

# RENEWABLE POWER PURCHASE AGREEMENT

## COVER SHEET

**Seller:** Deer Creek Solar I LLC

**Buyer:** Desert Community Energy, a California joint powers authority (“DCE”)

**Description of Facility:** 50 MW AC photovoltaic solar project, which includes a 50MW/200MWh battery energy storage facility

**Milestones:**

Milestone	Date for Completion
Evidence of Site Control	
Executed Interconnection Agreement	
CEC Pre-Certification Obtained	
Conditional Use Permit	
Distribution Upgrades Completed	
Expected Construction Start Date	
Guaranteed Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Expected Commercial Operation Date	
Guaranteed Commercial Operation Date	

**Delivery Term:** The period for Product delivery will be for twenty (20) Contract Years.

**Expected Energy:**

Contract Year	Expected Energy (MWh)
1	
2	
3	

4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

**Guaranteed Capacity:** 50 MW

**Storage Contract Capacity:** 50 MW

**Storage Contract Output:** 200 MWh (at 4 hour discharge)

**Storage Facility Loss Factor:** [REDACTED]

**Guaranteed Storage Availability:** [REDACTED] in Summer Season, [REDACTED]  
[REDACTED] in Winter Season

**Maximum storage facility cycles per year:** [REDACTED]

**Delivery Point:** Facility PNode

**Contract Price**

The Renewable Rate shall be:

Contract Year	Renewable Rate
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1 – 20	\$ [REDACTED]
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The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	\$ [REDACTED]

**Product:**

- PV Energy
- Wind Energy
- Discharging Energy
- Green Attributes (Portfolio Content Category 1)
- Storage Capacity\*
- Capacity Attributes (select options below as applicable)
  - Energy Only Status
  - Full Capacity Deliverability Status (completed)
- Ancillary Services
- Bridge Product

**Scheduling Coordinator:** Buyer/Buyer Third Party

**Development Security:** \$ [REDACTED] kW of Guaranteed Capacity, except as otherwise provided in Section 8.7

**Performance Security:** \$ [REDACTED] kW of Guaranteed Capacity

# TABLE OF CONTENTS

Page

<b>ARTICLE 1 DEFINITIONS.....</b>	<b>1</b>
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation.....	23
<b>ARTICLE 2 TERM; CONDITIONS PRECEDENT.....</b>	<b>24</b>
2.1 Contract Term.....	24
2.2 Conditions Precedent.....	25
2.3 Development; Construction; Progress Reports.....	26
2.4 Remedial Action Plan.....	26
<b>ARTICLE 3 PURCHASE AND SALE.....</b>	<b>26</b>
3.1 Purchase and Sale of Product.....	26
3.2 Sale of Green Attributes.....	27
3.3 Imbalance Energy.....	27
3.4 Ownership of Renewable Energy Incentives.....	27
3.5 Future Environmental Attributes.....	27
3.6 Test Energy.....	28
3.7 Capacity Attributes.....	28
3.8 Resource Adequacy Failure.....	29
3.9 CEC Certification and Verification.....	29
3.10 Bridge Product.....	30
3.11 RPS Standard Terms and Conditions.....	30
3.12 Compliance Expenditure Cap.....	30
3.13 Project Configuration.....	31
<b>ARTICLE 4 OBLIGATIONS AND DELIVERIES.....</b>	<b>31</b>
4.1 Delivery.....	31
4.2 Title and Risk of Loss.....	32
4.3 Forecasting.....	32
4.4 Dispatch Down/Curtailment.....	34
4.5 Charging Energy Management.....	36
4.6 Reduction in Delivery Obligation.....	37
4.7 Guaranteed Energy Production.....	38
4.8 Storage Availability Guarantee.....	39
4.9 Storage Tests.....	39
4.10 WREGIS.....	40
<b>ARTICLE 5 TAXES.....</b>	<b>41</b>
5.1 Allocation of Taxes and Charges.....	41
5.2 Cooperation.....	42

<b>ARTICLE 6 MAINTENANCE OF THE FACILITY .....</b>	<b>42</b>
6.1 Maintenance of the Facility. ....	42
6.2 Maintenance of Health and Safety. ....	42
6.3 Cooperation with Buyer Reporting Obligations. ....	42
<b>ARTICLE 7 METERING.....</b>	<b>42</b>
7.1 Metering. ....	42
7.2 Meter Verification.....	43
<b>ARTICLE 8 INVOICING AND PAYMENT; CREDIT.....</b>	<b>43</b>
8.1 Invoicing.....	43
8.2 Payment.....	44
8.3 Books and Records.....	44
8.4 Payment Adjustments; Billing Errors. ....	44
8.5 Billing Disputes. ....	44
8.6 Netting of Payments.....	45
8.7 Seller’s Development Security. ....	45
8.8 Seller’s Performance Security. ....	45
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral .....	46
8.10 Seller’s Financial Statements.....	47
8.11 Buyer’s Financial Statements. ....	47
<b>ARTICLE 9 NOTICES.....</b>	<b>47</b>
9.1 Addresses for the Delivery of Notices .....	47
9.2 Acceptable Means of Delivering Notice .....	47
<b>ARTICLE 10 FORCE MAJEURE.....</b>	<b>48</b>
10.1 Definition.....	48
10.2 No Liability If a Force Majeure Event Occurs .....	48
10.3 Notice .....	49
10.4 Termination Following Force Majeure Event .....	49
<b>ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION .....</b>	<b>49</b>
11.1 Events of Default .....	49
11.2 Remedies; Declaration of Early Termination Date.....	52
11.3 Termination Payment .....	53
11.4 Notice of Payment of Termination Payment .....	54
11.5 Disputes With Respect to Termination Payment.....	54
11.6 Rights And Remedies Are Cumulative .....	54
11.7 Seller Pre-COD Liability Limitations .....	54
11.8 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date .....	54
<b>ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES .....</b>	<b>55</b>
12.1 No Consequential Damages. ....	55
12.2 Waiver and Exclusion of Other Damages. ....	55

<b>ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY</b> .....	<b>56</b>
13.1 Seller’s Representations and Warranties.....	56
13.2 Buyer’s Representations and Warranties .....	57
13.3 General Covenants .....	58
13.4 Prevailing Wage.....	58
<b>ARTICLE 14 ASSIGNMENT</b> .....	<b>58</b>
14.1 General Prohibition on Assignments .....	58
14.2 Collateral Assignment.....	58
<b>ARTICLE 15 DISPUTE RESOLUTION</b> .....	<b>59</b>
15.1 Governing Law. ....	59
15.2 Venue. ....	59
15.3 Dispute Resolution.....	59
<b>ARTICLE 16 INDEMNIFICATION</b> .....	<b>59</b>
16.1 Mutual Indemnity.....	59
16.2 Notice of Claim.....	60
16.3 Failure to Provide Notice. ....	60
16.4 Defense of Claims.....	60
16.5 Subrogation of Rights .....	61
16.6 Rights and Remedies are Cumulative .....	61
<b>ARTICLE 17 INSURANCE</b> .....	<b>61</b>
17.1 Insurance .....	61
<b>ARTICLE 18 CONFIDENTIAL INFORMATION</b> .....	<b>62</b>
18.1 Definition of Confidential Information.....	62
18.2 Duty to Maintain Confidentiality.....	63
18.3 Irreparable Injury; Remedies .....	63
18.4 Disclosure to Lenders, Etc.....	63
18.5 Public Records Act.....	63
18.6 Press Releases.....	64
<b>ARTICLE 19 MISCELLANEOUS</b> .....	<b>64</b>
19.1 Entire Agreement; Integration; Exhibits .....	64
19.2 Amendments .....	64
19.3 No Waiver .....	64
19.4 No Agency, Partnership, Joint Venture or Lease .....	64
19.5 Severability.....	65
19.6 Mobile-Sierra.....	65
19.7 Counterparts; Electronic Signatures.....	65
19.8 Electronic Delivery .....	65
19.9 Binding Effect.....	65
19.10 No Recourse to Members of Buyer .....	65
19.11 Forward Contract .....	65
19.12 Further Assurances.....	66

**Exhibits:**

Exhibit A	Facility Description
Exhibit B	Major Project Development Milestones and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F-1	Form of Average Expected Energy Report
Exhibit F-2	Form of Monthly Available Generating Capacity Report
Exhibit F-3	Available Storage Capacity
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Guaranty
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Storage Capacity Tests
Exhibit P	Storage Facility Availability
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Form of Surety Bond
Exhibit T	Form of Collateral Assignment Agreement
Exhibit U	Bridge Addendum



## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2021 (the “**Effective Date**”), between Desert Community Energy, a California joint powers authority (“**Buyer**”) and Deer Creek Solar I LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own or otherwise control, and operate the Facility; and

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

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 3.11.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

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

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

**“Ancillary Services”** means those Ancillary Services, as defined in the CAISO Tariff, that can be produced from the Storage Facility at any relevant time consistent with the terms and conditions of this Agreement, the Operating Restrictions and Prudent Operating Practice. For clarity, “Ancillary Services” as used herein does not include, at any relevant time, any ancillary services that the Facility is not actually physically capable of providing consistent with the terms and conditions of this Agreement, the Operating Restrictions and Prudent Operating Practice.

**“Approved Forecast Vendor”** means (a) any entity listed in Schedule 4.3(d), or (b) a vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

**“Available Generating Capacity”** means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

**“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.

**“Bridge Addendum”** means that certain Addendum attached hereto as Exhibit T which set forth the terms of the purchase of Bridge Product.

**“Bridge Product”** has the meaning set forth in Section 3.10.

**“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”** means Desert Community Energy, a California joint powers authority.

**“Buyer Bid Curtailment”** means any curtailment of the Facility arising out of or resulting from the manner in which Buyer bids, offers or schedules the Facility, the Energy or any Products, or in which Buyer fails to do so, including a situation where all of the following occurs:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility, Facility Energy or Ancillary Services, including where the 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; or

(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 full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

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

**“Buyer Curtailment Order”** means (i) the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, or (ii) a curtailment of any portion of the Generating Facility or its output or any reduction in Energy arising out of Buyer’s issuance of any Discharging Notice or any other instruction, order or other communication requesting or requiring the Storage Facility to be discharged, including in connection with Buyer’s participation in Ancillary Services markets.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) Buyer Default; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

**“Buyer Default”** means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.10(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 Facility Energy delivered to the Delivery Point.

**“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) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“**Capacity Attribute**” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

“**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy 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.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller or otherwise ceases to retain the ability to control the decision-making of Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless 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 cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller;

provided that the following events shall not be deemed to be Changes of Control: (i) any exercise of a Lender's rights in connection with the financing documents, including in connection with foreclosure rights or transfers in lieu of foreclosure, and (ii) any transfer directly or indirectly of the equity interests of Seller to a Permitted Transferee.

**“Charging Energy”** means the as-available Energy produced by the Generating Facility and delivered to the Storage Facility pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility. For avoidance of doubt, Charging Energy shall be measured at the Storage Facility Meter.

**“Charging Notice”** means the operating instruction, and any subsequent updates, given by Buyer's SC, PTO, Transmission Provider or the CAISO to the Facility, directing the Storage Facility to charge at a specific MW rate for a specified period of time or to an amount of MWh, provided that any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

**“Claim”** has the meaning set forth in Section 16.2(a).

**“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 an amount each applicable day equal to 

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

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

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

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

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

**“Contract Price”** has the meaning set forth on the Cover Sheet. The Contract Price is each of the Renewable Rate and the Storage Rate.

**“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 end on the last day of the twelfth full month thereafter and each subsequent Contract Year shall be each twelve-month period thereafter.

**“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, which is incorporated into this Agreement.

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

**“CPUC”** means the California Public Utilities Commission or any successor agency performing similar statutory functions.

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

**“Curtailed Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, that such Party is required to curtail deliveries of Facility Energy 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 electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or 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 Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations or limitations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator, including curtailments arising from Seller not possessing Full Capacity Deliverability Status as to one-hundred percent (100%) of the Installed Capacity, or other limitations on transfer capability under the Interconnection Agreement; or

(e) a curtailment resulting from the operation of any Storage Facility capacity in excess of the Storage Contract Capacity installed pursuant to Section 4.5(f).

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

**"Daily Delay Damages"** means an amount equal means an amount each applicable day equal to [REDACTED]

**"Damage Payment"** means the dollar amount that equals [REDACTED]

**"Day-Ahead Forecast"** has the meaning set forth in Section 4.3(c).

**"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 Generating Facility would have produced and delivered to the Storage Facility or at the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Storage Facility or at the Generating Facility Meter during the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during such Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

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

**"Deficient Month"** has the meaning set forth in Section 4.10(e).

“**Deliverability Allocation**” means the percentage of the Guaranteed Capacity for which the Facility has received an allocation of TP Deliverability (as defined in the CAISO Tariff) pursuant to Section 8.9 of Appendix DD to the CAISO Tariff.

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

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

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

“**Development Security**” means (i) cash, (ii) a Letter of Credit, (iii) a Surety Bond, or (iv) a Guaranty in the amount set forth on the Cover Sheet.

“**Discharging Energy**” means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“**Discharging Notice**” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Restrictions. For the avoidance of doubt, except as otherwise provided in this Agreement, such as in the definition of Buyer Curtailment Order, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“**Distribution Upgrades**” has the meaning set forth in the SCE Tariff.

“**Distribution System**” has the meaning set forth in the SCE Tariff.

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

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

“**Electrical Losses**” means all transmission or transformation losses excluding the Loss Factor, including losses associated with (i) delivery of Charging Energy to the Storage Facility, (ii) conversion of Charging Energy into Discharging Energy, and (iii) delivery of Discharging Energy to the Delivery Point, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

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

“**Energy**” means electrical energy generated by the Generating Facility and is not Charging Energy or Discharging Energy.



“**Energy Management System**” or “**EMS**” means the Facility’s energy management system.

“**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 Exhibit C.

“**Excused Event**” has the meaning set forth in Exhibit P.

“**Executed Interconnection Agreement Milestone**” means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

“**Expected Commercial Operation Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“**Expected Construction Start Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

“**Expected Energy**” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet.

“**Expected Installed Capacity**” means the sum of (x) the Guaranteed Capacity and (y) the Expected Storage Contract Capacity.

“**Expected Storage Contract Capacity**” means the expected total capacity (in MW) of the Storage Facility equal to the Storage Contract Capacity amount set forth on the Cover Sheet.

“**Facility**” means the Generating Facility and the Storage Facility.

“**Facility Energy**” means the sum of PV Energy, and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“**Facility Meter**” means the CAISO Approved Meter that will measure all Facility Energy.

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

“**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 that prevents Seller from generating Energy or making PV Energy available at the

Generating Facility Meter or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

**“Forecasting Penalty”** means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller’s failure and Buyer’s scheduling activities in such hour with respect to Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Day-Ahead Forecast, or if there is no Day-Ahead Forecast, then the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour.

**“Forward Certificate Transfers”** has the meaning set forth in Section 4.10(a).

**“Full Capacity Deliverability Status”** means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status or a Deliverability Allocation of one hundred percent (100%) has been achieved.

**“Future Environmental Attributes”** shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or 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., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

**“Generating Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) Energy to the Delivery Point, and (ii)

Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

**“Generating Facility Meter”** means the meter, together with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services, that is installed at the Facility for the purpose of monitoring, recording and reporting, in real time, the amount of PV Energy generated by the Generating Facility for the purpose of invoicing in accordance with Section 8.1. The Generating Facility Meter will have a margin of error for recording energy that is similar to the CAISO Approved Meter. In the event that a meter that is capable of meeting such requirements is not commercially available as of the Commercial Operation Date, then the Parties will meet and confer to discuss commercially available options to measure Energy from the Generation Facility with a reasonable degree of accuracy and will mutually agree on appropriate modifications to this Agreement to reflect same.

**“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 generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), 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) 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 or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

**“Guaranteed Capacity”** means the amount of generating capacity of the Generating Facility, as measured in MW at the Generating Facility Meter, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5(a) of Exhibit B.

**“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”** means an amount of PV Energy, as measured in MWh, equal to the product of the Guaranteed Energy Production Percentage and the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

**“Guaranteed Energy Production Percentage”** means [REDACTED] if PV Energy is selected as a Product in the Cover Sheet.

**“Guaranteed Storage Availability”** has the meaning set forth in Section 4.8.

**“Guaranteed Storage Capacity”** has the meaning set forth in Section 4.9(b).

**“Guaranteed Storage Facility Loss Factor”** has the meaning set forth in Section 4.9(b).

**“Guarantor”** means, with respect to Seller, (a) a Person that is reasonably acceptable to Buyer, or (b) any Person that (i) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (ii) has an Investment Grade Credit Rating, (iii) has a tangible net worth of at least [REDACTED] [REDACTED] (iv) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (v) executes and delivers a Guaranty for the benefit of Buyer.

**“Guaranty”** means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

**“Imbalance Energy”** means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

**“Indemnifiable Loss(es)”** has the meaning set forth in Section 16.1.

**“Indemnified Group”** has the meaning set forth in Section 16.1.

**“Initial Storage Test”** has the meaning set forth in Section 4.9(a).

**“Initial Synchronization”** means the initial delivery of Facility Energy to the Delivery Point.

**“Installed Capacity”** means the sum of (x) the Installed PV Capacity and (y) the Installed Battery Capacity.

**“Installed Battery Capacity”** means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Installed PV Capacity”** means the actual PV generating capacity of the Generating Facility, as measured in MW(ac) at the Generating Facility Meter, that achieves Commercial Operation, as demonstrated by a performance test, adjusted for ambient conditions on the date of the performance test, and evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Instructed Operations”** means any dispatch or charging instruction or requirement by CAISO, the PTO, Transmission Provider or any other Governmental Authority for any reason.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Distribution 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 Distribution System in accordance with the Interconnection Agreement.

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

**“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.

**“Investment Grade Credit Rating”** means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody’s.

**“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 October 30, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

**“kWh”** means kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

**“Law”** means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit 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 (including back-leverage debt), equity (including tax 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 Person directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative 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, (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, or (iv) any Qualified Institution that has a lien on the Facility or the memberships interest of Seller or its upstream parents.

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a Qualified Institution, 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.

**“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.

**“Loss Factor”** means the sum of the following inverter losses (operation [efficiency], maximum input current, over nominal inverter voltage, power threshold, and voltage threshold, plus the sum of the following AC losses (AC ohmic loss, medium voltage transfer loss, medium voltage line ohmic losses, high voltage transformer loss, and high voltage line ohmic loss) [REDACTED] percent [REDACTED]%), which represents the electrical losses from delivery of the PV Energy to the Delivery Point, as may be adjusted by the mutual agreement of the Parties.

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

yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

“**Major Project Development Milestone**” has the meaning set forth in in Exhibit B.

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

“**Maximum Charging Capacity**” has the meaning set forth in in Exhibit A.

“**Maximum Discharging Capacity**” has the meaning set forth in in Exhibit A.

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

“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.3(b).

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

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Interval, the Real-Time Market LMP at the Facility’s PNode is less than Zero dollars (\$0).

“**Negative LMP Costs**” has the meaning set forth in Exhibit C.

“**NERC**” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

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

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

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

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

“**Notice of Claim**” has the meaning set forth in Section 16.2.

**“On-Peak Hour”** means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

**“Operating Restrictions”** means those rules, requirements, and procedures set forth on Exhibit Q.

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

**“Party”** or **“Parties”** has the meaning set forth in the Preamble.

**“Performance Measurement Period”** means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; provided, however, that a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7 instead of Contract Years 5 and 6.

**“Performance Security”** means (i) cash, (ii) a Letter of Credit, (iii) Surety Bond or (iv) a Guaranty (if permitted by Buyer in its reasonable discretion) in the amount set forth on the Cover Sheet.

**“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 [REDACTED] or an Investment Grade Credit Rating; and

(b) At least five (5) years of experience in the ownership and operations of power generation facilities similar to the Generating Facility and at least two (2) years of experience in the ownership and operations of energy storage facilities similar to the Storage Facility, or has retained a third-party with such experience to operate the Facility.

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



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

“**Planned Outage**” has the meaning set forth in Section 4.6(a).

“**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.

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

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

“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety 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 generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes 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.

**“PV Energy”** means Energy that is generated using photo-voltaic cells at the Generating Facility measured by the Generating Facility Meter as adjusted for the Loss Factor, excluding Electrical Losses, and is not Charging Energy or Discharging Energy.

**“Qualified Institution”** means a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) 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 or (b) being reasonably acceptable to Buyer.

**“Qualified Surety”** means an insurance company or surety issuer (a) that has and maintains either (i) a Credit Rating of at least two of the following: “BBB+” or better from S&P, or “BBB+” or better from Fitch, or “Baa1” or better from Moody’s or (ii) an overall rating by Best of at least A and a financial size rating of at least XII, or (b) being reasonably acceptable to Buyer.

**“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 3.8(b).

**“RA Guarantee Date”** means the date that is sixty (60) days after the Commercial Operation Date.

**“RA Shortfall Month”** means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month that was able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy was less than the Qualifying Capacity of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Planned Outage, (c) a Forced Facility Outage, and (d) the CAISO’s reduction in Facility NQC due to the Facility’s actual Forced Facility Outage rate (i.e., past performance). To the extent NQC is lower than Qualifying Capacity as a result of Seller being excused of performance pursuant to Section 3.12, then such portion of any deficit will not be counted in calculating the RA shortfall.

**“Real-Time Forecast”** means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

**“Real-Time Price”** means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

**“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; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

**“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, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource and located within the same Local Capacity Area.

**“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 any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

**“Resource Adequacy Rulings”** means all CPUC rulings and decisions governing resource adequacy that are currently in effect and applicable to the performance of this Agreement and any future ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

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

**“Season”** means the Summer Season or the Winter Season, as applicable.

**“SCADA Systems”** means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

**“SCE Tariff”** means the Southern California Edison Company Wholesale Distribution Access Tariff, as the same may be amended or modified from time-to-time and approved by FERC.

**“Schedule”** has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), 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.

“**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 8.8.

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

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

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

“**Settlement Amount**” means the Non-Defaulting Party’s (or in the case of Section 3.10(d)(v), Seller’s) Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s (or in the case of Section 3.10(d)(v), Seller’s) Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party (or in the case of Section 3.10(d)(v), Seller). If the Non-Defaulting Party’s (or in the case of Section 3.10(d)(v), Seller’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, 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 the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, as may be updated by Seller by providing written notice to Buyer no later than the Start of Construction consistent with the requirements of Exhibit A.

“**Site Control**” means that 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 or discharged 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 or discharged by the Facility that is consumed within the Facility's electric energy distribution system as losses.

**“Storage Availability”** has the meaning set forth in Exhibit P.

**“Storage Capacity”** means the maximum dependable operating capability of the Storage Facility, which is determined in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

**“Storage Test”** means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

**“Storage Contract Capacity”** means the total capacity (in MW) of the Storage Facility equal to the amount set forth on the Cover Sheet, as the same may be adjusted downwards in accordance with Section 5(b) of Exhibit B.

**“Storage Facility”** means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

**“Storage Facility Loss Factor”** is determined in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

**“Storage Facility Meter”** means the bi-directional meter, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together. For the avoidance of doubt, the Parties acknowledge that CAISO has not determined a DC-coupled meter that would enable co-located status for the Facility, but that if the CAISO subsequently makes such a determination prior to the Commercial Operation Date and the Facility is registered as a co-located Facility, then the Storage Facility Meter will be a meter approved by the CAISO for that purpose.

**“Storage Facility Metering Points”** means the locations of the Storage Facility Meters shown on Exhibit R.

**“Storage Product”** means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Ancillary Services, if any, and (d) and any other products that may be developed or evolve from time to time during the Term that the Storage Facility is able to and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy, in each case arising from or relating to the Storage Facility.

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

**“Stored Energy Level”** means, at a particular time, the amount of electric energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

**“Summer Season”** means the months of [REDACTED]

**“Surety Bond”** means a bond issued by a Qualified Surety in a form substantially similar to the surety bond set forth in Exhibit S.

**“System Emergency”** means any condition that 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.

**“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 or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy or storage facilities.

**“Terminated Transaction”** has the meaning set forth in Section 11.2(a).

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

**“Test Energy”** means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy 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.

**“Test Energy Rate”** has the meaning set forth in Section 3.6.

**“Transformer Failure”** means a failure of all or part of the generator step-up transformer, main circuit breaker or any associated high voltage equipment, which results in Seller being unable to generate or deliver Energy from the Facility to the Delivery Point.

**“Transmission Provider”** means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

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

**“Ultimate Parent”** means Vesper Energy Development LLC or any successor thereto.

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

**“Variable Expense”** means an each month equal to the sum of [REDACTED]

**“Winter Season”** means the months of [REDACTED]

**“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 4.10(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 means 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 work or provision in respect of which such examples are provided;

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

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

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

(k) 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

(l) 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 and any contract term extension provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, 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 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I 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) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(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 from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) 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 in accordance with Section 8.8; and

(h) Seller has paid Buyer (or Buyer has drawn on Development Security) for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 **Development; Construction; 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 shall hold 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 E, and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days after the occurrence of (a), (b) or (c), 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, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

### **ARTICLE 3 PURCHASE AND SALE**

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility (net of applicable losses). No re-sale of Product by Buyer shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the

Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order; provided that the foregoing shall not apply and Buyer is obligated to purchase from Seller Product if PV Energy is or can be delivered to the Storage Facility during any such outage of the Facility, Force Majeure Event or Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility. Subject to Section 3.12, upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified. The Parties acknowledge and agree that the certified volume of Green Attributes attributable to the Facility Energy may be less than the PV Energy Buyer is required to purchase hereunder as described in Section 4.10.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

3.4 **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. The Parties intend for the Facility (including the Storage Facility) to maintain eligibility for all available Renewable Energy Incentives and Tax Credits, including ITC, and Buyer and Seller each agree to cooperate reasonably as required to maintain such eligibility and to avoid risk of recapture of any Renewable Energy Incentives or Tax Credits, including ITC. Such cooperation will be at no cost to the Buyer.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Section 3.5(b), in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and

conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(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 and payment of any additional costs allocated to Buyer pursuant to Section 3.5(a) as set forth above; *provided*, that the Parties acknowledge and agree such terms are not intended to alter the other material terms of this Agreement.

3.6 **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 Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] (the “**Test Energy Rate**”). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As of the Effective Date, Buyer acknowledges that there are no Network Upgrades associated with obtaining such Full Capacity Deliverability Status. If CAISO notifies Seller that Network Upgrades are required in connection with obtaining Full Capacity Deliverability Status or the dates for completion of such Network Upgrades affect the expected commercial operation date in the interconnection Agreement as a result of any restudy after exiting the Interconnection Agreement suspension period, then the Parties shall negotiate a reasonable accommodation of the schedule, and, as between Buyer and Seller, Seller shall be responsible for the cost of such Network Upgrades associated with obtaining Full Capacity Deliverability Status up to the amount of the aggregate Compliance Expenditure Cap over the Delivery Term. If the costs exceed the aggregate Compliance Expenditure Cap over the Delivery Term, then the Parties shall negotiate in good faith to maintain the economic benefit of the bargain.

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

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity 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. On and after the RA Guarantee Date and thereafter throughout the Delivery Term, Seller hereby covenants and agrees to transfer all of the Resource Adequacy Benefits to Buyer.

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

### 3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”)<sup>1</sup> equal to the product of the difference, expressed in kW, of the Net Qualifying Capacity of the Facility for such month that was able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy that was less than the Qualifying Capacity of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Planned Outage, (c) a Forced Facility Outage, and (d) the CAISO’s reduction in Facility NQC due to the Facility’s actual Forced Facility Outage rate (i.e., past performance), 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 communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting. For the avoidance of doubt, any increases in the RA Deficiency Amounts incurred by Seller resulted from a change in Laws occurring after the Effective Date shall be subject to the provisions of Section 3.12.

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Delivery Term, including compliance with all requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Facility. 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 final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification, which deadline will be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and that delay is caused by any reason other than an act or omission

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<sup>1</sup> NTD: The intent of including a cross-reference to Section 3.12 is to pick up changes in law affecting the methodology that increase Seller’s damages under this section. Restated to make clearer.

of Seller as reasonably demonstrated to Buyer. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification.

3.10 **Bridge Product.** If Bridge Product has been selected on the Cover Page, then in addition to the Parties' rights and obligations under this Agreement with respect to the Facility, Seller agrees to deliver and Buyer agrees to purchase Bridge Product from one or more Bridge Facilities in accordance with the terms of the Bridge Addendum. Notwithstanding anything in this Agreement to the contrary, no breach or default of either Party under the Bridge Addendum shall be a breach or default of such Party under this Agreement and the Parties rights and remedies with respect to such breach or default will be as set forth in the Bridge Addendum.

3.11 **RPS Standard Terms and Conditions.**

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

(b) 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 electrical energy 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 3.12 means efforts consistent with and subject to Section 3.12.

(c) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. 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.

3.12 **Compliance Expenditure Cap.**

(a) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's 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 aggregate amount of out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED]

["**Compliance Expenditure Cap**"].

Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

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

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

(d) If the Compliance Costs exceed the Compliance Expenditure Cap, then 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: (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**") on terms and conditions to be set forth in a written amendment to this Agreement, or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions described in the Notice. If Buyer agrees to pay Seller for the Accepted Compliance Costs, then Seller shall take such Compliance 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 Buyer receives an invoice and documentation of such costs from Seller. For the avoidance of doubt, Seller is not obligated to take any Compliance Actions during the pendency of Buyer's 60-day evaluation period.

3.13 **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, each at its own cost, will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities (including enabling the Storage Facility to be charged from the grid after the seventh Contract Year); 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 (and Seller's Lenders) as set forth in a written agreement executed by the Parties.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and 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 Facility Energy to the Delivery Point, including without limitation, Station Use, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. Buyer is also responsible for all costs and charges associated with Electrical Losses. The Parties agree that Buyer will compensate Seller for such Electrical Losses by paying for PV Energy measured at the Generating Facility Meter. Notwithstanding any of the foregoing to the contrary, Buyer shall assume all liability and reimburse Seller for any and all CAISO charges and penalties incurred by Seller as a result of Buyer's actions or failures to comply with its obligations under this Agreement, including those resulting from a Buyer Curtailment Period. The Facility Energy will be scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator for the Facility) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility Energy, 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.

(c) **Resource ID.** Seller has requested from CAISO authorization to register and participate with the CAISO market as co-located resource. If Seller is unable to obtain such co-located status, notwithstanding its commercially reasonable efforts to do so, it shall not be a breach or default of Seller hereunder.

#### 4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices, including CAISO requirements applicable to projects similar to the Facility.



(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC for the Facility (if applicable) a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating 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 the SC for the Facility (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity less Planned Outages for each day of the following month in a form substantially similar to the tables found in Exhibit F-2 and Exhibit F-3 ("Monthly Delivery Forecast").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer or its Scheduling Coordinator with a non-binding forecast of (i) Available Generating Capacity and (ii) available Storage Capacity and (iii) hourly expected Energy, and (iv) Stored Energy Level, in each case, for each Settlement Interval of 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 the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each Settlement Interval of each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the hourly expected Energy, and (iv) Stored Energy Level. 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 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer. For the avoidance of doubt, receipt by the Scheduling Coordinator of a Day-Ahead Forecast in the form of the CAISO VER Forecast or Day-Ahead Forecast from another Approved Forecast Vendor shall satisfy Seller's obligations under this Section 4.3(c).

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify the Scheduling Coordinator of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity, (ii) available Storage Capacity or (iii) 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 Generating Capacity, Storage Capacity, or hourly expected Energy 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 or its Scheduling Coordinator 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 Generating Capacity, Storage Capacity, or

hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. Seller shall also provide access to routinely updated forecasts for each Settlement Interval of each hour of the expected Energy. Such real-time forecasts of Energy shall be provided by the CAISO, or if the CAISO does not provide such forecasts for the Facility or if Seller demonstrates to Buyer's reasonable satisfaction that the CAISO forecasts do not represent an accurate forecast of generation from the Facility then such forecasts shall be provided by an Approved Forecast Vendor. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer or its Scheduling Coordinator of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer or its Scheduling Coordinator 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 reasonably acceptable to Buyer; provided that Buyer specifies the method no later than twenty (20) Business 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 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer or its Scheduling Coordinator. For the avoidance of doubt, receipt by the Scheduling Coordinator of a Real-Time Forecasts in the form of the CAISO VER Forecast or Day-Ahead Forecast from another Approved Forecast Vendor shall satisfy Seller's obligations under this Section 4.3(d).

(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 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure and Buyer's scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. 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. Notwithstanding the foregoing, the limitations set forth in Section 3.12 will apply with respect to Seller's compliance obligations hereunder.

#### 4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of PV Energy produced by the Generating Facility, 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 Seller is not required to reduce such amount to the extent such reduction or any

such Curtailment Order, Buyer Curtailment Order or notice is inconsistent with the limitations of the Generating Facility set out in the Operating Restrictions and further provided that Seller is not required to reduce such amount if such amount is capable of being delivered to the Storage Facility during such interval and Buyer agrees that it will deliver such PV Energy to the Storage Facility in such interval.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period.

(c) Failure to Comply. Subject to Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to Buyer in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in any interval in which the Storage Facility is not capable of receiving such PV Energy as Charging Energy, 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 excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO 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. Subject to the last sentence of this Section 4.4(d), Seller shall acquire, install, and maintain such SCADA Systems, 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 reasonably directed by the Buyer in accordance with this Agreement 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, subject to the last sentence of this Section 4.4(d), take the steps necessary to become compliant as soon as 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 this Section 4.4(d). 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. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices facilities pursuant to this Section 4.4(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.12.

#### 4.5 **Charging Energy Management.**

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy from the Generating Facility to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement (including the Operating Restrictions), including complying with Prudent Operating Practices in the maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Buyer will have the right to direct the Seller to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice, the requirements of CAISO, the PTO, Transmission Provider or any other Governmental Authority and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice, except if changed pursuant to Instructed Operations.

(c) Seller shall not charge the Storage Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to Instructed Operations, or as otherwise required by applicable law. If, during the Contract Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice except as required by Instructed Operations, or (b) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge. All Instructed Operations shall be deemed to be dispatches by Buyer and Buyer will pay for all Charging Energy associated with such Instruction Operations in accordance with the terms of this Agreement as if such dispatches were directed by Buyer. Nothing herein shall bar Seller from complying with Instructed Operations; provided that if Seller receives an Instructed Operation other than through Buyer, it should advise the entity issuing the Instructed Operation that such communications are to be made to Buyer.

(d) Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice except if changed pursuant to Instructed Operations.

(e) During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with

CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices (“**Alternative Dispatches**”).

(f) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any conflicting Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any conflicting Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions; provided that Buyer will issue a Charging Notice to Seller during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order if the Storage Facility is capable of receiving Charging Energy at such time.

(g) If the Operating Restrictions are amended after the end of the seventh Contract Year to permit Buyer to charge the Storage Facility from a source other than the Generating Facility: (i) Buyer will be responsible for all costs, expenses and other liabilities relating to the charging of the Storage Facility from a source other than a Generating Facility, including the cost of energy used to charge the Storage Facility and (ii) the Parties will amend this Agreement to the extent necessary so that Facility Energy delivered by Seller to the Delivery Point is fully paid for by Buyer (unless Buyer is otherwise not required to pay for such Facility Energy hereunder) without reduction due to netting of consumption due to such charging against output of such Facility Energy or treated as Charging Energy and other modifications to address reductions, if any, in Environmental Attributes associated with such alternative charging sources; provided, however that any such agreement or amendment (i) shall preserve the “benefit of the bargain” of this Agreement for both Parties, without regard to the operation of such energy storage facility; (ii) shall not adversely affect any other right, benefit, risk or obligation of the Parties hereunder in any material respect, and (iii) shall not expose Seller or any Affiliate of Seller to any additional retail electric service or other utility regulation by any Governmental Authority that is not agreed upon by Seller in its sole and absolute discretion. Buyer will reasonably support Seller’s efforts in connection with a firm charging study.

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

(a) **Facility Maintenance**. Subject to providing Buyer one-hundred twenty (120) days’ prior Notice, Seller shall be permitted to reduce deliveries of Product during any

period of scheduled maintenance on the Facility, *provided*, that (i) no notice is required for scheduled maintenance or any changes or extensions thereto which do not result in a shutdown of more than [REDACTED] of the Guaranteed Capacity and [REDACTED] of the Storage Contract Capacity, and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days' prior Notice to Buyer so long as (X) Seller makes its request more than three (3) days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is reasonably acceptable to Buyer. To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof. Between June 1<sup>st</sup> and September 30<sup>th</sup>, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than [REDACTED] unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1<sup>st</sup> to September 30<sup>th</sup>, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), a “**Planned Outage**”).

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage.

(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 pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Buyer Default. In accordance with the terms of Section 11.2, Seller shall be permitted to reduce deliveries of Product during any period in which there is a Buyer Default or to sell such Product to third parties during such Buyer Default.

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

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

4.7 Guaranteed Energy Production. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Storage Tests, Buyer's Default or other failure to perform, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy, (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Storage Tests, Buyer's Default or other failure to perform, and Curtailment Periods (“**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 G;

provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP-15 within ninety (90) days after the conclusion of the applicable Performance Measurement Period. On a day ahead basis, Seller shall provide a notice via e-mail to Buyer's "scheduling" contact identified in Exhibit N identifying the electric generating facility(ies) that will provide Replacement Product for the following day and the volume of Replacement Product to be provided by each such facility, which may be expressed as a percentage of the applicable facility's output. Buyer will pay Seller for all such Replacement Product pursuant to Exhibit C.

4.8 **Storage Availability Guarantee.** During the Delivery Term, the Storage Facility shall maintain seasonal Storage Availability during each Season of no less than [REDACTED] during the Summer Season and [REDACTED] during the Winter Season (the "**Guaranteed Storage Availability**"), which Storage Availability shall be calculated in accordance with Exhibit P. If the Storage Availability during any Season is less than the applicable Guaranteed Storage Availability for that Season, Seller shall pay Buyer Storage Availability Damages (as determined in accordance with Exhibit P).

4.9 **Storage Tests.**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete an initial Storage Test in accordance with Exhibit O (the "**Initial Storage Test**").

(b) During the Delivery Term, the Storage Facility shall maintain Storage Capacity of no less than the [REDACTED] (the "**Guaranteed Storage Capacity**"), which Storage Capacity shall be calculated pursuant to the annual Storage Test or any Seller-initiated retest thereof in accordance with Exhibit O. If the actual Storage Capacity determined pursuant to the annual Storage Test or any Seller-initiated retest thereof is less than the Guaranteed Storage Capacity, then Seller shall pay Buyer Storage Capacity Damages (as determined in accordance with Exhibit O).

(c) During the Delivery Term, the Storage Facility shall maintain a Storage Facility Loss Factor of no less than [REDACTED] (the "**Guaranteed Storage Facility Loss Factor**"), which Storage Facility Loss Factor shall be calculated pursuant to the annual Storage Test, any Buyer-initiated Storage Test and any Seller Storage Test retest, in accordance with Exhibit O. If the actual Storage Facility Loss Factor determined pursuant to any Storage Test is less than the Guaranteed Storage Facility Loss Factor, then Seller shall pay Buyer Storage Facility Loss Factor Damages (as determined in accordance with Exhibit O) from the day after such Storage Test until the next Storage Test. The results of such subsequent Storage Test will determine whether Seller owes any Storage Facility Loss Factor Damages on and after such subsequent Storage Test and the amount thereof, calculated in accordance with Exhibit O.

(d) Buyer shall have the right to send one or more representative(s) to witness the Initial Storage Test and all Storage Tests thereafter. Such representative(s) shall not interfere with the Initial Storage Test and all Storage Tests and Buyer shall comply with all written Seller health and safety policies and procedures and instructions while present at the Facility Site and shall conduct itself in a manner that will not unreasonably interfere with or disrupt the operation of the Facility or other activities of Seller and its subcontractors. Buyer shall be responsible for

all costs, expenses and fees payable or reimbursable to its representative(s) witnessing the Initial Storage Test and all Storage Tests. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Initial Storage Test and all Storage Tests shall be borne by, or accrue to, Seller, as applicable.

(e) Following the Initial Storage Test and all Storage Tests, Seller shall submit a testing report in accordance with Exhibit O. The Storage Capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Storage Contract Capacity) shall become the new Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

4.10 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.12, 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 Facility Energy purchased by Buyer hereunder are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date or as soon as reasonably possible thereafter, 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 account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, 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 Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility 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 4.10. 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 delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of PV 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 either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) delivered to SP 15 EZ Gen Hub as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, 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.

(f) Subject to Section 3.12, if (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the Parties enable the Storage Facility to be charged from the grid in accordance with Section 3.13, the Parties promptly shall modify this Section 4.10 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 that portion of the Facility Energy that qualifies in the same calendar month.

## **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 the Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the Delivery Point. 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 Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. 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 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 applicable 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 Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging Energy to Buyer.

6.3 **Cooperation with Buyer Reporting Obligations.** Buyer will be required from time to time to report information concerning the Facility in connection the submission of its annual renewable energy portfolio procurement plan to the CPUC, including information on safety considerations such as (i) wildfire risk; (ii) decommissioning; (iii) climate change impacts; (iv) vegetation management; and (v) public safety power shutoff events. Upon thirty (30) days' written request from Buyer, Seller will reasonably cooperate with Buyer to provide the information set forth in subsections (i) through (v) necessary for Buyer to comply with such regulatory reporting requirements, provided, however, that Seller will not be required to incur any additional expense with respect to tracking or procuring such information.

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, and the amount of PV Energy using the Generating Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld,

provided that Buyer shall be required to approve any adjustments required by CAISO. Exhibit R is a preliminary diagram of the metering, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each 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 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 directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. 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 one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), 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-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (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 PV Energy produced by the Generating Facility as read by the Generating Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility to the Delivery Point, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), 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 in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

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, provided, however, that Seller will give Buyer no less than ten (10) days' notice of any account change with respect to the place of payment. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly billing period, whichever is later. 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 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, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either 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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

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 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent such meter inaccuracies are recognized by CAISO or WREGIS. 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.

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 twenty-four (24) 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 via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twenty-four (24) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twenty-four-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product and Deemed Delivered Energy during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, 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 its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Subject to Section 11.7, Seller shall maintain the Development Security in full force and effect; provided that, Seller has no obligation to replenish the Development Security after any draw or collection by Buyer and the amount of required Development Security will step down in an amount corresponding to any amounts paid by Seller hereunder. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall 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 meet the requirements of a Qualified Institution, (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 ten (10) Business Days to either post cash, a Surety Bond, a Guaranty or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security. For the avoidance of doubt, provided Seller complies with any applicable requirements of Article 14, nothing in this Agreement will prohibit or restrict a Qualified Institution from having a lien on the Facility or the equity interests of Seller, or from issuing debt financing for the Facility.

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 not in the form of cash, Letter of Credit or Surety Bond, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused

portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to meet the requirements of a Qualified Institution, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash, Surety Bond, Guaranty or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable. For the avoidance of doubt, provided Seller complies with any applicable requirements of Article 14, nothing in this Agreement will prohibit or restrict a Qualified Institution from having a lien on the Facility or the equity interests of Seller, or from issuing debt financing for the Facility.

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 and continuation 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. If no obligations or liabilities remain due by Seller to Buyer upon termination of this Agreement, then Buyer must return any remaining Credit Support within ninety (90) days following the termination of this Agreement.

8.10 **Seller's Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

8.11 **Buyer's Financial Statements.** During any period during the Term when Buyer does not have or maintain an Investment Grade Credit Rating, Buyer shall provide to Seller: (a) within ninety (90) days following the end of each fiscal quarter, unaudited quarterly financial statements of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with generally accepted accounting principles as promulgated by the Government Accounting Standards Board in the United States, consistently applied; (b) within one hundred eighty (180) days following the end of each fiscal year, annual audited financial statements of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with generally accepted accounting principles as promulgated by the Government Accounting Standards Board in the United States, consistently applied, provided, however, that such annual obligation will be deemed to have been filled if such financial statements are available at <http://desertcommunityenergy.org>.

## **ARTICLE 9 NOTICES**

9.1 **Addresses for the Delivery of Notices.** Except as provided in Exhibit D, 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 Exhibit N 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; or (b) if sent by electronic communication (including electronic mail 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 express courier, at the time indicated by the time stamp upon 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 or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; 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 an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product, or any component thereof, at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (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 Order except if such event 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; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

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. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. 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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or



excuse the obligation of a Party to make any payments due hereunder, or (b) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

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. 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 reasonable actions.

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 the impacted Party has claimed and received relief from performance of its obligations for, prior to the Commercial Operation Date, one hundred twenty (120) days, or on and after the Commercial Operation Date, a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any 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 set forth in this Section 11.1; and except for (1) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, and (2) failures to achieve the Guaranteed 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; the exclusive remedies for which are set forth in Section 4.8; and (3) any failures under the Bridge Agreement, the exclusive remedies for which are set forth in the Bridge Agreement) 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 default 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 electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4;

(iv) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within fifteen (15) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one-hundred eighty (180) days;

(v) if, in any two consecutive Contract Years, the Storage Availability is less than seventy percent (70%) when averaged over both Seasons in each Contract Year;

(vi) if, in any Contract Year during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount;

(vii) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least seventy-five percent (75%) of the Expected Energy amount in each Contract Year;

provided that, notwithstanding Section 11.1(b)(iv) – (vii), there shall be no Event of Default by Seller if the reason that the Adjusted Energy Production or Storage Availability was not at least equal to the percentages set forth in Sections 11.1(b)(iv) – (vii) is (x) due to a Transformer Failure, so long as (1) such failure was not due to the negligence of Seller; (2) Seller has taken reasonable actions necessary to cure such major equipment failure within twelve (12) months after the date of the occurrence thereof; and (3) Seller has not claimed a Transformer Failure more than twice during the Delivery Term; or (y) the occurrence of a Force Majeure Event, provided, however, that Seller would have been in compliance for the remainder of the measurement period not including the duration of the Force Majeure Event.

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Termination Payment except as otherwise provided herein;

(ix) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) Surety Bond, (3) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (4) a replacement Letter of Credit from an 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) if any representation or warranty made by the Guarantor in connection with this Agreement 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;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(x) 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, (2) Surety Bond, (3) Guaranty, or (4) 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 or Surety Bond does not remain a Qualified Institution or Qualified Issuer;

(B) the issuer of such Letter of Credit, Surety Bond or Guaranty becomes Bankrupt;

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

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

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

(F) such Letter of Credit, Surety Bond or Guaranty 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 or Surety Bond on a timely basis as provided in the relevant Letter of Credit or Surety Bond and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the 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 occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii) subject to the limitations in Section 11.7, 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 in the case that Buyer is the Defaulting Party, Seller may solely while such Event of Default is continuing with respect to Buyer, sell the Product to any third party; 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 the Terminated Transaction and the Event of Default related thereto.

**11.3 Termination Payment.** The Termination Payment (“**Termination Payment**”) for the Terminated Transaction shall be the aggregate of all Settlement Amounts 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. 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 the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the

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 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, 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. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations.** Notwithstanding any other provision of this Agreement, Seller's aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to the Damage Payment.

11.8 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN OR A THIRD PARTY CLAIM SUBJECT TO INDEMNIFICATION HEREUNDER, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, 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. ON AND BEFORE THE SEVENTH ANNIVERSARY OF THE COMMERCIAL OPERATION DATE, THE VALUE OF ANY RENEWABLE ENERGY INCENTIVES AND 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 AND TAX BENEFITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS [3.8, 4.7, 4.8, 4.9, 11.2 AND 11.3], AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, EXHIBIT O AND EXHIBIT P 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 limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and 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 limited liability company 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.



(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility.

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 a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, 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 elected or 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, 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 to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such claim and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect court is limited within a venue permitted in law and under the Agreement), (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; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

(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 California and 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, approvals and permits necessary for the operation of the Facility and for Seller 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 in material compliance with any Law.

13.4 **Prevailing Wage.** To the extent applicable to the construction of the Facility, Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as provided in this Article 14, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made without required 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. Seller shall provide notice to Buyer of changes in the Ultimate Parent's ability to control the decision-making of Seller.

14.2 **Collateral Assignment.** Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the prior consent of Buyer. In connection with any financing or refinancing of the Facility, Buyer, at its own cost, shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in substantially the form set forth in Exhibit T ("**Collateral Assignment Agreement**"). In addition, Buyer, at its own cost, shall cooperate with Seller or any Lender to execute or arrange for delivery of estoppels reasonably requested by Seller or Lender. At the time that Seller is either negotiating with or entering into a financing arrangement with a Lender and thereafter upon the reasonable request of Seller, Buyer will cooperate with Seller and its Lender to provide reasonable financial and operational information concerning Buyer that is readily available, including information such as reserve levels; subscription and opt-out rates;

provided, however, that if such information is not subject to disclosure by Buyer pursuant to the Public Records Act, then Buyer may require an appropriate non-disclosure agreement.

## **ARTICLE 15 DISPUTE RESOLUTION**

15.1 **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 laws. 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.

15.2 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Riverside County, California.

15.3 **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, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity, provided, however, that a dispute as to whether an Event of Default has occurred pursuant to Article 11 shall not be subject to mediation unless the Parties mutually agree. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then 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.

## **ARTICLE 16 INDEMNIFICATION**

### 16.1 **Mutual Indemnity.**

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness 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

negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, “**Indemnifiable Losses**”).

(b) Nothing in this Section 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 obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 (“**Claim**”). The Notice is referred to as a “Notice of Claim”. A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to

such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights.** Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

## **ARTICLE 17 INSURANCE**

### 17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance with a minimum of liability limits in the amount of Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. Coverage shall include products and completed operations, personal & advertising injury insurance, contractual liability, specifically covering Seller's obligations under this Agreement. The policy shall include Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller. Defense costs shall be provided as an additional benefit and not included with the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Umbrella or Excess Liability Insurance.** Seller shall maintain, or cause to be maintained at its sole expense, an Umbrella or Excess Liability Insurance policy in a minimum amount of liability of Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate.

(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 California Law. Employer's Liability insurance shall be 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.

(d) **Business Auto Liability Insurance.** Seller shall maintain at all times during the Contract Term Business Auto Liability 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 of the Facility, but only after major electrical generating equipment as arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Lender (if any) as the loss payee where its interest may appear.

(f) **Subcontractor Insurance.** Seller shall require all of its subcontractors to carry the same levels of insurance as Seller where exposure exists. All subcontractors shall include Seller as an additional insured or alternative employer, as applicable, to (i) Commercial General Liability insurance; (ii) Employers' Liability coverage; and (iii) Business Auto Liability insurance for bodily injury and property damage. All subcontractors shall provide a primary and non-contributory endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(g) **Evidence of Insurance.** Within ten (10) days after Start of Construction of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any cancellation 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.

## ARTICLE 18 CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of their Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Public Records Act.** Seller and Buyer acknowledge and agree that this Agreement and any documents, notices or confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Cal. Government Code § 6250 et seq.). Buyer acknowledges that Seller may submit information to Buyer that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Cal. Government Code §§ 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of

any third person or entity not a party to this Agreement (“**Requestor**”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “**Disclosing Party**”), the Party receiving such request (the “**Receiving Party**”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

18.6 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement; such agreement not to be unreasonably withheld, conditioned or delayed.

## **ARTICLE 19 MISCELLANEOUS**

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

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy 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 or, to the extent set forth herein, any Lender) or Indemnified Party.

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

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

19.7 **Counterparts; Electronic Signatures**. 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. The Parties may rely on electronic, facsimile or scanned signatures as originals.

19.8 **Electronic Delivery**. Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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

19.10 **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 or Buyer or its constituent members, in connection with this Agreement.

19.11 **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. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to

assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

*[Signatures on following page]*

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

**Deer Creek Solar I LLC, a Delaware  
limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DESERT COMMUNITY POWER, a  
California joint powers authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:**

**Site includes all or some of the following APNs:**

On or before the Construction Start Date, Seller may substitute, remove or add APNs to the Site by providing notice to Buyer with an updated Exhibit A reflecting such changes in the APNs included in the Site (which such notice will automatically update this Exhibit A without the need for any other action of the Parties); provided that such changes in the APNs comprising the Site do not cause an increased environmental or cultural impact over the original APNs in the Site.

**County:** Tulare County

**CEQA Lead Agency:** Tulare County

**Type of Generating Facility:** Solar & Energy Storage

**Operating Characteristics of Generating Facility:**

**Type of Storage Facility:** DC-coupled

**Operating Characteristics of Storage Facility;**

**Maximum Stored Energy Level at COD (MWh):** See Exhibit Q

**Maximum Charging Capacity at COD:** See Exhibit Q

**Maximum Discharging Capacity at COD:** See Exhibit Q

**Operating Restrictions of Storage Facility:** See Exhibit Q

**Guaranteed Capacity:** See definition in Section 1.1

**Storage Contract Capacity:** See definition in Section 1.1

**Delivery Point:** PNode assigned to the Facility by CAISO

**Facility Meter:** See Exhibit R

**Storage Facility Meter Locations:** See Exhibit R

**Facility Interconnection Point:** Poplar- Terra Bella 66 kV line

**Participating Transmission Owner:** CAISO

## EXHIBIT B

### MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

#### 1. Major Project Development Milestones.

(a) “**Construction Start**” will occur upon Seller’s execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site. 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 by Seller shall be the “**Construction Start Date.**” The Seller shall use commercially reasonable efforts to cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) “**Major Project Development Milestone**” means the Guaranteed Construction Start Date. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date; provided in no event shall Seller be required to pay Daily Delay Damages in excess of the Development Security. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility except as otherwise set forth herein; provided when Seller achieves Commercial Operation, all accrued Daily Delay Damages are automatically waived. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) that Seller has installed and commissioned ninety-five percent (95%) of the Guaranteed Capacity or such lesser amount as may be permitted pursuant to Section 2(d) below, and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation; provided that Buyer shall have ten (10) Business Days to approve or reject Seller’s notification of satisfaction of the conditions for Commercial Operation and if rejected, Buyer will provide written notice to Seller indicating which conditions were not satisfied with an explanation for the basis of Buyer’s rejection; provided, however, that Seller’s notification of Commercial Operation will be deemed approved by Buyer if Buyer fails to object in the required timeframe. The “**Commercial**

**Operation Date**” shall be the date specified in the COD Certificate unless Buyer objects to such COD Certificate, then the Commercial Operation Date will be the date upon which it is determined that such condition was satisfied.

(a) Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller will provide updates to Buyer regarding the expected interconnection date in its Progress Reports provided to Buyer pursuant to Section 2.3. To the extent that, on or before the date that is ninety (90) days prior to the close of construction financing for the Facility, Seller, using commercially reasonable efforts, reasonably expects that it can expedite the Commercial Operation Date, Seller will provide an update to Buyer regarding such earlier anticipated Commercial Operation Date. Notwithstanding the foregoing, in no event is Seller required to modify the Expected Commercial Operation Date to a date earlier than the date provided in the Cover Sheet. In any event, Seller will notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

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

(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, 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 until the Commercial Operation Date; provided, however, that in no event will Seller be required to pay aggregate Commercial Operation Delay Damages in excess of the amount of the Development Security less Daily Delay Damages already paid by Seller. On or before the tenth (10<sup>th</sup>) of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

(d) Seller may request that Buyer accept the COD Certificate when Seller has installed and commissioned ninety percent (90%) of the Guaranteed Capacity and otherwise satisfied the conditions for Commercial Operation, and Buyer will follow the process and timelines set forth in this Section 2 to approve Seller’s notification of satisfaction of the conditions for Commercial Operation; provided that Buyer is not required to accept such COD Certificate unless Seller can demonstrate to Buyer’s reasonable satisfaction that Seller will install and commission ninety-five percent (95%) of Guaranteed Capacity within sixty (60) days of the Commercial Operation Date set forth in the COD Certificate. If Buyer accepts Seller’s request that Seller accept the COD Certificate, then the Commercial Operation Date shall be the date

specified in the COD Certificate. If, notwithstanding Seller's demonstration to Buyer's reasonable satisfaction that Seller will install and commission ninety-five percent (95%) of Guaranteed Capacity within sixty (60) days of the Commercial Operation Date set forth in the COD Certificate, Seller is unable to do so, then Seller will use commercially reasonable efforts to continue to achieve one hundred percent (100%) of the Guaranteed Capacity until the date one hundred and twenty (120) days after the Commercial Operation Date, at which point Seller will provide to Buyer a detailed written explanation of the reasons why Seller has been unable to achieve a minimum of ninety-five percent (95%) of Guaranteed Capacity and Seller will owe Capacity Damages, if any, as calculated in Section 5(a) of this Exhibit B. Seller will compensate Buyer for the shortfall in capacity with additional Bridge Product until the earlier of the date that Seller achieves one hundred percent (100%) of the Guaranteed Capacity and the date that is one hundred twenty (120) days after the Commercial Operation Date.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and Guaranteed Commercial Operation Date both shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:

(a) Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility, and to permit the Seller and Facility to make available and sell Product by the Guaranteed Commercial Operation Date, despite the exercise of best efforts by Seller; or

(b) a Force Majeure Event occurs; or

(c) the Interconnection Facilities, Distribution Upgrades, 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 commercially reasonable efforts by Seller; or

(d) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 4(a), 4(b) and 4(c) above under the Development Cure Period shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to take all reasonable actions to meet its requirements and deadlines; provided, however, that only with respect to a Force Majeure Event related to COVID-19, the day-for-day extensions shall not exceed one hundred eighty (180) days. Notwithstanding anything to the contrary, no extension under the Development Cure

Period shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide 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 reasonable actions.

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity.**

(a) *Guaranteed Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity such that the Installed PV 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 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to the product of (i) [REDACTED] and (ii) each MW (or portion thereof) that the Guaranteed Capacity exceeds the Installed PV Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

(b) *Storage Contract Capacity.* If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity such that the Installed Battery Capacity is equal to (but not greater than) one hundred percent (100%) of the Storage Contract Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Battery Capacity. If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to the product of (i) [REDACTED] and (ii) each MW (or portion thereof) that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.



**EXHIBIT C**  
**COMPENSATION**

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. For each MWh of PV Energy in each Settlement Period, Buyer shall pay Seller the Renewable Rate.

(b) Deemed Delivered Energy. For each Settlement Period, Buyer shall pay Seller the Renewable Rate for each MWh of Deemed Delivered Energy.

(c) Excess Contract Year Deliveries Over [REDACTED]. If, after Seller has delivered an amount of PV Energy plus the amount of Deemed Delivered Energy for such Contract Year in excess of [REDACTED] of the Expected Energy in any Contract Year, the price to be paid for additional PV Energy or Deemed Delivered Energy in such Contract Year in excess of [REDACTED] of the Expected Energy shall be equal to [REDACTED]

If, at any point in any Contract Year, the amount of PV Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy or Deemed Delivered Energy in such Contract Year in excess of [REDACTED] of the Expected Energy shall be equal to [REDACTED].

(d) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of PV Energy, in excess of the product of the Guaranteed 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 [REDACTED] 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 such excess MWh (“**Negative LMP Costs**”).

(e) Curtailed Payments. Seller shall receive no compensation from Buyer for PV Energy provided in violation of a Curtailment Order provided that the foregoing shall not apply and Buyer is obligated to purchase from Seller Product if PV Energy is or can be delivered to the Storage Facility during any such outage of the Facility, Force Majeure Event or Curtailment Order. Buyer shall pay for Deemed Delivered Energy.

(f) Storage Rate. All Storage Product shall be paid on a monthly basis as the sum of [REDACTED]

[REDACTED] The Parties agree to maximize the use of PV Energy to minimize the Variable Expense and for Station Use. Seller will install meters in the Facility in order to allocate the Variable Expense as provided for herein.

(g) Test Energy. Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.

(h) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate 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. Except as provided in Section 12.1, 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 Facility Energy and Product, shall be effective regardless of whether the sale of PV Energy is eligible for, or receives Tax Credits during the Contract Term.

## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

#### Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid and through the end of the Delivery Term, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of Test Energy and the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. 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 (or Buyer's designee) as the 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. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Notwithstanding the foregoing, if a Buyer Default has occurred, then Buyer shall be required to submit Schedules on behalf and at the direction of Seller and Buyer shall remit all CAISO Revenues net of CAISO Costs related thereto to Seller. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility prior to the Commercial Operation Date.

(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 outages, forced 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 or by electronic mail transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except during a Storage Capacity Test or as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, 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 imposed on Buyer resulting from any failure

by Seller to abide by the CAISO Tariff requirements imposed on it as Facility owner (but not in connection with obligations of Buyer hereunder) or the outage notification requirements set forth in 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) which Buyer cannot reasonably mitigate. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account except to the extent such Non-Availability Charges are caused by Buyer's (or its SC) failure to perform its must offer requirements under Section 40.6 of the CAISO Tariff or caused by Buyer's other actions (as SC) in which case such Non-Availability Charges shall be the responsibility of Buyer and for Buyer'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 failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, 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 payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any such 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 dispute CAISO settlements in respect of the Facility at its own cost; provided that Seller may direct Buyer to dispute CAISO settlements in respect of the Facility, in which case, 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 File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, such 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.

**EXHIBIT E**  
**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Gantt chart schedule showing progress on achieving each of the Milestones.
5. Description of any material planned changes to the Facility or the site.
6. Summary of activities during the previous calendar quarter or month, as applicable.
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 are likely to 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. If applicable, prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. 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.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1**

**AVERAGE EXPECTED ENERGY**

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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT F-2**

**AVAILABLE GENERATING CAPACITY**

The following tables are provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**Available Generating Capacity, MW Per Hour – January**

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.



### Available Generating Capacity, MW Per Hour – February

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

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### Available Generating Capacity, MW Per Hour – March

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**Available Generating Capacity, MW Per Hour – April**

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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**Available Generating Capacity, MW Per Hour – May**

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

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**Available Generating Capacity, MW Per Hour – June**

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

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**Available Generating Capacity, MW Per Hour – July**

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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### Available Generating Capacity, MW Per Hour – August

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
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**Available Generating Capacity, MW Per Hour – September**

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

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### Available Generating Capacity, MW Per Hour October

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

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**Available Generating Capacity, MW Per Hour – November**

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

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**Available Generating Capacity, MW Per Hour December**

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

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### **EXHIBIT F-3**

#### **AVAILABLE STORAGE CAPACITY**

The following tables are provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G

### 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 = Price for Replacement Product for the Contract Year, in \$/MWh, which is the sum of (a) the weighted average of the Day-Ahead LMP at SP-15, as published by CAISO weight by the hourly and monthly volumes in Exhibit F-1, plus, the market value of Replacement Green Attributes, which shall be calculated by Buyer in a commercially reasonable manner. Buyer is not required to enter into a replacement transaction in order to determine this amount.

D = the Renewable Rate for the Contract Year, in \$/MWh

**“Adjusted Energy Production”** shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

**“Lost Output”** has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

**“Replacement Energy”** means energy 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 includes Replacement Green Attributes.

**“Replacement Green Attributes”** means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of 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 Product”** means (a) Replacement Energy, and (b) Replacement Green Attributes.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number. If the result of (C-D) is greater than \$ [REDACTED], then (C - D) will be replaced with \$ [REDACTED].

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

## EXHIBIT H

### FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Desert Community Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable 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.

As of [DATE], Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with a nameplate capacity of [\_\_\_\_\_] MW.
3. Seller has installed equipment for the Storage Facility with a nameplate capacity of [\_\_\_\_\_] MW.
4. The Generating Facility’s testing included a performance test demonstrating peak electrical output of [\_\_\_\_\_] MW of the Guaranteed Capacity for the Generating Facility at the Delivery Point, adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].
5. The Storage Facility is fully capable of charging, storing and Discharging Energy up to [\_\_\_\_\_]MW and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on [DATE].
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on [DATE].
8. [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**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to Desert Community Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable 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:

1. The performance test for the Generating Facility demonstrated peak electrical output of \_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ( “**Installed PV Capacity**”);
2. The Storage Test demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of at least \_\_ MW AC to the Delivery Point (not to exceed the Expected Storage Contract Capacity), during the Initial Storage Test, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Battery Capacity**”); and
3. The sum of 1. and 2. is \_\_ MW AC and shall be the “**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 of Construction Start Date (“**Certification**”) is delivered by [\_\_\_\_\_] (“**Seller**”) to Desert Community Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. 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 Construction Start is attached hereto;
2. the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: \_\_\_\_\_.

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**

Contract No.: XX  
Project Name: Deer Creek Solar  
For the purpose of: [\_\_\_\_\_]

Beneficiary:  
Desert Community Energy  
73710 Fred Waring Dr.  
Palm Desert, CA 92260  
Amount: USD \$\_\_\_\_\_

Applicant:

Expiration: [\_\_\_\_], 20[\_\_]

[\_\_\_\_\_] (the "Bank") hereby establishes this Irrevocable Nontransferable Standby Letter of Credit ("Letter of Credit") in favor of Desert Community Energy, a California joint power authority formed and existing under the laws of the State of California (the "Beneficiary"), for the account of Deer Creek Solar I LLC, a Delaware limited liability company ("the Applicant"), for the amount of [\_\_\_\_\_] ([\_\_\_\_\_]dollars 00/100) (the "Available Amount"), effective immediately and expiring at 5:00 p.m., California time, on [\_\_\_\_], 20[\_\_] (the "Expiration Date").

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 Expiration Date hereof and upon each anniversary of such date, unless at least sixty (60) days prior to any such Expiration Date Bank has sent Beneficiary written notice, at the address provided below, that Bank elects not to permit this Letter of Credit to be so extended beyond, and will expire on its then current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

All notices to Beneficiary will be in writing and are required to be sent by certified mail or overnight courier to: Desert Community Energy, [Attn to / Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

This Letter of Credit shall be of no further force or effect upon the close of business on the Expiration Date or, if such day is not a Business Day (as hereinafter defined), on the next Business Day.

For the purposes hereof, "Business Day" shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Subject to the terms and conditions herein, funds under this Letter of Credit are available to Beneficiary by presentation on or before 5:00 p.m., California time, on or before the Expiration Date of the following:

1. The original of this Letter of Credit and all amendments (or photocopy of the original for partial drawings); and
2. The Drawing Certificate issued in the form of Exhibit A attached hereto and which forms an integral part hereof, duly completed and bearing the signature of an authorized representative of the Beneficiary.

Notwithstanding the foregoing, any full or partial drawing hereunder may be requested by transmitting the requisite documents as described above to the Bank by facsimile at [ ] or such other number as specified from time-to-time by the Bank.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; *provided*, the Available Amount shall be reduced by the amount of each such drawing.

All correspondence and any drawings hereunder are to be directed to (Bank address/contact)

[ ]

Banking charges shall be the sole responsibility of the Applicant.

This Letter of Credit sets forth in full our obligations and such obligations shall not in any way be modified, amended, amplified or limited by reference to any documents, instruments or agreements referred to herein, except only the attachment referred to herein; and any such reference shall not be deemed to incorporate by reference any document, instrument or agreement except for such attachment. Except in the case of an increase in the Available Amount, this Letter of Credit may not be amended or modified without the Beneficiary's prior written consent.

The Bank engages with the Beneficiary that Beneficiary's drawing under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Bank on or before the Expiration Date.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). This Letter of Credit shall be governed by the internal laws of the State of New York to the extent that the terms of the ISP are not applicable; provided that, in the event of any conflict between the ISP and such New York laws, the ISP shall control.

AUTHORIZED SIGNATURE for Issuer

\_\_\_\_\_

(Name)

Title: \_\_\_\_\_

**EXHIBIT A**

**DRAWING CERTIFICATE**

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

**IRREVOCABLE NONTRANSFERABLE STANDBY LETTER OF CREDIT**

Reference Number. \_\_\_\_\_

**DRAWING CERTIFICATE**

Bank Name: [\_\_\_\_\_]

Bank Address: [\_\_\_\_\_]

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

Subject: Irrevocable Nontransferable Standby Letter of Credit

Reference Number: \_\_\_\_\_

The undersigned \_\_\_\_\_, an authorized representative of Desert Community Energy (the "Beneficiary"), hereby certifies to [\_\_\_\_\_] (the "Bank"), and Deer Creek Solar I LLC (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$\_\_\_\_\_, ("the Amount") for the following reason:

[ ] A. 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 or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

[ ] B. The Letter of Credit will expire in fewer than thirty (30) calendar days from the date hereof, and Applicant has not provided to Beneficiary alternate financial security.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND \_\_\_/100ths (U.S.\$\_\_\_\_\_), which amount does not exceed (i) the amount set forth in paragraph 1 above, and (ii) the Available Amount under the Letter of Credit as of the date hereof.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions:

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Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Beneficiary:

Desert Community Energy

By:

Name:

Title:

Date:

- 1.

## EXHIBIT L

### FORM OF GUARANTY

This Guaranty (this "**Guaranty**") is entered into as of [\_\_\_\_\_] (the "**Effective Date**") by and between [\_\_\_\_\_] a [\_\_\_\_\_] ("**Guarantor**"), and Desert Community Energy, a California joint powers authority (together with its successors and permitted assigns, "**Buyer**").

#### Recitals

- A. Buyer and [SELLER ENTITY], a \_\_\_\_\_ ("**Seller**"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "**PPA**") dated as of [\_\_\_\_], 20\_\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "**Guaranteed Amount**"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such



failure (the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding

on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at   
Attn:   
Fax:

If delivered to Guarantor, to it at   
Attn:   
Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in Riverside County, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable

Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

*[Signature on next page]*

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

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

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

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

BUYER:

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

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

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

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

Printed Name:\_\_\_\_\_

Title:\_\_\_\_\_

**EXHIBIT M**

**FORM OF REPLACEMENT RA NOTICE**

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Desert Community Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between 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 Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information**<sup>1</sup>

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	

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

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

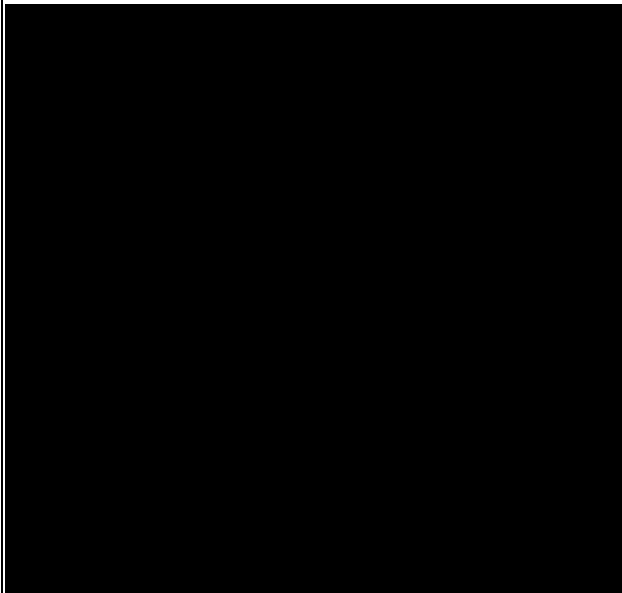


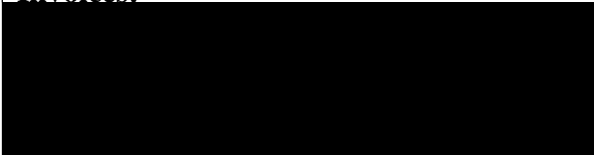


By: \_\_\_\_\_

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

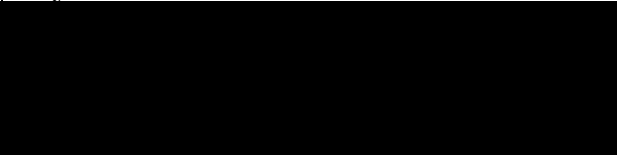
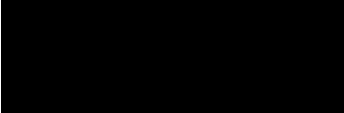
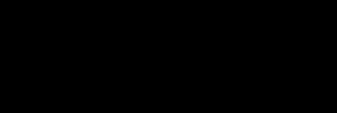
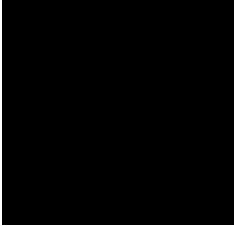

Date: \_\_\_\_\_

**EXHIBIT N**

**NOTICES**

<b>Deer Creek Solar I LLC, a Delaware limited liability company (“Seller”)</b>	<b>Desert Community Energy, a California joint powers authority (“Buyer”)</b>
<b>All Notices:</b> 	<b>All Notices:</b>  Street: 73-710 Fred Waring Drive, Suite 200 City: Palm Desert, CA 92260 Attn: Katie Barrows Phone: (760) 346-1127 Facsimile: (760) 340-5949 Email: kbarrows@cvag.org  With a copy to:  Street: 405 114th Ave SE #100 City: Bellevue, WA 98004 Attn: TEA CAISO Desk  Phone: 425-460-1118 Facsimile: 425-372-0201 Email: Group-Corp-TradingCaiso@teainc.org
<b>Reference Numbers:</b> Duns: Federal Tax ID Number: 	<b>Reference Numbers:</b> Duns: NA Federal Tax ID Number: 
<b>Invoices:</b> 	<b>Invoices:</b> Attn: Valdemar Galeana Phone: (760) 346-1127 Facsimile: (760) 340-5949 E-mail: vgaleana@cvag.org
<b>Scheduling:</b> 	<b>Scheduling:</b> Attn: TEA CAISO Desk Phone: 425-460-1118 Facsimile: 425-372-0201 E-mail: Group-Corp-TradingCaiso@teainc.org
<b>Confirmations:</b> 	<b>Confirmations:</b> Attn: Katie Barrows Phone: (760) 346-1127 Facsimile: (760) 340-5949 E-mail: kbarrows@cvag.org



<b>Deer Creek Solar I LLC, a Delaware limited liability company (“Seller”)</b>	<b>Desert Community Energy, a California joint powers authority (“Buyer”)</b>
<b>Payments:</b> 	<b>Payments:</b> Attn: Valdemar Galeana Phone: (760) 346-1127 Facsimile: (760) 340-5949 E-mail: vgaleana@cvag.org
<b>Wire Transfer:</b> 	<b>Wire Transfer:</b> 
<b>With additional Notices of an Event of Default to:</b> 	<b>With additional Notices of an Event of Default to:</b>  Attn: Tom Kirk, Executive Director Phone: (760) 346-1127 E-mail: tkirk@cvag.org  With a copy to:  Attn: TEA CAISO Desk Phone: 425-460-1118 Facsimile: 425-372-0201 Email: Group-Corp-TradingCaiso@teainc.org
<b>Emergency Contact:</b> 	<b>Emergency Contact:</b> Attn: TEA CAISO Desk Phone: 425-460-1118 Facsimile: 425-372-0201 Email: Group-Corp-TradingCaiso@teainc.org

## EXHIBIT O

### STORAGE TEST

#### Storage Test Notice and Frequency

A. Initial Storage Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Test prior to the Commercial Operation Date. Such Initial Storage Test shall be performed in accordance with this Exhibit O and shall establish the Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Initial Storage Test not to exceed the Expected Storage Contract Capacity.

B. Subsequent Annual Storage Tests. No later than thirty (30) days after the end of each Contract Year, Seller shall schedule and complete a Storage Test. Within twenty (20) days following any annual Storage Test, Seller may run a retest of such annual Storage Test upon no less than five (5) Business Days prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). Notwithstanding the foregoing, all retests of the Storage Capacity shall be concluded by no later than ninety (90) days after the start of each Contract Year. Notwithstanding anything herein to the contrary, any revenues associated with a Storage Test that is initiated by Seller shall accrue to Buyer.

C. Periodic Storage Tests; Guaranteed Storage Facility Loss Factor. During any Contract Year, and with at least fifteen (15) days prior written notice to Seller, Buyer may request up to three (3) Storage Tests in addition to the annual Storage Test for purposes of determining if Seller is satisfying the Guaranteed Storage Facility Loss Factor. Within twenty (20) days following any periodic Storage Test, Seller may run a retest of such periodic Storage Test upon no less than five (5) Business Days prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). If the Storage Facility Loss Factor result from any such period Storage Test is equal to or greater than the Guaranteed Storage Facility Loss Factor, then Buyer will not be entitled to, and Seller shall not be required to pay, any Storage Facility Loss Factor Damages. If the Storage Facility Loss Factor is less than the Guaranteed Storage Facility Loss Factor, then Seller shall pay Buyer Storage Facility Loss Factor Damages beginning on the day after the period Storage Test until the next Storage Test, including any retest initiated by Seller. Within twenty (20) days following any Buyer-initiated period Storage Test, Seller may run a retest of such Storage Test upon no less than five (5) Business Days prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice). Storage Facility Loss Factor Damages shall be equal to the following: [REDACTED] for each MW of Storage Capacity for each day after the applicable Storage Test in which the Storage Facility Loss Factor determined during such test is less than the Guaranteed Storage Facility Loss Factor, until the next Storage Test. Damages thereafter, if any, owing with respect to the Guaranteed Storage Facility Loss Factor will be established as a result of such subsequent test according to the provisions of this Exhibit O.

D. Guaranteed Storage Capacity. The results of the last annual Storage Test and any retest thereof shall establish the Storage Capacity for purposes of determining if Seller has

satisfied the Guaranteed Storage Capacity. If the Storage Capacity is equal to or greater than the Guaranteed Storage Capacity, then Buyer will not be entitled to, and Seller shall not be required to pay, any Storage Capacity Damages. If the Storage Capacity is less than the Guaranteed Storage Capacity, then Seller shall pay Buyer Storage Capacity Damages. Storage Capacity Damages shall be equal to the following: [REDACTED] for each MW of Storage Capacity for each day after the applicable Storage Test in which the Storage Capacity determined during such test is less than the Guaranteed Storage Capacity, until the next Storage Test. Damages thereafter, if any, owing with respect to the Guaranteed Storage Capacity will be established as a result of such subsequent test according to the provisions of this Exhibit O.

E. Test Results. No later than five (5) days following any Storage Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. For the avoidance of doubt, although Storage Capacity will be a result of a Buyer-initiated periodic Storage Test or any Seller retest thereof, the Storage Capacity results of any periodic Storage Test and any retest thereof will not be used for any purposes hereunder, including to determine Seller's compliance with the Guaranteed Storage Capacity. In accordance with Section 4.9(d) of the Agreement and Part II(I) below, the Storage Capacity determined pursuant to an annual Storage Test (up to, but not in excess of, the Storage Contract Capacity) shall become the new Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

## **Storage Test Procedures**

### **PART I. GENERAL.**

A. Each Storage Test (including the Initial Storage Test, each annual Storage Tests, Buyer-initiated period Storage Tests, and all re-tests thereof permitted under paragraphs B and C above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Test is sometimes referred to in this Exhibit O as a "**ST**". Buyer or its representative may be present for the ST and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

#### **B. Conditions Prior to Testing.**

(1) The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

(2) The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer's RTU and Seller's EMS interface and the ability to record SCADA Systems data.

(3) Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE TESTS.

A. Purpose of Test. Each annual ST and retest thereof shall:

- (1) Determine the Storage Capacity; and
- (2) Determine the Storage Facility Loss Factor.

Each Buyer-initiated period ST and any retest thereof shall:

- (1) Determine the Storage Facility Loss Factor.

B. Parameters. During each ST, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at a minimum of ten (10) minute intervals:

- (1) time (minutes);
- (2) charging energy (MWh);
- (3) discharging energy (MWh);
- (4) Stored Energy Level (MWh).

C. Site Conditions. During each ST, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
- (3) Ambient air Temperature (°F).

D. Test Elements. Each ST Shall include the following test elements:

- (1) The discharging of the Storage Facility to 0% Stored Energy Level;
- (2) The charging of the Storage Facility at a constant power charge rate equal to the Storage Contract Capacity as of the commencement of the Storage Capacity Test;
- (3) The measurement of the time from when the charge signal is sent until the constant power charge rate is achieved (dividing the constant power

charge rate by this measurement will determine the updated charging ramp rate);

- (4) The measurement of Energy, as measured by the Storage Facility Meter, that is required to charge the Storage Facility until a 100% Stored Energy Level is achieved;
- (5) The discharging of the Storage Facility at a constant power discharge rate equal to the Storage Contract Capacity as of the commencement of the Storage Test;
- (6) The measurement of the time from when the discharge signal is sent until the constant power discharge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated discharging ramp rate);
- (7) The measurement of Energy, as measured by the Storage Facility Meter, that is discharged from the Storage Facility to the Delivery Point until a 0% Stored Energy Level is achieved as indicated by the battery management system.

E. Test Conditions.

- (1) General. At all times during a ST, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a ST (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such ST in accordance with Part II.F below.
- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ST. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

F. Incomplete Test. If any ST is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the ST stopped; (ii) require that the portion of the ST not completed, be completed within a reasonable specified time period; or (iii) require that the ST be entirely repeated. Notwithstanding the above, if Seller is unable to complete a ST due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such ST on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within fifteen (15) Business Days after the completion of any ST,

Seller shall prepare and submit to Buyer a written report of the results of the ST, which report shall include:

- (1) a record of the personnel present during the ST that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for each parameter set forth in Part II.A through D, as applicable, including copies of the raw data taken during the test;
- (3) the current level of storage contract capacity, the amount of Energy required to fully charge the battery, the current charge and discharge ramp rate, and the Maximum Stored Energy Level, each determined by the ST, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the ST or Seller's rejection of the ST results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ST results or Buyer's rejection of the ST and reason(s) therefor.

If either Party reasonably rejects the results of any ST, such ST shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Storage Test. The Storage Facility will be operated in both the charge and discharge directions in the following order:

- (1) Set each Battery Subsystem to 3% SOC.
- (2) Allow each Battery Subsystem to enter background cell balancing mode by maintaining a SOC of 3% for 20 minutes. After the background cell balancing mode begins the system can be operated as normal. Allow the cell balancing function to operate in the background for at least four (4) days to allow the automatic cell balancing procedure to reach completion.

(3) Discharge each Battery Subsystem to 0% SOC.

(4) Immediately perform the Storage Test set forth below.

To be valid, this test must be started within twenty-four (24) hours of the end of the period (greater than four days) during which cell balancing was completed. For the duration of the Storage Test, the Control System will be configured to have the power limiting mechanisms disabled, and each Battery Subsystem shall be configured to follow the charge and discharge current limits specified by their respective Battery BMSs.

(5) Procedure:

- A. System Starting State: The Facility will be in the on-line state with each Battery Subsystem at 0% SOC
- B. Verify that in the previous twenty-four (24) hour period, each Battery Subsystem completed the cell balancing procedure allowing full cell balancing to occur, as described in steps 1-4.
- C. Verify that ambient temperature measurements at all Battery Subsystems are between 18 °C and 28 °C throughout this test.
- D. Record initial values of each Battery Subsystem SOC.
- E. Command a real power charge that fully charges the battery within six (6) hours.
- F. Record and store the energy charged to the system as measured at the Storage Facility Meter. Measurements will be made by the Storage Facility Meter with recording in the Facility historian.
- G. Within 4 hours of fully charging the System, command a real power discharge that results in a power output of facility's maximum operating level.
- H. Maintain the discharging state for at least four (4) hours.
- I. Record and store the AC energy discharged as measured at the Facility Meter. Measurements will be made by the Facility Meter with recording in the Facility historian.
- J. Results:
  - a. For an annual ST or any retest thereof, "Storage Capacity" equals the AC energy discharged divided by four (4) hours
  - b. "Storage Facility Loss Factor" equals the Storage Capacity resulting from such test divided by the Storage Contract Capacity.

**EXHIBIT P**

**STORAGE FACILITY AVAILABILITY**

**Storage Availability**

(a) Calculation of Storage Availability. Seller shall calculate the “**Storage Availability**” in a given Season using the formula set forth below:

$$\text{Storage Availability (\%)} = \frac{[\text{SSNSIS}_S - \text{UNAVAILSIS}_S]}{\text{SSNSIS}_S}$$

where:

S = relevant Season “S” in which availability is calculated;

SSNSIS<sub>S</sub> is the total number of Settlement Intervals for the applicable Season;

UNAVAILSIS<sub>S</sub>, is the total number of Settlement Intervals in the applicable Season during which both of the following are true: (i)

**Event”):**

To be clear, Settlement Intervals of unavailability caused by any Excused Event will not be included in UNAVAILSIS<sub>S</sub> for such Season.

If the Storage Availability is equal to or greater than the Guaranteed Storage Availability, then Buyer will not be entitled to, and Seller shall not be required to pay, any Storage Availability Damages. If the Storage Availability during any Season is less than the Guaranteed Storage Availability applicable for such Season, then Seller shall pay Buyer Storage Availability Damages. Storage Availability Damages shall be equal to the following: \$

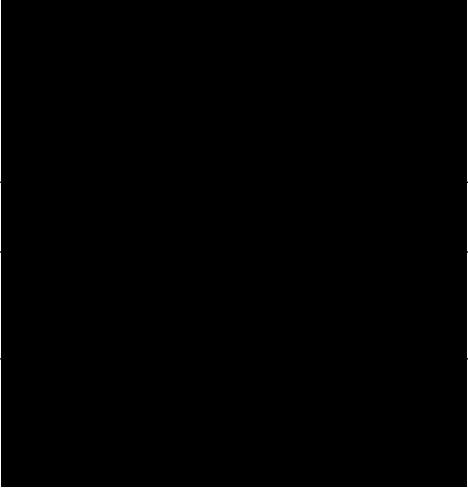
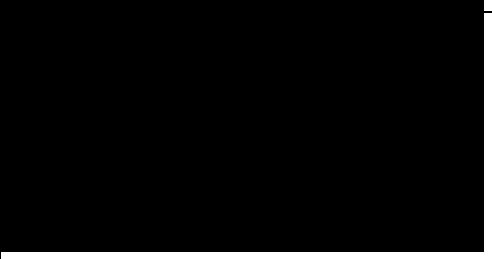
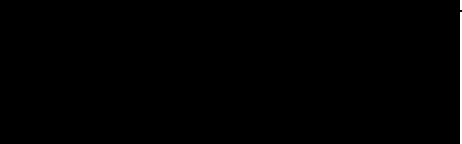


## EXHIBIT Q

### OPERATING RESTRICTIONS

The Storage Facility shall be subject to the following Operating Restrictions:

	Description	Value	Notes
1.	Storage Contract Capacity		
2.	Maximum Stored Energy Level		
3.	Minimum Stored Energy Level		
4.	Maximum Charging Capacity		
5.	Minimum Charging Capacity		
6.	Maximum Discharging Capacity		
7.	Minimum Discharging Capacity		
8.	Maximum State of Charge (SOC) during Charging		
9.	Minimum State of Charge (SOC) during Discharging		
10.	Annual Average State of Charge Range (SOC)		
11.	Annual Cycle Limit		

12.	Daily Dispatch Limits		
13.	Ramp rate		
14.	Charging energy source		
15.	Grid Charging		

**EXHIBIT R**  
**METERING DIAGRAM**

**REDACTED**

**EXHIBIT S**

**FORM OF SURETY BOND**

BOND NUMBER: \_\_\_\_\_

\_\_\_\_\_

**FINANCIAL AND PERFORMANCE GUARANTEE BOND**

KNOW ALL MEN BY THESE PRESENTS: That we, \_\_\_\_\_  
(hereinafter called the Principal), and \_\_\_\_\_  
with its principal office at \_\_\_\_\_  
located in the Continental United States, a corporation duly organized under the laws of the  
State of \_\_\_\_\_ (hereinafter called the Surety) as Surety, are held and firmly bound  
unto \_\_\_\_\_ (hereinafter called the Obligee), as  
Obligee, in the sum of \_\_\_\_\_  
Dollars (\$\_\_\_\_\_) for the payment of which sum well and truly to be made, we the  
said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors  
and assigns, jointly and severally, firmly by these presents.

This Financial and Performance Guarantee Bond is being issued in connection with a Purchase  
Power Agreement between Principal and Obligee (referred to as the "Agreement" or  
"Agreements").

Now therefore, the condition of this obligation is such that if the Principal shall well and truly  
keep all the terms and conditions as outlined in said Agreement, including any amendment  
thereto, then this obligation shall be null and void; otherwise to remain in full force and effect.

Provided, however, this bond is executed by the Surety and accepted by the Obligee subject to  
the following conditions:

1. No assignment of this bond shall be effective without the written consent of the Surety.
2. This obligation may be terminated by the Surety by sixty (60) days advance written  
notice to the Obligee, such notice to be sent by commercial overnight courier to

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

Such termination shall not affect liability incurred under this obligation prior to the  
effective date of such termination subject to condition 4 herein.

3. A condition precedent to any right of recovery herein that, Obligees has provided written notice to Surety that (i) a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Obligees is authorized to make a claim against this bond; or (ii) this bond will expire in fewer than thirty (30) calendar days from the date of such written notice and Principal has not provided Obligees with alternate financial security. Surety shall be obligated to pay amounts requested by Obligees within fifteen (15) Business Days after Surety's receipt of such notice.
4. No action, suit or proceeding shall be had or maintained against the Surety on this bond unless the same be brought or instituted within sixty (60) days after the termination or release of this bond.
5. Under no circumstances shall the aggregate liability of the Surety exceed the sum above stated regardless of the number of years and/or continuation certificates that the surety may issue.
6. This bond will expire on \_\_\_\_\_, 20\_\_ unless extended by continuation certificate issued by the Surety and received by the Obligees prior to the bond expiration date, such certificate to be sent by commercial overnight courier to:

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

In witness whereof, said Principal and said Surety have caused this bond to be duly signed and their seals affixed this \_\_\_\_ day of \_\_\_\_\_. 20\_\_.

\_\_\_\_\_  
 Principal

BY: \_\_\_\_\_

\_\_\_\_\_  
 Surety

BY: \_\_\_\_\_

## EXHIBIT T

### FORM OF COLLATERAL ASSIGNMENT AGREEMENT

#### CONSENT AND AGREEMENT

##### ([Contracting Party])

This CONSENT AND AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Consent”), dated as of [\_\_\_\_], 202[\_\_\_], is executed by [CONTRACTING PARTY], a [Jurisdiction and Entity Type] (together with its successors, designees and assigns, “Contracting Party”), [COLLATERAL ASSIGNOR], a [Jurisdiction and Entity Type] (together with its successors, designees and assigns, “Collateral Assignor”), and [\_\_\_\_], in its capacity as the collateral agent (in such capacity, together with its successors and assigns, “Collateral Agent”) for the Secured Parties (as defined in the Financing Agreement defined below). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms, directly or by reference, in Exhibit A to the Financing Agreement.

#### RECITALS

A. [Insert Description of Financing Agreement], pursuant to which, among other things, the Secured Parties have agreed to extend financing to the Borrower with respect to the construction, operation and maintenance of the Project (defined below).

B. [Insert Description of Project] (as further described in the Financing Agreement, the “Project”).

C. Collateral Assignor has entered into that certain [List Agreement and Amendments, If Any], dated as of [\_\_\_\_] (as amended in accordance with the terms hereof or as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms hereof, the “Assigned Agreement”), with Contracting Party.

D. As a condition to the extension of credit under the Financing Agreement, Collateral Assignor has entered into that certain [Insert Description of Applicable Security Agreement], dated as of [\_\_\_\_], 20[\_\_\_] (as amended, amended and restated, supplemented or otherwise modified and in effect from time to time, the “Security Agreement”), pursuant to which Collateral Assignor has collaterally assigned and granted to Collateral Agent for the benefit of the Secured Parties a first-priority security interest in all of Collateral Assignor’s right, title and interest in, to and under the Assigned Agreement, including all of Collateral Assignor’s rights to receive payments under or with respect to the Assigned Agreement and all payments due and to become due to Collateral Assignor under or with respect to the Assigned Agreement, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the “Assigned Collateral Interest”), as collateral security for satisfaction

of all Obligations (as defined in the Financing Agreement) under the Financing Agreement and the other related financing documents (the “Financing Documents”).

E. It is a requirement under the Financing Agreement that Contracting Party and the other parties hereto shall have executed this Consent.

## **AGREEMENT**

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything to the contrary in the Assigned Agreement, as follows:

1. Consent and Agreement. Contracting Party:

(a) acknowledges and consents in all respects to the assignment of the Assigned Collateral Interest as collateral security to Collateral Agent, for the benefit of the Secured Parties, pursuant to the Security Agreement and the terms hereof;

(b) acknowledges the right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Agreement, upon notice to Contracting Party that an Event of Default has occurred and is continuing under the Financing Agreement, to cure any defaults of Collateral Assignor, make all demands, give all notices, take all actions, and exercise all rights of Collateral Assignor under the Assigned Agreement and agrees to accept any such exercise;

(c) agrees not to: (i) cancel, terminate, suspend performance or waive material compliance under the Assigned Agreement, except as provided in the Assigned Agreement or by operation of law and, in any event, except as provided in Section 4 of this Consent; (ii) consent to or accept any cancellation, termination, suspension or material waiver of the Assigned Agreement by Collateral Assignor without the prior written consent of Collateral Agent; or (iii) sell, assign, transfer or otherwise dispose of (by operation of law or otherwise) any part of its right, title or interest in the Assigned Agreement, without the prior written consent of Collateral Agent;

(d) agrees not to amend, supplement or modify the Assigned Agreement in any material respect, without the prior written consent of Collateral Agent; and

(e) agrees to promptly deliver to Collateral Agent duplicates or copies of all notices of, or with respect to actual or threatened litigation or arbitration, material amendments, default, suspension, waiver or termination delivered under or pursuant to the Assigned Agreement.

2. Collateral Assignor’s Acknowledgement. Collateral Assignor acknowledges and agrees that Contracting Party is authorized to perform its obligations under the Assigned Agreement upon Collateral Agent exercising its rights under the Security Agreement and this Consent in accordance with its terms after the occurrence and during the continuation of an

Event of Default, and that Contracting Party shall bear no liability to Collateral Assignor in connection therewith.

3. Subsequent Transferee.

(a) Contracting Party agrees that, if Collateral Agent notifies Contracting Party in writing that an Event of Default under the Financing Agreement has occurred and is continuing and that Collateral Agent has elected to exercise its rights and remedies pursuant to the Financing Agreement and the Security Agreement with respect to the foreclosure (whether judicial or nonjudicial) or sale of the Assigned Collateral Interest (or any portion thereof), then Collateral Agent or any other purchaser, successor, assignee or designee of the Assigned Collateral Interest who meets the requirements of this Section 3(a) (as the case may be, in each case, a “Subsequent Transferee”) following the exercise by Collateral Agent of such rights and remedies shall be substituted for Collateral Assignor under the Assigned Agreement and Contracting Party shall (i) recognize the Subsequent Transferee as its counterparty under the Assigned Agreement and (ii) continue to perform its obligations under the Assigned Agreement in favor of the Subsequent Transferee in accordance with the Assigned Agreement; provided, that such Subsequent Transferee shall meet the following requirements: (i) Subsequent Transferee shall meet the requirements of a Permitted Transferee under the Assigned Agreement; and (ii) Subsequent Transferee shall elect in writing to assume all of Collateral Assignor’s rights and obligations (including the obligation to cure any then-existing Defaults other than a Non-Curable Default (as defined below) by Collateral Assignor within the time permitted in the Assigned Agreement subject to Section 4 of this Consent) under the Assigned Agreement. The Subsequent Transferee shall have the right to assign all of its interest in the Assigned Agreement in accordance with the terms and limitations set forth in the Assigned Agreement. .

(b) Contracting Party acknowledges and agrees that, notwithstanding anything to the contrary in the Assigned Agreement, none of (i) the assignment of the Assigned Agreement pursuant to the Security Agreement, (ii) the foreclosure or any other enforcement action (any such action an “Enforcement Action”) undertaken by Collateral Agent in respect of its rights under the Security Agreement or any other related pledge agreement or mortgage, (iii) the acquisition of the rights of Collateral Assignor under the Assigned Agreement as a consequence of any Enforcement Action by Collateral Agent or any successor, assignee, designee or purchaser (or acceptance of an absolute assignment of the Assigned Agreement in lieu of an Enforcement Action) or (iv) the assignment of the Assigned Agreement by Collateral Agent to a Subsequent Transferee after an Enforcement Action or following an absolute assignment thereof in lieu of an Enforcement Action, shall constitute a default by Collateral Assignor under the Assigned Agreement or shall result in termination thereof.

4. Right to Cure. In the event of a default or breach by Collateral Assignor in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate or suspend performance under the Assigned Agreement (hereinafter, a “Default”), Contracting Party shall not cancel, suspend or terminate the Assigned Agreement or its performance thereunder until it first gives written notice of such Default to Collateral Agent and affords Collateral Agent or its successor(s), assignee(s), or designee(s) (a) a



period of thirty (30) days from the later to occur of (i) Collateral Agent's receipt of such Default notice and (ii) the expiration of the cure period available to Collateral Assignor under the Assigned Agreement to cure such Default, in each case, if such Default is the failure to pay amounts to Contracting Party which are due and payable under the Assigned Agreement or (b) with respect to any other Default, sixty (60) days from the later to occur of (i) Collateral Agent's receipt of such Default notice and (ii) the expiration of the cure period available to the Collateral Assignor under the Assigned Agreement, in each case, to cure such nonpayment Default (provided that during such cure period Collateral Agent or Collateral Assignor continues to perform each of Collateral Assignor's other obligations under the Assigned Agreement). Notwithstanding anything to the contrary herein, if the Default is peculiar to Collateral Assignor and not curable by Collateral Agent (each, a "Non-Curable Default"), such as the insolvency, bankruptcy, general assignment for the benefit of the creditors, or appointment of a receiver, trustee, custodian or liquidator of Collateral Assignor or its properties, then, notwithstanding any right that Contracting Party may have to terminate the Assigned Agreement, Collateral Agent, in accordance with the Financing Documents, shall be entitled to assume the rights and obligations of Collateral Assignor under the Assigned Agreement within the cure period provided in clause (b) above plus an additional one hundred twenty (120) days, and provided such assumption has occurred within such aggregate period, Contracting Party shall not be entitled to terminate the Assigned Agreement as a result of such Default. If possession of the Project is necessary to cure such Default (including any Non-Curable Defaults), and Collateral Agent or its successor(s), assignee(s), or designee(s) declares an Event of Default under the Financing Agreement or any other Financing Document and commences foreclosure proceedings or any other proceedings necessary to take possession of the Project, Collateral Agent or its successor(s), assignee(s), or designee(s) will be allowed a reasonable period (not to exceed one hundred eighty (180) days) to complete such proceedings. After taking possession of the Project, Collateral Agent or its successor(s), assignee(s), or designee(s) shall commence curing such Default within thirty (30) days after having possession of the Project and thereafter diligently pursue such cure to completion. If Collateral Agent or its successor(s), assignee(s), or designee(s) is prohibited by any court order, stay or injunction, or bankruptcy or insolvency proceedings of Collateral Assignor from curing the Default or from commencing or prosecuting such proceedings, then the foregoing time periods shall be extended by the period of such prohibition. Nothing contained in this Section 4 shall prevent Contracting Party from exercising its right to draw on any Development Security or Performance Security pursuant to the terms of the Assigned Agreement.

5. Replacement Agreement. In the event that the Assigned Agreement is rejected or terminated as a result of any bankruptcy or insolvency or similar proceeding, or otherwise terminated other than for a Default which could have been cured by Collateral Agent as provided in Section 4 of this Consent, Contracting Party shall, at the option of Collateral Agent exercised within sixty (60) days after such rejection or termination, in accordance with the Financing Documents, enter into a new agreement with Collateral Agent having identical terms as the Assigned Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually and reasonably agree, the "Replacement Agreement"); provided, that the term under such Replacement Agreement shall be no longer than the remaining balance of the term specified in the Assigned Agreement. Collateral Agent shall have the right to assign all of its interest in the Replacement Agreement to a qualified Subsequent Transferee. Upon such assignment, each of Collateral Agent and, if applicable, the

Secured Parties under the Financing Agreement (including their agents and employees) shall be released from any further liability thereunder to the extent of its interest under the Replacement Agreement.

6. No Liability. Contracting Party acknowledges and agrees that neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s) or other representative of Collateral Agent or the Secured Parties) shall have any liability or obligation under the Assigned Agreement as a result of exercising its rights under this Consent (other than as a Subsequent Transferee under Section 3 of this Consent or a counterparty to a Replacement Agreement pursuant to Section 5 of this Consent), the Financing Agreement or any other Financing Document, and neither Collateral Agent nor the Secured Parties (nor any successor(s), assignee(s), designee(s) or other representative of Collateral Agent or the Secured Parties) shall be obligated or required to perform any of Collateral Assignor's obligations under the Assigned Agreement or to take any action to collect or enforce any claim for payment assigned under the Financing Agreement or any other Financing Document, except during any period in which such Person has elected to become a Subsequent Transferee pursuant to Section 3 of this Consent or a counterparty to a Replacement Agreement pursuant to Section 5 of this Consent, in which case such Subsequent Transferee shall assume all of Collateral Assignor's rights and obligations under the Assigned Agreement in accordance with Section 3 of this Consent; provided, that the obligations of such Subsequent Transferee shall be no more than that of Collateral Assignor under the Assigned Agreement, or, if such Person is a counterparty to a Replacement Agreement, shall cure any Defaults other than a Non-Curable Defaults under the Assigned Agreement but shall not otherwise be required to perform or be subject to any defenses or offsets by reason of any of Collateral Assignor's other obligations under the Assigned Agreement that were unperformed at such time unless expressly agreed to in writing by such counterparty. Notwithstanding anything to the contrary herein, the sole recourse of Contracting Party in seeking the enforcement of any obligations under this Consent or the Assigned Agreement or the Replacement Agreement shall be to any such Subsequent Transferee's or Replacement Agreement counterparty's right, title and interest in the Project and neither Collateral Agent nor its successor(s), assignee(s), or designee(s) shall have any personal liability to Contracting Party under the Assigned Agreement or the Replacement Agreement. Without limiting the generality of the foregoing, under no circumstance shall Collateral Agent or its successor(s), assignee(s), or designee(s) be liable to Contracting Party for any action taken by it or on its behalf in good faith during the cure period provided in Section 4 of this Consent, notwithstanding such action may prove to be, in whole or in part, inadequate or invalid.

7. Payment of Monies. Contracting Party agrees to make all payments (if any) required to be made by it under the Assigned Agreement to Collateral Assignor in U.S. dollars and in immediately available funds directly to the account described immediately below or directly to such other institution or in such other manner as may be specified by the Collateral Agent to Contracting Party in writing from time to time, or, if Contracting Party has been notified in writing by Collateral Agent (with a copy to Collateral Assignor) that an Event of Default under the Financing Agreement has occurred and is continuing, to such other Person or at such other address or account as Collateral Agent may from time to time specify in writing to Contracting Party, and all payments made by Contracting Party shall be accompanied by a statement stating that such payments are made under the Assigned Agreement. Collateral Assignor hereby instructs Contracting Party, and Contracting Party accepts such instructions, to

make all payments due and payable to Collateral Assignor under the Assigned Agreement as set forth in the immediately preceding sentence. Collateral Assignor hereby consents to the foregoing and instructs Contracting Party to do so.

ACCOUNT:

Account Name: [\_\_\_\_\_]

Account Number: [\_\_\_\_\_]

Bank Name: [\_\_\_\_\_]

Bank Address: [\_\_\_\_\_]

ABA: [\_\_\_\_\_]

Credit: [\_\_\_\_\_]

8. Representations and Warranties. Contracting Party hereby represents and warrants to Collateral Assignor, Collateral Agent and the Secured Parties, as of the date of this Consent that:

(a) Contracting Party (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its [formation/incorporation], (ii) is duly qualified, authorized to do business and in good standing under the laws of the jurisdiction of its [formation/incorporation] and in every other jurisdiction necessary to perform its obligations under the Assigned Agreement and this Consent, and (iii) has all requisite power and authority to conduct its business as now conducted, to own its properties and assets, and to execute, deliver and perform its obligations under the Assigned Agreement and this Consent, and to carry out the terms thereof and hereof and the transactions contemplated thereby and hereby;

(b) The execution, delivery and performance by Contracting Party of the Assigned Agreement and this Consent, and the consummation by Contracting Party of the transactions contemplated thereby and hereby, have been duly authorized by all necessary [corporate/limited liability company] action, as applicable, on the part of Contracting Party and do not and will not require any further authorizations, consents or approvals or filings with any Person which have not been obtained or made, or violate or conflict with any provision of any law, regulation, order, permit, license, rule, judgment, injunction, or similar matters or breach any material agreement, indenture, contract or organizational document presently in effect with respect to or binding on Contracting Party or any properties to which Contracting Party may be bound;

(c) Neither Contracting Party nor, to Contracting Party's knowledge, any other party to the Assigned Agreement is in default thereunder;

(d) All governmental approvals necessary for the execution, delivery and performance by Contracting Party of its obligations under the Assigned Agreement have been

obtained and are in full force and effect, except those governmental approvals routinely obtained during the ordinary course of business during the execution of the Project;

(e) Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of Contracting Party by the appropriate officers or representatives of Contracting Party, constitutes the legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with their respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of rights generally;

(f) The Assigned Agreement has not been amended, supplemented or modified except as specified or provided herein. The Assigned Agreement and this Consent are the only agreements between Contracting Party and Collateral Assignor in respect of the matters set forth in the Assigned Agreement;

(g) There is no litigation, action, suit, proceeding or investigation at law or in equity by or before any governmental authority, arbitral tribunal or other body now pending or, to the knowledge of Contracting Party, threatened (in writing) against or affecting Contracting Party that (i) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, or any action taken or to be taken pursuant hereto or thereto or any transactions contemplated hereby or thereby, (ii) could reasonably be expected to have a materially adverse effect on the performance of the obligations hereof or of the Assigned Agreement or the condition (financial or otherwise), business, or operation of Contracting Party, or (iii) could reasonably be expected to have materially modify or otherwise have a materially adverse effect on any required approvals, filings or consents which have previously been obtained or made with respect to the Assigned Agreement or the Project;

(h) (i) No Force Majeure Event exists under, and as defined in, the Assigned Agreement, (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Contracting Party or Collateral Assignor to terminate or suspend its obligations under the Assigned Agreement, (iii) there are no disputes or legal proceedings between Contracting Party and Collateral Assignor, and (iv) Collateral Assignor does not owe any indemnity payments or other amounts to Contracting Party under the Assigned Agreement, and no amounts are currently due and payable to Contracting Party under the Assigned Agreement which have not been paid;

(i) Notwithstanding anything to the contrary in the Assigned Agreement, after giving effect to the assignment by Collateral Assignor to Collateral Agent of the Assigned Collateral Interest as set forth herein and pursuant to the Security Agreement, and after giving effect to the acknowledgment of and consent to such assignment by Contracting Party, there exists no event or condition which would constitute a default, or which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned Agreement. Contracting Party and, to the knowledge of Contracting Party, Collateral Assignor have complied with all conditions precedent to the respective obligations of such parties to perform under the Assigned Agreement; and

(j) Other than this Consent and the Security Agreement, Contracting Party has no knowledge of any pledge, assignment or other transfer of any interest in the Assigned Agreement.

Each of the representations and warranties set forth in this Section 8 shall survive the execution and delivery of this Consent and the consummation of the transactions contemplated hereby.

9. Notices. Any communications hereunder between or among the parties hereto, or any notices provided herein to be given, may be given to the following addresses:

If to Contracting Party: [\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
Attn: [\_\_\_\_\_]
Tel: [\_\_\_\_\_]
Fax: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

If to Collateral Agent: [\_\_\_\_\_]
as Collateral Agent
Attn: [\_\_\_\_\_]
Tel: [\_\_\_\_\_]
Fax: [\_\_\_\_\_]
Email: [\_\_\_\_\_]

If to Collateral Assignor: [\_\_\_\_\_] ,  
Attn: [\_\_\_\_\_] ]  
Tel: [\_\_\_\_\_] ]  
Fax: [\_\_\_\_\_] ]  
Email: [\_\_\_\_\_] ]

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, or (b) if sent by overnight delivery service. Any notice or other communication so given shall be effective upon receipt by the addressee. Any party shall have the right to change its address for notice hereunder by giving written notice of such change to the other parties in the manner set forth in this Section.

10. Binding Effect; Amendments. This Consent shall be binding upon and shall inure to the benefit of Contracting Party, Collateral Assignor, Collateral Agent and the Secured Parties and their respective successors, transferees and permitted assigns (including, without limitation, any Person that refinances all or any portion of the Obligations under the Financing Agreement). Contracting Party also agrees to cause any successor-in-interest to Contracting Party with respect to its interest in the Assigned Agreement to assume, in writing in form and substance reasonably satisfactory to Collateral Agent and the Required Lenders, the obligations of Contracting Party hereunder. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by Contracting Party, Collateral Agent and Collateral Assignor.

11. Governing Law. THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICT OF LAWS).

CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT HEREBY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA. CONTRACTING PARTY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL TO CONTRACTING PARTY AT ITS NOTICE ADDRESS PROVIDED PURSUANT TO SECTION 9 HEREOF. EACH OF CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

EACH OF CONTRACTING PARTY, COLLATERAL ASSIGNOR AND COLLATERAL AGENT HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, LEGAL PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CONSENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

12. Further Assurances. Contracting Party will, upon the reasonable written request of Collateral Agent, execute and deliver such further documents and do such other acts and things as may be necessary to effectuate the purposes of this Consent.

13. Severability. If any provision of this Consent is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Consent shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provision. The invalidity of a provision of this Consent in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

14. Counterparts. This Consent may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same document. Delivery of an executed counterpart of a signature page to this Consent by facsimile or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Consent.

15. Headings. The headings of the sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

16. Interpretation. All references in this Consent to any document, instrument or agreement (a) shall include all contract variations, exhibits, schedules and other attachments thereto, and (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, as amended, modified and supplemented from time to time and in effect at any given time. In the event of any conflict between the terms, conditions and provisions of this Consent and any agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

17. Collateral Agent's Rights. In the performance of its obligations hereunder, Collateral Agent shall be entitled to all of the rights, benefits, protections and immunities afforded to it pursuant to the Financing Documents. Collateral Agent shall have the right to assign the Assigned Agreement or a Replacement Agreement entered into pursuant to Section 5 of this Consent to a Person to whom the Project is transferred. Upon such assignment, Collateral Agent shall be released from any further liability under the Assigned Agreement or such Replacement Agreement to the extent of the interest assigned.

**[SIGNATURE PAGES TO FOLLOW]**





**IN WITNESS WHEREOF**, the undersigned, by their respective officers, representatives or other authorized persons thereunto duly authorized, have duly executed this **CONSENT AND AGREEMENT** as of the date first written above.

**[CONTRACTING PARTY]**,

a [\_\_\_\_\_],

as Contracting Party

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

Name:

Title:

**[COLLATERAL ASSIGNOR],**

a [\_\_\_\_\_],

as Collateral Assignor

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

Title:

Accepted and Agreed:

**[COLLATERAL AGENT],**  
as Collateral Agent

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

Name:

Title:

**EXHIBIT U**  
**BRIDGE ADDENDUM**

*To be attached*