

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

(d) to suspend performance; and/or

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

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

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

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

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

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

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE

CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

(e) The Facility is located in the State of California, and will be designed to contain the capabilities provided in Exhibit A. Seller agrees and hereby certifies to Buyer that the Site shall be sufficient in size and scope to accommodate both the Facility and the potential future build out of an Energy Storage Facility (whether the Parties agree to develop the Energy Storage

Facility or not) to be available for the time period described in Section 3.14. Seller acknowledges and agrees that Buyer's available option to add an Energy Storage Facility under Section 3.14 and the obligation to size the Site accordingly in this Section 13.1(e) are material inducements to Buyer to enter into this Agreement.

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

(a) Buyer is a joint powers authority and public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

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

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

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

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

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign this Agreement or its rights or obligations under this Agreement, or any part of such rights or obligations, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to such an assignment. Any Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Permitted Assignment; Change of Control of Seller**. Seller may, upon prior written notice to, but without the prior written consent of, Buyer, transfer or assign this Agreement to a Permitted Transferee; *provided*, that no more fewer than fifteen (15) Business Days before such assignment Seller (x) notifies Buyer of such assignment and (y) provides to Buyer a written agreement signed by the Persons to which Seller wishes to assign its interests stating that such Persons agree to assume all of Seller's obligations and liabilities under this Agreement. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been delivered to Buyer.

14.3 **Permitted Assignment; Change of Control of Buyer**. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition, or otherwise without Seller's prior written consent, *provided*, that in each of the foregoing situations, the assignee has a Credit Rating of Baa2 or higher by Moody's or BB or higher by S&P; *provided, further*, that in each such case, no more fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written

agreement signed by the Persons to which Buyer wishes to assign its interests stating that such Persons agree to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Article 15. Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

ARTICLE 15
LENDER AND FINANCING ACCOMMODATIONS

15.1 **Collateral Assignment and Granting of Lender Interest**. Subject to the provisions of this Section 15.1, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that the Buyer recognizes the Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection therewith shall be borne by the Seller, and that the Buyer shall not be required to agree to any terms or conditions except those that are reasonable and customarily obtained by financing parties in similar transactions.

15.2 **Shared Facilities; Portfolio Financing**. Without limiting the foregoing, Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements; provided, Seller shall not permit the Facility, this Agreement, or the direct or indirect interests in Seller to be included in more than one Portfolio Financing at any given time. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions except those that are reasonable and customarily obtained by financing parties in similar transactions, and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

ARTICLE 16
DISPUTE RESOLUTION

16.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any litigation arising with respect to this Agreement is to be venued in the Superior Court for the County of San Joaquin, California.

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

16.3 **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 17
INDEMNIFICATION

17.1 **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the violation of Law or the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided*, *however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as

otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18
INSURANCE

18.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction or re-powering of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit coverage of not less than One Million Dollars ($1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage, in each case, with limits of One Million Dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary

endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 19
CONFIDENTIAL INFORMATION

19.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the terms and conditions of this Agreement; and (c) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" or words of similar import before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 **Duty to Maintain Confidentiality**. The Party receiving Confidential Information shall treat it as confidential, and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own confidential information, or (b) a standard of care reasonably tailored to prevent

unauthorized use or disclosure of such Confidential Information. Confidential Information may be disclosed by the recipient if and to the extent such disclosure is required (a) by Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own purposes, and may publicly disclose such information at its own discretion. Notwithstanding the foregoing, Seller acknowledges that Buyer is required to make portions of this Agreement available to the public in connection with the process of seeking approval from its board of directors for execution of this Agreement. Buyer shall redact the financial terms of this Agreement as part of any such public disclosure, and will use reasonable efforts to consult with Seller prior to any such public disclosure. Seller further acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information provided by Seller to Buyer, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any other requested Confidential Information, whether or not advance written notice to Seller has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect Confidential Information that is the subject of any Public Records Act request submitted by a third person to Buyer.

19.3 **Irreparable Injury; Remedies**. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

19.4 **Disclosure to Seller Permitted Party**. Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any Seller Permitted Party or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

19.5 **Disclosure to Credit Rating Agency**. Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party or its affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information in accordance with this Article 19.

ARTICLE 20
MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event

of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

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

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

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

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

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

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

20.8 **Facsimile or Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document

format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

20.10 **No Recourse to Members of Buyer**. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

20.11 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event.

20.12 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code.

20.13 **Service Contract**. The Parties intend this Agreement to be considered as a service contract for the purposes of Section 7701(e) of the United States Internal Revenue Code of 1986, as amended.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Facility Name: **RE Slate 4**

Site Name: **RE Slate 4**

Site includes all or some of the following APNs:

[redacted]

Site Address: [redacted]

GPS Coordinates: [redacted]

County: Kings County

Guaranteed Capacity: 26 MW AC (net, at the Delivery Point)

Generation Technology: Tier 1: Module, Inverter and Single-Axis Tracker Supplier

P-node/Delivery Point: the PNode designated by the CAISO for the Facility at the 230kV Mustang Switching Station

Point of Interconnection: 230kV Mustang Switching Station

CAISO Queue Number: Q1158

One-Line Diagram: [*see attached.*]

Description of Interconnection Facilities and Metering: An indicative depiction of the Interconnection Facilities and metering configuration is shown in the following one-line diagram:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

   a. "**Construction Start**" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and when Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to immediately mobilize to Site and begin physical construction at the Site (including, at a minimum, excavation for foundations or the installation or erection of improvements). The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Start Delay Damages to Buyer on account of such delay. Construction Start Delay Damages shall be payable to Buyer by Seller for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Construction Start Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Start Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Start Delay Damages set forth in the invoice. Construction Start Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. [redacted].

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.3 of the Agreement and (ii) Seller has provided Notice to Buyer substantially in the form of Exhibit I-1 (the "**COD Certificate**"). The "**Commercial Operation Date**" shall be the later of (x) the date that is ninety (90) days before the Expected Commercial Operation Date or (y) the date identified in the COD Certificate as the "Commercial Operation Date".

a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Construction Start Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Start Delay Damages with the first invoice to Buyer after the Commercial Operation Date.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Construction Start Delay Damages and Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller for each day for which Commercial Operation has not begun after the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Facility achieves Commercial Operation. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. [redacted].

3. **Termination for Failure to Timely Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation within [redacted] after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any delay arising out of any of the following circumstances:

a. a Force Majeure Event occurs; or

b. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date; or

c. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable actions by Seller, including compliance with applicable Laws, diligent pursuit of approval in any General Order 131-D process with the California Public Utilities Commission, and full utilization of the rights and remedies of Seller's Affiliate under the Interconnection Agreement.

[redacted] No extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide the requested documentation as provided below, or (iii) Seller failed to provide the written Notice to Buyer as required in the next sentence. Seller shall provide prompt written Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 hereto specifying the new Installed Capacity. In the event that the Installed Capacity is still less than the Guaranteed Capacity as of such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer's Right to Draw on Development Security**. If Seller fails to timely pay any Construction Start Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security to its full amount within ten (10) Business Days after such draw.

7. [redacted].

EXHIBIT C

RESERVED

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Attn: Bruce McLaughlin
Phone: 916.531.5566
Email: bcm@cameron-daniel.com

ALTERNATE BUYER EMERGENCY CONTACT:

Cori Bradley
Phone No.: 916.405.8923
Email: cori@robertson-bryan.com

ALTERNATE BUYER EMERGENCY CONTACT:

Dan Griffiths
Phone No.: 916.471.9518
Email: dg@cameron-daniel.com

SELLER:

RE Slate 4 LLC
c/o Recurrent Energy, LLC
3000 Oak Road, Ste. 300
Walnut Creek, CA 94597
Attention: Asset Management
Phone No.: 415.501.9495
Email: Asset_Management@canadiansolar.com

EXHIBIT E

RESERVED

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)]

where:

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

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

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) $50/MWh and (y) the market value of Replacement Green Attributes.

D = the Contract Price for the Performance Measurement Period, in $/MWh

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

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

Additional Definitions:

"**Adjusted Energy Production**" shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output + Replacement Product – Excess MWh.

"**Lost Output**" means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Scheduling Failure, or Curtailment Order. The amount of Lost Output shall be equal to (a) the VER Forecast expressed in MWh during the period of the Force Majeure Event, Buyer Scheduling Failure, or Curtailment Order, or (b) if there is no VER Forecast available or Seller demonstrates to Buyer's reasonable satisfaction that the VER Forecast does not represent an accurate forecast of generation from the Facility, the result of the equation reasonably calculated and provided by Seller, and approved by Buyer in its reasonable discretion, to reflect the potential generation of the Facility as a function

of Available Capacity, solar insolation and panel temperature, and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Force Majeure Event, Buyer Scheduling Failure, or Curtailment Order, in all cases less the amount of Metered Energy delivered to the Delivery Point during such period.

"**Replacement Green Attributes**" means Renewable Energy Credits of the same Portfolio Content Category (e.g., PCC1) as the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

"**Replacement Energy**" means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

"**Replacement Product**" means (a) Replacement Energy, and (b) all Replacement Green Attributes.

EXHIBIT G

PROGRESS REPORTING FORM

For new facilities, within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a written Progress Report in the form specified below.

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any planned changes to the Facility or the site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar month, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that could potentially affect Seller's Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

13. Any other documentation reasonably requested by Buyer.

EXHIBIT H

[Reserved]

EXHIBIT I

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____[*licensed professional engineer*] ("**Engineer**") to the Power and Water Resources Pooling Authority **(**"**Buyer**") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("**Agreement**") by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

(1) The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

(2) Seller has installed equipment with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

(2) The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].

(3) Authorization to parallel the Facility was obtained by the PTO, [Name of PTO as appropriate] on___[DATE]____.

(4) The PTO has provided documentation supporting full unrestricted release for Commercial Operation by [Name of PTO as appropriate] on _____[DATE]_____.

(5) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on _____[DATE]_____.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity is delivered by _____[*licensed professional engineer*] ("Engineer") to the Power and Water Resources Pooling Authority ("Buyer") in accordance with the terms of that certain Power Purchase Agreement dated _____ ("Agreement") by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The performance test for the Facility demonstrated peak Facility output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

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

Seller hereby notifies Buyer of the following:

1. the EPC Contract related to the Facility was executed on _____;
2. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of the Construction Start is attached hereto;
3. the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and
4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

   _____

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

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

[SELLER ENTITY]

By:_____
Its:_____

Date:_____

EXHIBIT K

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]
DATE:
AMOUNT: USD 1,560,000.00
EXPIRY DATE AND PLACE: [XXXXXX], 4:00 P.M. AT OUR COUNTER IN NEW YORK

BENEFICIARY:
POWER AND WATER RESOURCES POOLING AUTHORITY
3514 W. LEHMAN ROAD
TRACY, CA 95304-9336
ATTN: BRUCE MCLAUGHLIN

LADIES AND GENTLEMEN:

BY THE ORDER OF RE SLATE 4 LLC, 3000 OAK ROAD, SUITE 300, WALNUT CREEK, CA 94597 (THE "APPLICANT" ALSO KNOWN AS THE "SELLER"), WE, [X – BANK NAME AND ADDRESS - X], (THE "ISSUER") HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX] (THE "LETTER OF CREDIT") IN FAVOR OF POWER AND WATER RESOURCES POOLING AUTHORITY (THE "BENEFICIARY"), 3514 W. LEHMAN ROAD, TRACY, CA 95304-9336, FOR AN AMOUNT NOT TO EXCEED THE AGGREGATE SUM OF USD 1,560,000.00 (UNITED STATES DOLLARS ONE MILLION FIVE HUNDRED SIXTY THOUSAND AND 00/100), PURSUANT TO THAT CERTAIN POWER PURCHASE AGREEMENT DATED AS OF [XXXXXXX], 2019 (AND AS AMENDED, THE "AGREEMENT") BETWEEN THE SELLER (AS DEFINED IN THE AGREEMENT) AND THE BENEFICIARY. THIS LETTER OF CREDIT SHALL BECOME EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [XXXXXXX].

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO YOU AGAINST PRESENTATION OF THE FOLLOWING DOCUMENTS:

1. YOUR DRAFT(S) DRAWN ON US AT SIGHT, MARKED "DRAWN UNDER STANDBY LETTER OF CREDIT NO. _____ ." , AND
2. YOUR DATED STATEMENT PURPORTEDLY SIGNED BY YOUR DULY AUTHORIZED REPRESENTATIVE, IN THE FORM ATTACHED HERETO AS EXHIBIT A, AND
3. THE ORIGINAL OF THIS LETTER OF CREDIT AND ITS AMENDMENT(S), IF ANY.

WE HEREBY AGREE WITH THE BENEFICIARY THAT DRAFT(S) AND DOCUMENT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED UPON PRESENTATION TO US AT [X – BANK NAME AND ADDRESS - X] IN ONE LOT BY COURIER SERVICE. PAYMENT SHALL BE MADE BY US IN U.S. DOLLARS IN IMMEDIATELY AVAILABLE FUNDS.

[THE DOCUMENT(S) REQUIRED MAY ALSO BE PRESENTED BY FAX AT FACSIMILE NO. (XXX) XXX-XXXX ON OR BEFORE THE EXPIRY DATE (AS MAY BE EXTENDED BELOW) ON THIS LETTER OF CREDIT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT. IN THE EVENT OF A PRESENTATION MADE BY FACSIMILE TRANSMISSION, THE FACIMILE MUST BE FOLLOWED BY THE PHYSICAL ORIGINALS OR COPIES AND PAYMENT SHALL BE EFFECTED AGAINST PHYSICAL DOCUMENTS IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT. IF PRESENTATION IS MADE BY FACSIMILE TRANSMISSION, BENEFICIARY MAY CONTACT THE BANK AT (XXX) XXX-XXXX TO CONFIRM RECEIPT OF THE TRANSMISSION. BENEFICIARY'S FAILURE TO SEEK SUCH TELEPHONE CONFIRMATION DOES NOT AFFECT THE ISSUER'S OBLIGATION TO HONOR SUCH PRESENTATION RECEIVED BY IT.]2

PARTIAL DRAWS ARE PERMITTED UNDER THIS LETTER OF CREDIT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR A ONE YEAR PERIOD BEGINNING ON THE PRESENT EXPIRY DATE HEREOF AND UPON EACH ANNIVERSARY OF SUCH DATE, UNLESS AT LEAST NINETY (90) CALENDAR DAYS PRIOR TO ANY SUCH EXPIRY DATE, WE NOTIFY YOU IN WRITING BY OVERNIGHT COURIER SERVICE (AT YOUR ABOVE ADDRESS OR AT THE ADDRESS YOU WILL CHANGE IN WRITING) THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT, IN WHICH CASE IT WILL EXPIRE ON THE DATE SPECIFIED IN SUCH NOTICE. IN ANY EVENT, THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND THE FINAL EXPIRY DATE, [XXXXX].

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS, THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

UNLESS EXPRESSLY STIPULATED, THIS LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION) INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600 (THE "UCP"). IN THE EVENT OF AN ACT OF GOD, RIOT, CIVIL COMMOTION, INSURRECTION, WAR OR ANY OTHER CAUSE BEYOND ISSUER'S CONTROL (AS DEFINED IN ARTICLE 36 OF THE UCP) THAT INTERRUPTS ISSUER'S BUSINESS AND CAUSES THE PLACE FOR PRESENTATION OF THE LETTER OF CREDIT TO BE CLOSED FOR BUSINESS ON THE LAST DAY FOR PRESENTATION, THE EXPIRY DATE OF THE LETTER OF CREDIT WILL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT TO A DATE THIRTY (30) CALENDAR DAYS AFTER THE PLACE FOR PRESENTATION REOPENS FOR BUSINESS.

WE COMPLY WITH INTERNATIONAL SANCTIONS REGULATIONS ISSUED BY THE UNITED NATIONS, UNITED KINGDOM, EUROPEAN UNION, AND UNITED STATES (AS WELL AS LOCAL LAWS AND REGULATIONS APPLICABLE TO US) ("SANCTIONS"). CONSEQUENTLY PAYMENT REQUESTS ISSUED BY OR SHOWING ANY INVOLVEMENT OF PARTIES UNDER SANCTIONS WILL NOT BE PROCESSED AND WITHOUT LIABILITY ON

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2 Provided that Seller uses reasonable efforts to cause the issuing bank to include this provision allowing fax presentation, a Letter of Credit without such provision and that is otherwise substantially similar to the form provided in this Exhibit K, shall be deemed to be substantially similar to the form provided in this Exhibit K.

OUR PART.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO THE ATTENTION OF TRADE FINANCE TEAM, REFERRING SPECIFICALLY TO ISSUER'S LETTER OF CREDIT NO. _____.

_____

[INSERT OFFICER NAME]

[INSERT OFFICER TITLE]

(DRAWING CERTIFICATE SHOULD BE ON BENEFICIARY'S LETTERHEAD)

EXHIBIT A

DRAWING CERTIFICATE

[X – BANK NAME AND ADDRESS - X]

LADIES AND GENTLEMEN:

THE UNDERSIGNED, A DULY AUTHORIZED REPRESENTATIVE OF POWER AND WATER RESOURCES POOLING AUTHORITY, 3514 W. LEHMAN ROAD, TRACY, CA 95304-9336, AS BENEFICIARY (THE "BENEFICIARY") OF THE IRREVOCABLE LETTER OF CREDIT NO. _____ (THE "LETTER OF CREDIT") ISSUED BY [X – BANK NAME AND ADDRESS - X], (THE "ISSUER") BY ORDER OF RE SLATE 4 LLC (THE "APPLICANT" ALSO KNOWN AS THE "SELLER"), HEREBY CERTIFIES TO THE BANK AS FOLLOWS:

1. SELLER AND BENEFICIARY ARE PARTY TO THAT CERTAIN POWER PURCHASE AGREEMENT DATED AS OF [XXXXXX] (THE "AGREEMENT").

2. BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. $_____ BECAUSE A SELLER EVENT OF DEFAULT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) HAS OCCURRED.

3. THE UNDERSIGNED IS A DULY AUTHORIZED REPRESENTATIVE OF BENEFICIARY AND IS AUTHORIZED TO EXECUTE AND DELIVER THIS DRAWING CERTIFICATE ON BEHALF OF BENEFICIARY.

YOU ARE HEREBY DIRECTED TO MAKE PAYMENT OF THE REQUESTED AMOUNT TO BENEFICIARY BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE FUNDS TO THE FOLLOWING ACCOUNT:

[SPECIFY ACCOUNT INFORMATION]

FOR AND ON BEHALF OF POWER AND WATER RESOURCES POOLING AUTHORITY

SIGNED BY: _____

NAME: _____
TITLE: _____

EXHIBIT L

CURTAILMENT OPERATIONAL CHARACTERISTICS

Operational characteristics of the Facility for Buyer Bid Curtailment and Buyer Curtailment Orders:

- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 30 minutes prior to the beginning of the applicable Buyer Curtailment Period, unless the curtailment is effectuated through CAISO Automated Dispatch System (ADS), in which case the advanced notification required will match that provided by the CAISO ADS.
- Minimum Buyer Curtailment Period: 30 minutes (i.e., six (6) consecutive Settlement Intervals).
- Maximum ramp rate for Buyer Curtailment Periods: ten percent (10%) of the Installed Capacity per minute (i.e., the 100 MWac Facility can ramp 10 MW/minute or to full capacity in 10 minutes); provided if the CAISO Master File for the Facility reflects, or CAISO otherwise requires, a more rapid ramp rate, the rate in the CAISO Master File or required by CAISO shall apply.

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [SELLER ENTITY] ("**Seller**") to the Power and Water Resources Pooling Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Agreement dated _____ by and between the Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[1] To be repeated for each unit if more than one.

[SELLER ENTITY]

By: ______________________________

Its: ______________________________

Date: ______________________________