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# Notice – Call of Special Facilities Committee Meeting

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**Date:** April 11, 2024  
**To:** Facilities Committee  
**From:** Shiva Swaminathan, Chair Facilities Committee  
**Subject:** April 15, 2024 – NCPA Special Facilities Committee Meeting Notice and Agenda

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PLEASE TAKE NOTICE that, pursuant to Government code section 54956, a special meeting of the Northern California Power Agency Facilities Committee is hereby called for April 15, 2024 at 10:00 am to discuss those matters listed on the attached Agenda. The meeting will be held at NCPA's Roseville Office, 651 Commerce Drive, Roseville, California, 95678.

*Shiva Swaminathan*

SHIVA SWAMINATHAN  
Facilities Committee Chair

SS/cp



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# Special Facilities Committee Meeting Agenda

**Date:** Monday, April 15, 2024

**Subject:** Special Facilities Committee Meeting

**Location:** NCPA Headquarters, 651 Commerce Drive, Roseville, CA

**Time:** 10:00 am

**\*\*In compliance with the Brown Act, you may participate via teleconference at one of the meeting locations listed below or attend at NCPA Headquarters. In either case, please: (1) post this Agenda at a publicly accessible location at the participation location no later than 24-hours before the meeting begins, and (2) have a speaker phone available for any member of the public who may wish to attend at your location.\*\***

## NCPA, 651 Commerce Drive, Roseville, CA 95678 (916) 781-3636

ALAMEDA MUNICIPAL PWR 2000 Grand St., Alameda, CA	BAY AREA RAPID TRANSIT 2150 Webster Street, 1 <sup>st</sup> Floor, Oakland, CA	CITY OF BIGGS 3016 Sixth Street, Biggs, CA
CITY OF GRIDLEY 685 Kentucky Street, Gridley, CA	CITY OF HEALDSBURG 401 Grove Street, Healdsburg, CA	CITY OF LODI 1331 S. Ham Lane, Lodi, CA
CITY OF LODI 221 W. Pine Street, Lodi, CA	CITY OF LOMPOC 100 Civic Ctr. Plaza, Lompoc, CA	CITY OF PALO ALTO 250 Hamilton Avenue, 3 <sup>rd</sup> Floor Palo Alto, CA
PLUMAS-SIERRA REC 3524 Mulholland Way, Sacramento CA	PORT OF OAKLAND 530 Water Street, Oakland, CA	CITY OF REDDING 3611 Avtech Pkwy., Redding, CA
CITY OF ROSEVILLE 2090 Hilltop Circle, Roseville, CA	CITY OF SHASTA LAKE 3570 Iron Court, Shasta Lake, CA	SILICON VALLEY POWER 881 Martin Ave., Santa Clara, CA
TURLOCK IRRIGATION DISTRICT 333 E. Canal Drive, Turlock, CA	CITY OF UKIAH 411 W. Clay St., Ukiah, CA	

*The Facilities or Finance (Committee) may take action on any of the items listed on this Agenda regardless of whether the matter is described as an Action Item, or an Informational Item. This agenda is often supplemented by various documents which are available to the public upon request. Pursuant to Government Code Section 54957.5, the following is the location at which the public can view agendas and other public writings: NCPA Offices, 651 Commerce Drive, Roseville, California, or [www.ncpa.com](http://www.ncpa.com).*

*Persons requiring accommodation in accordance with the Americans with Disabilities Act in order to attend or participate in this meeting are requested to contact the NCPA Secretary at 916.781.3636 in advance of the meeting to arrange for such accommodations.*

## REVIEW SAFETY PROCEDURES

### 1. Call Meeting to Order and Roll Call

#### **PUBLIC FORUM**

Any member of the public who wishes to address the Committee on matters not on the Agenda, but within the subject matter jurisdiction of the Committee, or any member of the public who desires to address the Committee on any item considered by the Committee at this meeting before or during the Committee's consideration of that item, shall so advise the Chair and shall thereupon be given an opportunity to do so.

#### **OPEN SESSION**

#### **DISCUSSION/ACTION ITEMS**

2. **All NCPA Facilities, Members, SCPPA – NovaSync MTPSA** – Staff is seeking a recommendation for Commission approval of a five-year Multi-Task Professional Services Agreement with NovaSync, for cyber security maturity improvement and risk assessment software development services, with a not to exceed amount of \$2,000,000, and delegating authority to the General Manager or his designee to execute any pass through cyber security grant related agreements with APPA and DOE, for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members. All purchase orders will be issued following NCPA procurement policies and procedures. *(Commission Category: Discussion/Action; Sponsor: Compliance)*
3. **Grace Solar PPA and Third Phase Agreement** – Staff is seeking a recommendation for Commission approval of (i) the Grace Solar Renewable Power Purchase Agreement, and (ii) the Grace Solar Renewable Power Purchase Agreement Third Phase Agreement. *(Commission Category: Discussion/Action; Sponsor: Power Management)*

#### **ADJOURNMENT**

SS/cp



# Commission Staff Report

**COMMISSION MEETING DATE:** April 25, 2024

**SUBJECT:** NovaSync – Five Year Multi-Task Professional Services Agreement for cyber security maturity improvement and risk assessment software development services; Applicable to the following: All Northern California Power Agency (NCPA) Facilities (except the Lodi Energy Center), NCPA Members, Southern California Public Power Authority (SCPPA), and SCPPA Members

**AGENDA CATEGORY:** Consent

<b>FROM:</b>	Marty Hostler	<b>METHOD OF SELECTION:</b>
	Compliance Manager	N/A
Division:	Executive Services	<i>If other, please describe:</i>
Department:	Compliance	

<b>IMPACTED MEMBERS:</b>		
All Members	<input checked="" type="checkbox"/>	
Alameda Municipal Power	<input type="checkbox"/>	City of Lodi <input type="checkbox"/>
San Francisco Bay Area Rapid Transit	<input type="checkbox"/>	City of Shasta Lake <input type="checkbox"/>
City of Biggs	<input type="checkbox"/>	City of Lompoc <input type="checkbox"/>
City of Gridley	<input type="checkbox"/>	City of Palo Alto <input type="checkbox"/>
City of Healdsburg	<input type="checkbox"/>	City of Redding <input type="checkbox"/>
		City of Roseville <input type="checkbox"/>
		City of Santa Clara <input type="checkbox"/>
		City of Ukiah <input type="checkbox"/>
		Plumas-Sierra REC <input type="checkbox"/>
		Port of Oakland <input type="checkbox"/>
		Truckee Donner PUD <input type="checkbox"/>
		Other <input type="checkbox"/>
<i>If other, please specify</i>		
_____		
_____		

## **RECOMMENDATION:**

Approve Resolution 24-XX authorizing the General Manager or his designee to enter into a Five-Year Multi-Task Professional Services Agreement with NovaSync for cyber security maturity improvement and risk assessment software development services, with any non-substantial changes recommended and approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members, and delegating authority to the General Manager or his designee to execute any pass through cyber security grant related agreements with APPA and DOE.

## **BACKGROUND:**

Software Development Services are required from time to time for the operation and maintenance of facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members.

NovaSync was the successful bidder on a recent solicitation for NCPA Cyber Security Maturity Improvement and Risk Assessment Software Development Services at NCPA Headquarters and the NCPA Disaster Recovery Center. NCPA desires to enter into this agreement so established terms and conditions are in place should this vendor be the successful bidder on this and future projects.

NCPA does not have any agreements in place for similar services with additional vendors at this time.

## **FISCAL IMPACT:**

Upon execution, the total cost of the agreement is not to exceed \$2,000,000 over five years. Purchase orders referencing the terms and conditions of the agreement will be issued following NCPA procurement policies and procedures.

## **SELECTION PROCESS:**

Two vendors were selected as a result of a Request for Proposal (RFP) process in accordance with NCPA's procurement policies and procedures. A total of three responses were received and evaluated based on: 1) Price, 2) Compliance with NCPA's RFP requirements, 3) Proposed product delivery schedule, and 4) Product features. The selection process was completed by NCPA NERC compliance and Information Services Staff.

This enabling agreement does not commit NCPA to any expenditure of funds. NCPA will issue purchase orders based on cost and availability of the services needed at the time the service is required. This enabling agreement is also APPA and DOE grant funded.

## **ENVIRONMENTAL ANALYSIS:**

This activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 of the California Environmental Quality Act. No environmental review is necessary.

**COMMITTEE REVIEW:**

AFTER FACILITIES APPROVAL: On April 15, 2024 the Facilities Committee reviewed and endorsed the recommendation above for Commission approval.

Respectfully submitted,

RANDY S. HOWARD  
General Manager

Attachments (2):

- Resolution 24-XX
- Five-Year Multi-Task Professional Services Agreement with NovaSync

DRAFT

**RESOLUTION 24-XX**

**RESOLUTION OF THE NORTHERN CALIFORNIA POWER AGENCY  
APPROVING A MULTI TASK PROFESSIONAL SERVICES AGREEMENT WITH NOVASYNC**

**(reference Staff Report #XXX:24)**

WHEREAS, software Development Services are required from time to time for the operation and maintenance of facilities owned and/or operated by the Northern California Power Agency (NCPA), NCPA Members, by the Southern California Public Power Authority (SCPPA), and SCPPA Members; and

WHEREAS, NovaSync is a provider of these services; and

WHEREAS, NovaSync was the successful bidder on a recent solicitation for NCPA Cyber Security Maturity Improvement and Risk Assessment Software Development Services at NCPA Headquarters and the NCPA Disaster Recovery Center; and

WHEREAS, the NCPA Commission has reviewed the Five-Year Multi-Task Professional Services Agreement with NovaSync to provide such services as needed at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members; and

WHEREAS, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a "project" for purposes of Section 21065 of the California Environmental Quality Act. No environmental review is necessary; and

NOW, THEREFORE BE IT RESOLVED, that the Commission of the Northern California Power Agency authorizes the General Manager or his designee to enter into a Five-Year Multi-Task Professional Services Agreement with NovaSync, with any non-substantial changes as approved by the NCPA General Counsel, which shall not exceed \$2,000,000 over five years, for use at any facilities owned and/or operated by NCPA, NCPA Members, by SCPPA, and SCPPA Members, and delegating authority to the General Manager or his designee to execute any pass through cyber security grant related agreements with APPA and DOE.

PASSED, ADOPTED and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2024 by the following vote on roll call:

	<u>Vote</u>	<u>Abstained</u>	<u>Absent</u>
Alameda	_____	_____	_____
San Francisco BART	_____	_____	_____
Biggs	_____	_____	_____
Gridley	_____	_____	_____
Healdsburg	_____	_____	_____
Lodi	_____	_____	_____
Lompoc	_____	_____	_____
Palo Alto	_____	_____	_____
Port of Oakland	_____	_____	_____
Redding	_____	_____	_____
Roseville	_____	_____	_____
Santa Clara	_____	_____	_____
Shasta Lake	_____	_____	_____
Truckee Donner	_____	_____	_____
Ukiah	_____	_____	_____
Plumas-Sierra	_____	_____	_____

\_\_\_\_\_  
JERRY SERVENTI  
CHAIR

ATTEST: \_\_\_\_\_  
ASSISTANT SECRETARY

**MULTI-TASK PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE NORTHERN CALIFORNIA POWER AGENCY AND  
NOVASYNC**

This Professional Services Agreement ("Agreement") is made by and between the Northern California Power Agency, a joint powers agency with its main office located at 651 Commerce Drive, Roseville, CA 95678-6420 ("Agency") and NovaSync, a corporation, with its office located at 250 W Center Street, Suite 111, Provo, UT 84601 ("Consultant") (together sometimes referred to as the "Parties") as of \_\_\_\_\_, 2024 ("Effective Date") in Roseville, California.

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Agency the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein ("Services"), at the time and place and in the manner specified therein.

- 1.1 Term of Agreement.** The term of this Agreement shall begin on the Effective Date and shall end when Consultant completes the Services, or no later than five (5) years from the date this Agreement was signed by Agency, whichever is shorter, unless the term of the Agreement is otherwise terminated or modified, as provided for herein. The Parties may elect to amend the Agreement to extend the five-year term for one additional five-year term, as mutually agreed.
- 1.2 Standard of Performance.** Consultant shall perform the Services in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and for which Consultant is providing the Services. Consultant represents that it is licensed, qualified and experienced to provide the Services set forth herein.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel.
- 1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform the Services. In the event that Agency, in its sole discretion, at any time during the term of this Agreement, requests the reassignment of any such personnel, Consultant shall, immediately upon receiving written notice from Agency of such request, reassign such personnel. Consultant shall ensure all personnel assigned to perform the Services meet and follow the requirements specified below for unescorted physical or electronic access:
- Complete a Personnel Risk Assessment, provided by the Consultant, comprised of the following: 1) verification of identification, (2) criminal history reference check for the previous seven (7) years, and 3) written confirmation that the results of the criminal history reference check are within the acceptance criteria defined by Agency and included in Exhibit C, and



- Complete an initial security training and annual training thereafter, both of which will be provided by Agency.

Consultant shall notify Agency within 24 hours of voluntary separation or termination of one of its personnel who has been granted unescorted physical or electronic access to Agency facilities or systems. And, Consultant shall notify the Agency within 24 hours of any lost or stolen Agency issued badges or electronic access authenticators. Failure to timely notify Agency of voluntary termination or separation, or loss of access badge or authenticator may be considered by Agency as Consultant breach of this Agreement allowing Agency to immediately terminate this Agreement without liability to Agency.

- 1.4 Services Provided.** Services provided under this Agreement by Consultant may include Services directly to the Agency or, as requested by the Agency and consistent with the terms of this Agreement, to Agency members, Southern California Public Power Authority ("SCPPA") or SCPPA members.
- 1.5 Request for Services to be Performed.** At such time that Agency determines to use Consultant's Services under this Agreement, Agency shall issue a Purchase Order. The Purchase Order shall identify the specific services to be performed ("Requested Services"), may include a not-to-exceed monetary cap on Requested Services and expenditures authorized by that Purchase Order, and a time by which the Requested Services shall be completed. Consultant shall have seven calendar days from the date of the Agency's issuance of the Purchase Order in which to respond in writing that Consultant chooses not to perform the Requested Services. If Consultant agrees to perform the Requested Services, begins to perform the Requested Services or does not respond within the seven-day period specified, then Consultant will have agreed to perform the Requested Services on the terms set forth in the Purchase Order, this Agreement and its Exhibits.
- 1.6 Changes in Name, Ownership, or Control.** Consultant shall notify the Agency in writing of any change in name, ownership or control of Consultant's [proprietorship/partnership/corporation] or of any subcontractor. Change of ownership or control of Consultant's [proprietorship/partnership/corporation] shall require an amendment to the Agreement.

**Section 2.** **COMPENSATION.** Agency hereby agrees to pay Consultant an amount **NOT TO EXCEED TWO MILLION DOLLARS (\$2,000,000)** for the Services, which shall include all fees, costs, expenses and other reimbursables, as set forth in Consultant's fee schedule, attached hereto and incorporated herein as Exhibit B. This dollar amount is not a guarantee that Agency will pay that full amount to the Consultant, but is merely a limit of potential Agency expenditures under this Agreement.

- 2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- Services performed;
- The Purchase Order number authorizing the Services;
- At Agency's option, the total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder; and
- At Agency's option, when the Consultant's Scope of Work identifies tasks, for each work item in each task, a copy of the applicable time entries showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense, with supporting documentation, to Agency's reasonable satisfaction.

Invoices shall be sent to:

Northern California Power Agency  
 651 Commerce Drive  
 Roseville, California 95678  
 Attn: Accounts Payable  
[AcctsPayable@ncpa.com](mailto:AcctsPayable@ncpa.com)

- 2.2 Monthly Payment.** Agency shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Agency shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. Agency shall pay a two percent (2%) fee if Consultant is not paid within ninety (90) days from receipt of an undisputed invoice.
- 2.3 Payment of Taxes.** Consultant is solely responsible for the payment of all federal, state and local taxes, including employment taxes, incurred under this Agreement.
- 2.4 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of a Purchase Order from the Contract Administrator.
- 2.5 Timing for Submittal of Final Invoice.** Consultant shall have ninety (90) days after completion of its Services to submit its final invoice. In the event Consultant fails to submit an invoice to Agency for any amounts due within the ninety (90) day period, Consultant is deemed to have waived its right to collect its final payment from Agency.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the Services, except for Agency shall provide and maintain server equipment and licensing needed to host Consultant software on-premise.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, shall procure the types and amounts of insurance listed below with insurance companies having an A.M. Best rating of A/VIII or better, or otherwise acceptable to Agency. Consultant shall maintain the types and amounts of

insurance listed below for the period covered by this Agreement, unless otherwise specified below.

#### **4.1 All Policies Requirements.**

- 4.1.1 Additional Insured.** Agency shall be included as additional insureds on each of the Consultant's policies except for Workers' Compensation and Professional Liability. The additional insured protection for the commercial general liability and umbrella/excess liability shall include both ongoing and completed operations coverage. Additional insured coverage shall not be limited to the minimum amounts of insurance required by written agreement and shall extend through the expiration of all applicable statutes of limitation and statutes of repose.
- 4.1.2 Primary/Non-Contributory.** Consultant's insurance coverage shall be primary and any insurance or self-insurance of Agency shall be excess and non-contributory to Consultant's coverage.
- 4.1.3 Severability of Interests.** All Consultant policies shall provide, or be endorsed to include, a severability of interests provision. There shall be no exclusion for cross liability.
- 4.1.4 Deductibles.** Any deductibles or self-insured retentions in excess of \$250,000 shall be subject to prior review and approval by Agency at Agency's sole discretion. If approved by Agency, such approval shall be in writing. Consultant is responsible for payment of all deductibles and self-insured retentions.
- 4.1.5 Verification of coverage.** Prior to beginning any work under this Agreement, 5 business days prior to insurance coverage renewals, and upon Agency's written request, Consultant shall provide Agency with (1) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (2) waiver of subrogation, additional insured and primary/non-contributory policy endorsements. Agency's review of coverage does not relieve Consultant of the requirements of Section 4.

The failure of Agency to identify any deficiencies in the certificate(s) or endorsement(s) provided by Consultant shall not be construed as acceptance of the noncompliant coverage nor a waiver of Consultant's obligation to maintain coverage compliant with the requirements set forth herein. Agency does not represent or warrant that coverage and limits will be adequate to protect Consultant from loss, and such coverage and limits required herein shall not be deemed a limitation on Consultant's liability under this Agreement. Agency has not waived, and is not estopped from asserting against Consultant, any claim or claims alleging Consultant's breach of any of its insurance procurement or maintenance obligations.

Furthermore, Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, Agency may either (i) immediately terminate this Agreement, or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense. Agency reserves the right to obtain a full certified copy of any insurance policy endorsement. Failure to exercise this right shall not constitute a waiver of the right to exercise later.

**4.1.6 Notice of Reduction in or Cancellation of Coverage.** Consultant shall provide at least thirty (30) days prior written notice to Agency of any reduction in scope or amount, cancellation, or modification adverse to Agency of the policies referenced in Section 4.

**4.1.7 Higher Limits.** If Consultant maintains higher limits than the minimums specified herein, the Agency shall be entitled to coverage for the higher limits maintained by the Consultant.

**4.1.8 Additional Certificates and Endorsements.** If Consultant performs Work for Agency members, SCPPA and/or SCPPA members pursuant to this Agreement, Consultant shall provide the certificates of insurance and policy endorsements, as referenced in Section 4.1.5, naming the specific Agency member, SCPPA and/or SCPPA member for which the Work is to be performed.

**4.1.9 Waiver of Subrogation.** Consultant agrees to waive, and shall cause all of its insurers and subcontractors to waive, all rights of subrogation and set-off against Agency. All insurance policies shall be endorsed to provide such waivers of subrogation.

**4.2 Consultant's Obligation.** Consultant shall be solely responsible for ensuring that all equipment, vehicles and other items utilized in the performance of Work are operated, provided or otherwise utilized in a manner that ensures they are and remain covered by the policies referenced in Section 4 during this Agreement. Consultant shall also ensure that all workers involved in the provision of Work are properly classified as employees, agents or independent contractors and are and remain covered by any and all workers' compensation insurance required by applicable law during this Agreement.

**4.3 Workers' Compensation & Employer's Liability Insurance.** If Consultant employs any person, Consultant shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance in compliance with all applicable federal, state and local laws, regulations and statutes, for any and all persons employed directly or indirectly by Consultant. Consultant shall maintain Employer's Liability insurance with limits of not less than one million dollars (\$1,000,000.00) for bodily injury by per accident, \$1,000,000 for bodily injury by disease (each employee), \$1,000,000 for bodily injury by disease (policy limit). When applicable, an alternate employer endorsement shall be endorsed to the Workers' Compensation coverage naming Agency as an alternate employer.

- 4.4 Commercial General Liability Insurance.** Consultant shall maintain commercial general liability insurance with limits no less than \$2,000,000 per occurrence, \$2,000,000 in the aggregate written on an occurrence ISO Form CG 00 01 04 13, or other equivalent form acceptable to Agency. Aggregate limits shall apply on a per project or per location basis. Products-completed operations coverage shall apply through the expiration of all applicable statutes of limitation and statutes of repose. Such coverage shall include, with no sublimit or exclusion: broad form third party bodily injury, including death; broad form property damage, including loss of use thereof; premises & operations; contractual liability, including tort liability of another assumed in a written agreement; liability for work within 50 feet of a railroad or railroad right of way; independent contractors; sudden & accidental pollution liability; wildfire liability, including suppression costs; fire, explosion and underground damage (XCU coverage); and include defense coverage outside the limits.
- 4.5. Business Automobile Liability.** Not applicable.
- 4.6 Professional Liability Insurance.** Consultant shall maintain professional liability insurance appropriate to Consultant's profession performing services in connection with this Agreement in an amount not less than \$2,000,000 per claim and in the aggregate for liability arising out of negligent acts, errors or omissions or willful misconduct in the performance of the Services including coverage for bodily injury, property damage and consequential financial loss. If coverage is on a "claims made" form, the retroactive date shall precede the commencement of any Work under this agreement. Coverage must be maintained, or an extended reporting period must be purchased, for a minimum of three (3) years following completion of all Services.
- 4.7 Umbrella/Excess Liability Insurance.** Consultant may use Umbrella or Excess policies to provide the coverage amounts required by this Agreement. Umbrella or Excess policies are acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability and/or Automobile insurance. No insurance policies maintained by the Agency, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Consultant's primary and excess liability policies are exhausted.

Consultant shall maintain umbrella/excess liability insurance on a follow-form basis, including drop down coverage, with limits no less than \$5,000,000 per occurrence/aggregate. Such coverage shall be on an occurrence form and shall provide coverage in excess of the Employer's Liability, Commercial General Liability, and Automobile Liability insurance. Such coverage shall not contain any endorsements that restrict the underlying policies or exclude cross liability.

- 4.8 **Cyber Risk Liability.** Consultant shall maintain cyber risk liability insurance with an aggregate limit of not less than \$5,000,000. Such insurance shall cover any and all errors, omissions or negligent acts arising in or connected with the performance of the Scope of Work under this Agreement. Such cyber risk liability insurance shall include, but not be limited to, coverage of claims and losses with respect to network risks (such as data breaches, unauthorized access/use, ID theft, invasion of privacy, damage/loss/theft of data, degradation, downtime, spread of virus, denial of service, etc.), failure to supply, and intellectual property infringement (such as copyrights, trademarks, service marks and trade dress). No exclusions shall be listed within the policy for unencrypted, media or portable devices. Notwithstanding any other provision of this Agreement, if coverage is provided on a claims-made form, Consultant shall purchase and maintain a two-year extended reporting period coverage following termination of this Agreement only in the event that the policy is canceled or non-renewed.

## **Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

- 5.1 **Effect of Insurance.** Agency's acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.
- 5.2 **Scope.** Consultant shall indemnify, defend with counsel reasonably acceptable to the Agency, and hold harmless the Agency and its officials, commissioners, officers, employees, and volunteers from and against any and all claims to the extent that the claims arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Consultant in its performance of Services under this Agreement. Consultant shall bear all losses, costs, damages, expense and liability of every kind, nature and description to the extent that they arise out of, pertain to, or relate to such claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the Agency shall not apply to the extent that such Liabilities are caused by the negligence, active negligence, or willful misconduct of the Agency. This indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct by the Agency, its officers, official employees, and volunteers. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of the Agency, then Consultant's indemnification and defense obligations shall be reduced in proportion to the established comparative liability of the Agency and shall not exceed the Consultant's proportionate percentage of fault.

As respects all acts or omissions which do not arise directly out of the performance of design professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, and to the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the Agency, its officers, officials, agents, employees, and

volunteers from and against any claims, demands, losses, liability of any kind or nature (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees) where the same arise out of, are in connection with, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant, excepting those which arise out of the active negligence, sole negligence or willful misconduct of the Agency, its officers, officials, employees and volunteers.

- 5.3 Offset Compensation.** Agency shall have the right to offset against any compensation due Consultant under this Agreement any amount due Agency from Consultant as a result of Consultant's failure to pay Agency promptly any indemnification arising under this Section 5 of this Agreement and any amount due Agency from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

## **Section 6. STATUS OF CONSULTANT.**

- 6.1 Independent Contractor.** Consultant is an independent contractor and not an employee of Agency. Agency shall have the right to control Consultant only insofar as the results of Consultant's Services and assignment of personnel pursuant to Section 1; otherwise, Agency shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other Agency, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Agency, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Agency and entitlement to any contribution to be paid by Agency for employer contributions and/or employee contributions for PERS benefits.

Consultant shall indemnify, defend, and hold harmless Agency for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Agency. Consultant and Agency acknowledge and agree that compensation paid by Agency to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services, including salaries and benefits of employees, agents and subcontractors of Consultant.

Consultant shall indemnify, defend, and hold harmless Agency from any lawsuit, administrative action, or other claim for penalties, losses, costs, damages,

expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such claims, whether directly or indirectly, due to Consultant's failure to secure workers' compensation insurance for its employees, agents, or subcontractors.

Consultant agrees that it is responsible for the provision of group healthcare benefits to its fulltime employees under 26 U.S.C. § 4980H of the Affordable Care Act. To the extent permitted by law, Consultant shall indemnify, defend and hold harmless Agency from any penalty issued to Agency under the Affordable Care Act resulting from the performance of the Services by any employee, agent, or subcontractor of Consultant.

- 6.2 Consultant Not Agent.** Except as Agency may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Agency in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Agency to any obligation whatsoever.
- 6.3 Assignment and Subcontracting.** This Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique professional competence, experience, and specialized professional knowledge. A substantial inducement to Agency for entering into this Agreement was and is the personal reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Agency. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors identified in Exhibit A, without prior written approval of the Agency. Where written approval is granted by the Agency, Consultant shall supervise all work subcontracted by Consultant in performing the services and shall be responsible for all work performed by a subcontractor as if Consultant itself had performed such work. The subcontracting of any work to subcontractors shall not relieve Consultant from any of its obligations under this Agreement with respect to the services and Consultant is obligated to ensure that any and all subcontractors performing any services shall be fully insured in all respects and to the same extent as set forth under Section 4, to Agency's satisfaction.
- 6.4 Certification as to California Energy Commission.** If requested by the Agency, Consultant shall, at the same time it executes this Agreement, execute Exhibit D.

## **Section 7. LEGAL REQUIREMENTS.**

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and its subcontractors and agents, if any, shall comply with all laws applicable to the performance of the work hereunder.



- 7.3 **Licenses and Permits.** Consultant represents and warrants to Agency that Consultant and its employees, agents, and subcontractors (if any) have and will maintain at their sole expense during the term of this Agreement all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice their respective professions.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** Agency may cancel this Agreement at any time and without cause upon ten (10) days prior written notice to Consultant.

In the event of termination, Consultant shall be entitled to compensation for Services satisfactorily completed as of the effective date of termination; Agency, however, may condition payment of such compensation upon Consultant delivering to Agency any or all records or documents, as referenced in Section 9.1 hereof.

- 8.2 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.3 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Agency and Consultant and pertaining to the handling and non-disclosure of confidential information shall survive the termination of this Agreement unless specifically provided otherwise in this Agreement.
- 8.4 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, including but not limited to those set forth in Section 4, Agency's remedies shall include, but not be limited to, the following:
- 8.4.1 Immediately terminate the Agreement;
  - 8.4.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
  - 8.4.3 Retain a different consultant to complete the Services not finished by Consultant; and/or
  - 8.4.4 Charge Consultant the difference between the costs to complete the Services that are unfinished at the time of breach and the amount that Agency would have paid Consultant pursuant hereto if Consultant had completed the Services.

## **Section 9. RECORDS, CONFIDENTIALITY, SECURITY AND NOTIFICATION.**

### **9.1 Keeping and Status of Records.**

- 9.1.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda,

plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement ("Agency Records") and that relate to the matters covered hereunder shall be the property of the Agency. Consultant hereby agrees to deliver those documents to the Agency upon termination of the Agreement. Agency and Consultant agree that, unless approved by Agency in writing, Consultant shall not release to any non-parties to this Agreement any data, plans, specifications, reports and other documents. Furthermore, Consultant shall not use Agency Records for any purpose other than to facilitate this Agreement.

**9.1.2 Consultant's Books and Records.** Consultant shall maintain any and all records or other documents evidencing or relating to charges for Work or expenditures and disbursements charged to the Agency under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant under this Agreement.

**9.1.3 Inspection and Audit of Records.** Any records or documents that this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Agency. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Agency or as part of any audit of the Agency, for a period of three (3) years after final payment under this Agreement.

## **9.2 Confidential Information and Disclosure.**

**9.2.1 Confidential Information.** The term "Confidential Information", as used herein, shall mean any and all confidential, dam safety, Critical Energy/Electrical Infrastructure Information (CEII)<sup>1</sup>, proprietary, proprietary, or trade secret information, whether written, recorded, electronic, oral or otherwise, where the Confidential Information is made

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<sup>1</sup> CEII is specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that:

1. Relates details about the production, generation, transmission, or distribution of energy;
2. Could be useful to a person planning an attack on critical infrastructure;
3. Is exempt from mandatory disclosure under the Freedom of Information Act; and
4. Gives strategic information beyond the location of the critical infrastructure.

*Critical energy/electric infrastructure* means a system or asset of the bulk-power system, (physical or virtual) the incapacity or destruction of which would negatively affect:

- national security,
- economic security,
- public health or safety, or
- any combination of such matters.

[\(Critical Energy/Electric Infrastructure Information \(CEII\) | Federal Energy Regulatory Commission \(ferc.gov\)\),](#)

available in a tangible medium of expression and marked in a prominent location as confidential, proprietary and/or trade secret information.

Confidential Information shall not include information that: (a) was already known to the Receiving Party or is otherwise a matter of public knowledge, (b) was disclosed to Receiving Party by a third party without violating any confidentiality agreement, (c) was independently developed by Receiving Party without reverse engineering, as evidenced by written records thereof, or (d) was not marked as Confidential Information in accordance with this section.

**9.2.2 Restricted Use of Confidential Information.** A party shall not use Confidential Information for any purpose other than to facilitate this Agreement

**9.2.3 Non-Disclosure of Confidential Information.** During the term of this Agreement, either party may disclose (the “Disclosing Party”) Confidential Information to the other party (the “Receiving Party”). The Receiving Party: (a) shall hold the Disclosing Party’s Confidential Information in confidence and with the same degree of care it uses to protect its own confidential information, but in no event using less than a reasonable standard of care; (b) shall not disclose Confidential Information to any employee or Consultant unless such person needs access in order to facilitate the Agreement,; and (c) shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Confidential Information.

**9.2.4 Permitted Disclosure.** Notwithstanding the foregoing, the following disclosures of Confidential Information are allowed. Receiving Party shall endeavor to provide prior written notice to Disclosing Party of any permitted disclosure made pursuant to Section 9.2.4.2 or 9.2.4.3. Disclosing Party may seek a protective order, including without limitation, a temporary restraining order to prevent or contest such permitted disclosure; provided, however, that Disclosing Party shall seek such remedies at its sole expense. Neither party shall have any liability for such permitted disclosures:

**9.2.4.1** Disclosure to employees, agents, Consultants, subcontractors or other representatives of Receiving Party that have a need to know in connection with this Agreement.

**9.2.4.2** Disclosure in response to a valid order of a court, government or regulatory agency or as may otherwise be required by law; and

**9.2.4.3** Disclosure by Agency in response to a request pursuant to the California Public Records Act.

**9.2.5 Handling of Confidential Information.** Upon conclusion or termination of the Agreement, Receiving Party shall return to Disclosing Party or destroy Confidential Information (including all copies thereof).

Notwithstanding the foregoing, the Receiving Party may retain copies of such Confidential Information, subject to the confidentiality provisions of this Agreement in files of Receiving Party's representatives where such copies are necessary to comply with applicable law.

### **9.2.6 Unauthorized Disclosure.**

**9.2.6.1 Security Breach.** Security Breach means (a) any actual or reasonably suspected unauthorized use of, loss of, access to or disclosure of Agency Records or Agency Confidential Information or (b) security breach (or substantially similar term) as defined with applicable law.

**9.2.6.2 Action Upon Unauthorized Disclosure.** If either party believes there has been a Security Breach, such party must notify the other party upon the earlier of forty-eight (48) hours after discovery or any timeframe required by applicable law unless legally prohibited from doing so. Each party will reasonably assist the other party in mitigating or remediating any potential damage where appropriate. Each party shall bear the costs of such remediation or mitigation to the extent the breach or security incident was caused by it or if such part is the recipient of the Security Breach. As soon as reasonably practicable after any such Security Breach, Agency and Consultant will consult in good faith regarding the root cause analysis and any remediation efforts.

**9.3 Cyber Security.** Consultant agrees to abide by Agency's CIP-013<sup>2</sup> policies, processes, and procedures as outlined below for completing the Work. In addition, Consultant takes all responsibility and liability to ensure all Work is free from malicious code. Malicious code means viruses, worms, timebombs, trojan horses and other malicious code, files, scripts, agents or programs. In addition, Consultant shall take all of the following actions.

**9.3.1 Notification.** Consultant shall notify Agency of Consultant-identified incidents related to the Work provided to Agency that pose cyber security risk to Agency.

Consultant is required to notify Agency of all identified, threatened, attempted, or successful breaches or vulnerabilities of Consultant's products, software, systems, components, or services. Consultant's notification will also provide Agency with all known mitigations, controls, patches, components Agency can implement to prevent and/or correct the identified breach, issue, or incident.

Consultant shall provide all notifications to:

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<sup>2</sup>See North American Transmission Forum, NATF CIP 013 Implementation Guidance; Supply Chain Risk Management Plans (available at [natf-cip-013-implementation-guidance-supply-chain-risk-management-plans.pdf](https://www.natf.org/cip-013-implementation-guidance-supply-chain-risk-management-plans.pdf)).

Agency:  
Email: Support@ncpa.com

With a copy to:

Legal:  
Email: General.Counsel@ncpa.com

and

Contract Administrator  
Email: Randy.Howard@ncpa.com

**9.3.2 Coordination**. Consultant shall coordinate responses to Consultant-identified incidents related to the Work provided to Agency that pose cyber security risk to Agency.

As stated in Section 9.3.1, Consultant is required to notify Agency of any breaches or vulnerabilities related to Consultant's products or services. In the event Consultant's products or services pose a cyber security risk to Agency or otherwise cause a cyber security incident for Agency, Consultant is required to collaborate with Agency to mitigate and correct the cyber security risk, breach or vulnerability.

Consultant shall provide Agency with:

- List of Consultant's specific products or services at risk
- Precautions, mitigations, or controls to minimize risks
- Action plan to correct the risk
- Status reports (if risk is ongoing)
- Final resolution of issue

**9.3.3 Remote or Onsite Access**. Consultant shall notify Agency when remote or onsite access should no longer be granted to Consultant representatives.

Consultant will notify Agency within 24 hours:

- Consultant's employees, or Consultant's authorized subcontractors no longer require access.
- Consultant's employees, or Consultant's authorized subcontractors are no longer qualified to maintain access.
- Consultant's employees', or Consultant's authorized subcontractors' employment has ended or been terminated.

**9.3.4. Disclosure of Vulnerabilities.** Consultant shall promptly disclose known vulnerabilities related to the Work provided to Agency.

Consultant will provide Agency with summary documentation describing security breaches in Consultant's products or Consultant's supply chain impacting Agency's BES Cyber System. Consultant will also provide Agency with summary documentation describing any uncorrected security vulnerabilities.

Consultant's disclosure should be made to Agency within 48 hours of identifying the breach or vulnerability. The disclosure should include:

- Summary description of the breach or vulnerability
- Potential impact of the breach or vulnerability
- Root cause
- Corrective actions, compensating controls, mitigations, or other steps Agency should take as a result of the breach or vulnerability

**9.3.5 Integrity and Authenticity.** Consultant shall verify the integrity and authenticity of all software and patches provided by Consultant for use by Agency.

Consultant agrees to provide Agency with all software and firmware updates to remediate vulnerabilities or weaknesses. Upon execution of this Contract, Consultant will provide Agency with Consultant's patch management and update process and software delivery documentation. The documentation should include a description of how Agency will verify the authenticity of software and validate the integrity of all patches provided by Consultant.

Consultant will also provide Agency with Consultant's schedule for releasing software and patch updates. Consultant will provide Agency with instructions for applying, validating, and testing the updates and patches.

**9.3.6 Access Controls.** Consultant shall coordinate controls with Agency for (a) Consultant-initiated interactive remote access, and (b) system to system remote access.

If Consultant uses remote access, Consultant will provide Agency with the IP addresses, ports, and minimum privileges required to perform remote access services. Consultant agrees to use individual user accounts to limit access and permissions. Consultant also agrees to maintain Consultant's IT assets connecting to Agency's network with current updates to remediate vulnerabilities or weaknesses. Consultant and

Consultant's employees agree to not disclose or share account credentials, passwords, or established connections.

**Section 10. MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.
- 10.6 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Agency or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Agency official in the work performed pursuant to this Agreement. No officer or employee of Agency shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant represents that it has advised Agency in writing prior to the date of signing this Agreement of any known relationships with third parties, Agency members, or employees of Agency which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090 *et seq.*, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

**10.7 Contract Administrator.** This Agreement shall be administered by Randy S. Howard, General Manager, or his/her designee, ("Contract Administrator") who shall act as the Agency's representative. All correspondence shall be directed to or through the representative. Agency reserves the right to change this designation upon written notice to Consultant.

**10.8 Notices.** Any written notice to Consultant shall be sent to:

Brent Castagnetto, CISSP  
Vice President of Business Development  
250 W Center Street  
Suite 111  
Provo, UT 84601

Any written notice to Agency shall be sent to:

Randy S. Howard  
General Manager  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:

Jane E. Luckhardt  
General Counsel  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

**10.9 Professional Seal.** Where applicable in the determination of the Agency, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

**10.10 Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between Agency and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.

**10.11 Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Agency and Consultant agree to resolve the dispute in accordance with the following:

**10.11.1** Each party shall designate a senior management or executive level representative to negotiate any dispute;

**10.11.2** The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.



- 10.11.3** If the issue remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by negotiation between legal counsel. If the above process fails, the Parties shall resolve any remaining disputes through mediation to expedite the resolution of the dispute.
- 10.11.4** The mediation process shall provide for the selection within fifteen (15) days by both Parties of a disinterested third person as mediator, shall be commenced within thirty (30) days and shall be concluded within fifteen (15) days from the commencement of the mediation.
- 10.11.5** The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.
- 10.11.6** The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 *et seq.*
- 10.12 Controlling Provisions.** In the case of any conflict between the terms of this Agreement and the Exhibits hereto, a Purchase Order, or Consultant's Proposal (if any), the Agreement shall control. In the case of any conflict between the Exhibits hereto and a Purchase Order or the Consultant's Proposal, the Exhibits shall control. In the case of any conflict between the terms of a Purchase Order and the Consultant's Proposal, the Purchase Order shall control.
- 10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.
- 10.14 Construction of Agreement.** Each party hereto has had an equivalent opportunity to participate in the drafting of the Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting party shall not apply hereto.
- 10.15 No Third Party Beneficiaries.** This Agreement is made solely for the benefit of the parties hereto, with no intent to benefit any non-signator third parties. However, should Consultant provide services to an Agency member, SCPPA or SCPPA member (collectively for the purpose of this Section only "Member") pursuant to Section 1.4, the parties recognize that such Member may be a third-party beneficiary solely as to the Purchase Order and Requested Services relating to such Member.
- 10.16 Identity Information Protection.**
- 10.16.1.1 During the term of the Agreement the Consultant shall not collect, process or store any Private Information (PI) and Personally

Identifiable Information (PII), except the name and address of an individual.

10.16.1.2 Personal information (PI) is defined as an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number; (2) Driver's license number or California Identification Card number; (3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account,

"Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Personally Identifiable Information (PII), as used in information security, is information that can be used to uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify a single individual.

The Parties have executed this Agreement as of the date signed by the Agency.

NORTHERN CALIFORNIA POWER AGENCY

NOVASYNC

Date \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
**RANDY HOWARD**  
**GENERAL MANAGER**

\_\_\_\_\_  
**BRENT CASTAGNETTO**  
**VICE PRESIDENT OF BUSINESS**  
**DEVLEOPMENT**

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

\_\_\_\_\_  
Jane E. Luckhardt, General Counsel

## EXHIBIT A

### SCOPE OF SERVICES

Consultant shall provide the following Services as requested by the Northern California Power Agency (Agency) at any facilities owned or operated by the Agency, NCPA Members, Southern California Public Power Authority (SCPPA) or SCPPA Members, as follows:

#### **Task 1: Base Software Platform – Cyber Asset Management Software Programming Tool**

The Consultant shall supply NCPA with a Base Software Platform which will include programming necessary to mimic all CIP-002 requirements for low, medium, and high impact Cyber System and Cyber Assets. The Base Software Platform shall include all forms, reports, and dashboards associate with NERC Bulk Electric System (BES) Cyber Assets, Systems and Asset inventories. The Consultant shall input NCPA's existing Cyber Asset and System inventories in their platform and NCPA shall be able to amend them in the future.

This Programming Tool shall be capable of Categorizing BES Cyber Assets and Systems in accordance with the existing and future versions (via maintenance updates) of CIP-002.

#### **Task 2: Access and Identity Management Software Programming Tool**

The Consultant shall supply NCPA with an Access and Identity Management Software Programming Tool which shall include programming necessary to mimic all CIP-004, 5, and 6 Standards requirements associated with NERC requirements for Access and Identity Management and include all forms, reports, and dashboards associated with tracking and managing NCPA electronic and physical access.

The Consultant shall coordinate with NCPA to integrate the proposed solution(s) into NCPA's current Physical Access Controls systems to include:

- Data related to physical access permissions into restricted areas.
- Alert notifications for unauthorized attempts into restricted areas
- Reports detailing audit logs of all authorized and unauthorized ingress/egress attempts.

Software shall also:

- Track electronic and physical access.
- Be capable of provisioning Access and revocation.
- Integrate with the existing NCPA Lenel Physical Access Control System.
- Integrate with existing NCPA Active Directory electronic access system.
- Integrate or replace NCPA's system used to track and manage electronic access.
- Compare provisioned electronic and physical access, produce reports, and provide dashboards to ensure accurate access provisioning.
- Facilitate required quarterly and annual access reviews.

### **Task 3: CIP Security Patch and Change Management Software Programming Tool**

The Consultant shall supply NCPA a Security Patch and Change Management Software Programming Tool. This Programming Tool shall include programming necessary to mimic all CIP-007, 10, and 11 Patch and Change Management, and Information Protection Disposal requirements and include all forms, reports, and dashboards associated with these aforementioned Standards and their requirements. This includes creating the necessary approval workflows for common change requests including but not limited to; onboarding new assets/users, installation software/patches, permission, electronic access and terminations. The Software Programming Tool Shall integrate with NCPA's systems identified below and come with programming to allow NCPA to:

- Ivanti Security Controls patch management system.
  - Track its patch sources.
  - Identify applicable security patches.
  - Track patch application and/or patch mitigation plans.
- Baseline monitoring tool (CimTrak).
  - Produce simplified CIP baseline reports.
  - Include reports to be used during audit engagements.

### **Task 4: CIP Vulnerability Management Software Programming Tool**

The Consultant shall supply NCPA a CIP Vulnerability Management Software Programming Tool. This Programming Tool shall include programming to mimic all CIP-005, 7, and 10 Vulnerability Management requirements and include all forms, reports, and dashboards associated with these Standards and their requirements. The Programming Tool Shall integrate with NCPA's:

- Tenable scanning tools to detail and simplify compliance reporting.
- Allow NCPA to track and manage vulnerabilities and associated data.

### **Task 5: Internal Controls and Risk Management Programming Tool**

The Consultant shall supply NCPA an Internal Controls and Risk Management Program Tool. This Programming Tool shall include all forms, reports, and dashboards associated with all NERC CIP Standards, CIP-002 through 13, and their requirements. This Programming Tool shall include programming to mimic all CIP-002 through 13 requirements and include all forms, reports, and dashboards associated with these Standards and their requirements.

All programming shall produce specific document types that map to Standard Requirement's language. The Consultant shall use NCPA's existing Policies, Procedures, Processes, Programs, and Plans when developing Internal input templates/documents.

Programming shall be provided that will deliver risk and control calculations/scoring to ensure risks and controls are appropriately managed and tracked.

The Internal Controls Programming Tool, its inputs, and outputs shall ensure NERC/WECC auditors that NCPA has good Internal Controls in place to achieve NERC Compliance.

## **Task 6: SharePoint Integration and Exporting Software Programming Tool**

The Consultant shall supply NCPA a SharePoint Integration and Export Programming Tool, which shall:

- Include all data entered into all Software Programming Tools listed above.
- Be capable of locking data files in order to prevent data deletion, manipulation, and overwriting of data repositories.
- Transmit CIP baseline information from the Base Platform and/or each of the Software Programming Tools to the NCPA's MS SharePoint site.
- Schedule daily exports from all Software Programming Tools Data Base(s) and files listed in the Tasks (included in this RFP) to the NCPA MS SharePoint site.

## **Task 7: Software Programming Tool for Task Scheduling**

The Consultant shall supply NCPA a Task Scheduling Software Programming Tool. Which is capable of the following at a minimum.

- Capability to schedule recurring tasks and events to maintain compliance with all NERC CIP Standards.
- Scheduling all period tasks required in all CIP Standards requirements, i.e.
  - Patching, Categorization of Assets, Senior Manager Reviews, etc.
- Scheduling all event driven tasks required in all CIP Standard requirements, i.e.
  - Changing in Senior Manager, change/addition of Senior Manager delegate, exercising of recovery plan, lessons learned for Incident Response Drills, etc.
- Capability of allowing NCPA user added Tasks in addition to Standard Requirements for Quality Control, process improvement, and/or in general increased Cyber Security Maturity and Posture.

## **Task 8: Consultant-Led User Training**

The Consultant shall provide Consultant-Led User Training for all aforementioned Task One (1) through Seven (7). Responders to this RFP shall list the number of hours of Training for each Task in the Column on the Task Bid sheet Appendix B next to the specific Task. Additionally, a lump sum (assuming all Task One (1) through Eight (8) are procured) Training price and hours shall be listed on the Task Bid sheet in Appendix A next to Task Eight (8).

Training shall be recorded and recordings shall be provided to NCPA within two weeks after each training. The Consultant shall also provide an on-line user manual and power point handouts one-week prior to each training session.

Consultant shall spend time with Subject Matter Experts, Supervisors, and Managers for input and follow up questions and concerns prior to moving any Software Programming Tools from initial submittal to production mode.

Training can be done in-house at only NCPA Headquarters located at 653 Commerce Drive, Roseville, California 95747. Training may partially be conducted remotely, but no more than 50% of training may be conducted remotely.

### **Task 9: User Acceptance Testing and Year One (1) Maintenance Updates**

The Consultant shall provide NCPA Consultant Led User Acceptance Testing for the Base Platform and each Software Programming Tool. Afterward initial Consultant Led User Acceptance Testing the Consultant shall allow NCPA one month to test the Base Platform and each Software Programming Tool on their own without the need of the Consultant leading them or being on site. Note: Training for all Software Programming Tools does not need to be conducted at the same time. It can be done whenever a Software Programming Tool is available for Testing.

NCPA shall provide the Consultant a list of concerns within one five weeks of testing each Software Programming Tool. The Consultant shall make changes within two weeks of receipt of each list of concerns for each Tool. This process shall continue until NCPA is satisfied with the completed Task Number.

Additionally, the first years' maintenance period shall not commence until NCPA satisfactorily receives of all complete Task Numbers that are ready for production. The end of the first years' maintenance shall terminate 365-calendar-days after it commences.

### **Task 10: Year Two (2) through Ten (10) Maintenance Updates and Training**

The second years' maintenance period immediately commences following the day after the first years' maintenance period ends, and so forth for the third (3<sup>rd</sup>) through tenth (10<sup>th</sup>) years. Additionally, under this Task the Consultant shall provide NCPA personnel with training detailing what changes were made to each Base Software Platform and the all Software Programming Tools.

### **Task 11: Low-Impact Distribution Provider CIP and O&P Software Programming Tools**

The Consultant shall provide NCPA with cost proposals for NCPA/SCPPA member(s) that are NERC Registered as a DP. Cost proposals shall include Software Programming Tools for:

- NERC CIP-002 and 003 Standards and all O&P DP Standards.
- Data Repositories, Implementation, User Testing, Training, and Maintenance Fees.

### **Task 12: Low-Impact DP-UFLS Software Programming Tools**

The Consultant shall provide NCPA with cost proposals for NCPA/SCPPA member(s) that are NERC Registered as DP-UFLS. Cost proposals shall include Software Programming Tools for:

- All applicable standards required of DP-UFLS registered entities.
- Data Repositories, Implementation, User Testing, Training, and Maintenance Fees.

## EXHIBIT B

### COMPENSATION SCHEDULE AND HOURLY FEES

Compensation for all tasks, including hourly fees and expenses, shall not exceed \$2,000,000 subject to Section 2 of the Agreement. The hourly rates and or compensation break down and an estimated amount of expenses is as follows:

NOVASYNC SOFTWARE DEVELOPMENT IMPLEMENTATION COSTS FOR NCPA		
All pricing below includes User Acceptance Testing (UAT) and Training		
TASK	DESCRIPTION	COST
Asset Management Module	Deploy NCPA Asset Management Module	\$56,640
Access Management Module	Deploy Access Management Module	\$79,296
Patch & Change Management Module	Deploy Patch & Change Management Module	\$84,960
Vulnerability Management Module	Deploy Vulnerability Management Module	\$28,320
Internal Controls Module	Deploy Internal Controls Module	\$42,480
Integrate with MS SharePoint	Deploy MS SharePoint Integration (not needed if using NovaSync Data Repositories)	\$28,320
Task Scheduler Module	Deploy Task Scheduler Module	\$42,480
NERC CIP Data Repositories	Deploy NERC CIP Data Repositories	\$44,850
<b>TOTAL</b>		<b>\$407,346</b>

SOFTWARE DEVELOPMENT IMPLEMENTATION COSTS for NCPA & SCPPA MEMBERS		
TASK	DESCRIPTION	COST
CIP Low Impact Module	Deploy CIP Low Impact Module	\$30,000
NERC O&P Data Repositories (DP)	Deploy O&P Data Repositories	\$12,000
<b>TOTAL</b>		<b>\$42,000</b>

Pricing for services to be performed at NCPA Member or SCPPA locations will be quoted at the time services are requested.

#### NOTES:

- As a public agency, NCPA shall not reimburse Consultant for travel, food and related costs in excess of those permitted by the Internal Revenue Service. In addition, NCPA policies prohibit reimbursement for alcohol.
- NCPA does not pay for clerical, accounting, managerial, or other types of related overhead expenses.

**EXHIBIT C**

**CRIMINAL HISTORY ACCEPTANCE CRITERIA**

**CIP PERSONNEL RISK ASSESSMENT (PRA) EVALUATION CHECKLIST**

Vendors Name: \_\_\_\_\_  
Applicant's Name: \_\_\_\_\_  
Investigator's Name: \_\_\_\_\_  
Date: \_\_\_\_\_ Badge Number: \_\_\_\_\_

Consultant or Vendor       Self-Reported Arrest

---

**RISK ASSESSMENT DETAILS (Check Yes or No for each criteria)**

YES    NO

- Identity verification completed and approved.    Method Used: \_\_\_\_\_
  - Name and social security number correspond.
  - Pre-employment Background Investigation for previous 7 years completed and approved by the Vendor. No criminal history, or disposition of not guilty, not prosecuted, waived or dismissed.
  - Is the Vendor able to verify the nature or status of criminal history. If no, comment below.
  - Unresolved or outstanding warrant.
  - Potentially Disqualifying Misdemeanor* – Misdemeanor conviction or misdemeanor pending court adjudication or disposition for crime INVOLVING weapons, drugs, violence, theft, robbery, burglary, embezzlement, misappropriation, fraud, terrorist threats, or sabotage or sexual offenses, where the conviction date and any related term of imprisonment ended less than 7 years prior to background investigation application (describe in comments).
  - Felony conviction at any time or felony charge pending court adjudication or disposition.
- 

**EXHIBIT C (Continued)**

**CRIMINAL HISTORY ACCEPTANCE CRITERIA**



Comments/Notes (attach additional pages as needed):

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NCPA INTERNAL REVIEW

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

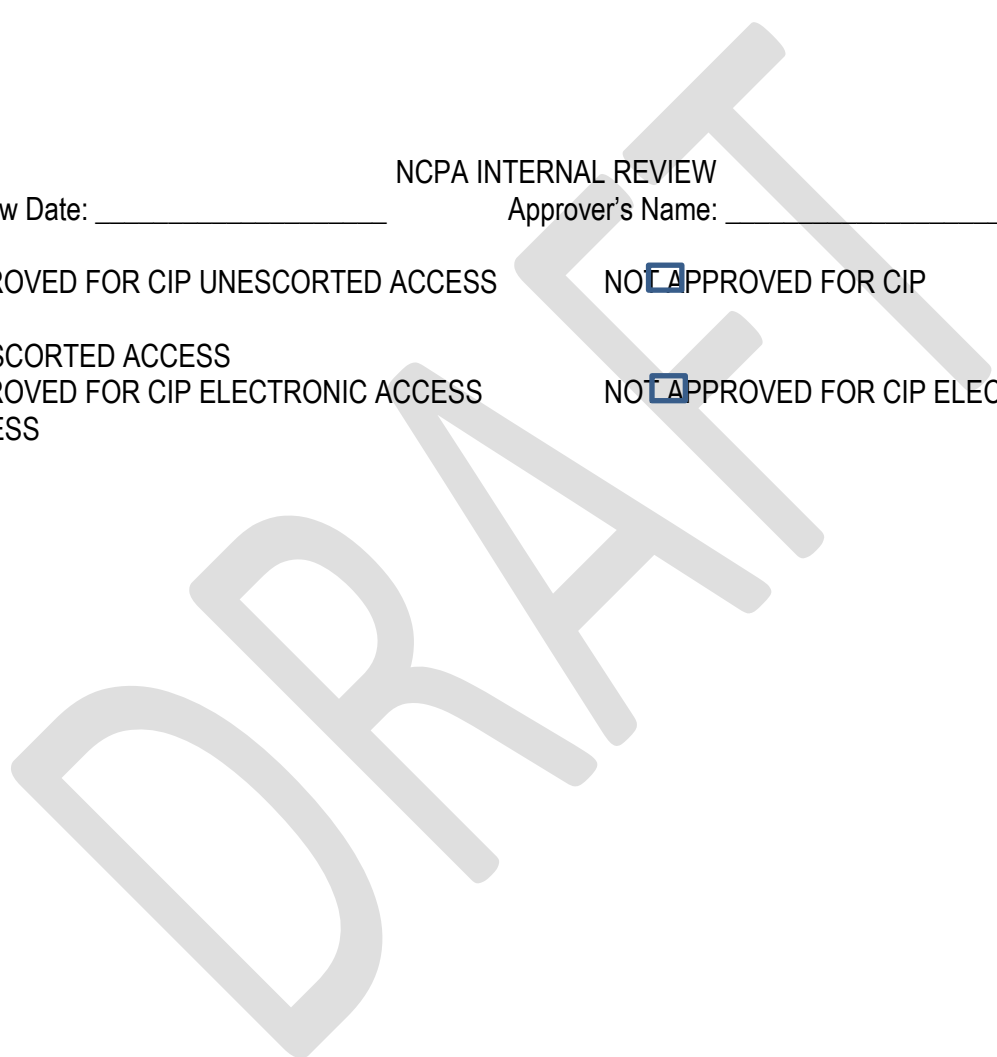
Approver's Name: \_\_\_\_\_

APPROVED FOR CIP UNESCORTED ACCESS

NO  APPROVED FOR CIP

UNESCORTED ACCESS  
APPROVED FOR CIP ELECTRONIC ACCESS  
ACCESS

NO  APPROVED FOR CIP ELECTRONIC  
ACCESS



**EXHIBIT D**

**CERTIFICATION**

**Affidavit of Compliance for Contractors**

I, \_\_\_\_\_

(Name of person signing affidavit) (Title)

do hereby certify that background investigations to ascertain the accuracy of the identity and employment history of all employees of

\_\_\_\_\_

(Company name)

for contract work at:

LODI ENERGY CENTER, 12745 N. THORNTON ROAD, LODI, CA 95242

(Project name and location)

have been conducted as required by the California Energy Commission Decision for the above-named project.

\_\_\_\_\_

(Signature of officer or agent)

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

THIS AFFIDAVIT OF COMPLIANCE SHALL BE APPENDED TO THE PROJECT SECURITY PLAN AND SHALL BE RETAINED AT ALL TIMES AT THE PROJECT SITE FOR REVIEW BY THE CALIFORNIA ENERGY COMMISSION COMPLIANCE PROJECT MANAGER.



**NovaSync**  
**Multi-Task Consulting Services Agreement**

Facilities Committee  
April 15, 2024

## Background

- NCPA issued a RFP for NCPA Cyber Security Maturity Improvement and Risk Assessment Software Development Services at NCPA Headquarters and the NCPA Disaster Recovery Center on January 31, 2024. NovaSync was the successful bidder.
- This is a new agreement with a new vendor.
- Enabling agreement. APPA/DOE Grant Funded.
- It is recommended to place this item on the consent calendar.
- For use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA and SCPPA Members.
- None of NCPA's current vendors provide services specific to the RFP.

## General Scope of Work

- Term of Agreement = 5 years, with right to exceed another 5-years, and the right to terminate the agreement
- Cost = Not to Exceed \$2,000,000
- Scope of Work: Develop the following software related to NERC CIP Compliance
  - Asset Management Module
  - Access Management Module
  - Patch and Change Management Module
  - Vulnerability Management Module
  - Internal Task Scheduler Module

## General Scope of Work

- Integration with SharePoint Module
- Data Repository Module
- User Acceptance Testing
- User Training
- Annual Service Maintenance
- Optional for NCPA Members that are Distribution Providers
  - CIP Low Impact Module
  - O&P Data Repositories

## **Environmental Analysis**

- As an enabling agreement, this activity would not result in a direct or reasonably foreseeable indirect change in the physical environment and is therefore not a “project” for purposes of Section 21065 the California Environmental Quality Act. No environmental review is necessary.

## Proposal

- Staff is seeking a recommendation from the Facilities Committee for Commission approval of the five year Multi-Task Consulting Services Agreement between NCPA and NovaSync in an amount not to exceed \$2,000,000 for use at all facilities owned and/or operated by NCPA, NCPA Members, SCPPA, and SCPPA Members.



# RENEWABLE POWER PURCHASE AGREEMENT

## COVER SHEET

**Seller:** Grace Orchard Energy Center, LLC, a Delaware limited liability company

**Buyer:** Northern California Power Agency, a joint powers agency of the State of California

**Description of Facility:** A 50 MW<sub>AC</sub> solar photovoltaic generating facility located in Riverside County, California, as further described in Exhibit A.

**Milestones:**

Milestone	Date for Completion
Evidence of Site Control	9/1/2025
Executed Interconnection Agreement	Completed
Guaranteed Construction Start Date	9/1/2026
Guaranteed Commercial Operation Date	12/1/2027

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

**Expected Energy:** The amount of Expected Energy is set forth below.

Contract Year	Expected Energy (MWh)
1	████████
2	████████
3	████████
4	████████
5	████████
6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████

13	[REDACTED]
14	[REDACTED]
15	[REDACTED]
16	[REDACTED]
17	[REDACTED]
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]

**Guaranteed Capacity:** 50 MW<sub>AC</sub>

**Dedicated Interconnection Capacity:** 50 MW<sub>AC</sub>

**Contract Price:**

Contract Year	Contract Price
1 – 20	[REDACTED]

**Product:**

- Facility Energy
- Green Attributes, including, but not limited to, Portfolio Content Category 1 Renewable Energy Credits

**Scheduling Coordinator:** Buyer or Buyer’s agent

**Development Security:** [REDACTED]

**Performance Security:** [REDACTED]

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2024 (the “**Effective Date**”), between Buyer and 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, 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.

“**Acceptable Issuer**” means a U.S. commercial bank, or a foreign bank with a U.S. branch, with such bank \_\_\_\_\_.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.9.

“**AD/CVD**” means antidumping and/or countervailing duty.

“**Adjusted Days of Liquidity on Hand**” or “**ADLH**” means the calculation below using figures and terms from Buyer’s Audited Financial Statements published on Buyer’s website:

$$\frac{(\text{Unrestricted Cash and Cash Equivalents} + \text{Unrestricted Investments})}{(\text{Total Operating Expenses} - \text{Other Third Party Operating Revenues} - \text{Depreciation and amortization})} / 365$$

“**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 Transfer” and “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. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include any investment funds or publicly-traded vehicles for the ownership of operating power generation, storage, or transmission assets (such as a “yield co”) controlled by Seller, NextEra Energy, Inc. or an Affiliate of NextEra Energy, Inc., NextEra Energy Partners, LP (“**NEP**”), NextEra Energy Operating Partners, LP (“**NEOP**”), and NextEra Energy Capital Holdings, Inc. (“**NEECH**”), and their respective direct or indirect subsidiaries.

“**After-Tax Basis**” means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the “Base Payment”), supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

“**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.

“**Approved Forecast Vendor**” means

[REDACTED]

“**Auxin Anti-Circumvention Proceeding**” means the DOC’s anti-circumvention investigation and proceeding concerning Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China, Petition filed February 8, 2022 by Auxin Solar, Inc. in four separate DOC dockets: A-570-979 Malaysia; Thailand; Cambodia; and Vietnam.

“**Available Generating Capacity**” means the capacity of the 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.

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

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

“**Buyer Bid Curtailment**” means the occurrence of both of the following:

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

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Facility, as the result of a Buyer instruction or lack of instruction to the SC:

(i) not having submitted a Self-Schedule or Energy Supply Bid for the MW subject to the reduction;

(ii) having submitted an Energy Supply Bid and the MW subject to the reduction were not awarded a schedule with respect to the Energy Supply Bid; or

(iii) having submitted a Self-Schedule for less than the full amount of Energy forecasted to be generated by or delivered from the Facility in accordance with Section 4.3(d).

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event, or Curtailment Order. For avoidance of doubt, if a Buyer Bid Curtailment and a CAISO system-wide overgeneration Curtailment Order occur in the same Settlement Interval or Settlement Period, the curtailment shall be treated as:

(i) a Buyer Bid Curtailment for the purpose of the calculation of Deemed Delivered Energy when there is a Negative LMP that is equal to or less than the Negative LMP Strike Price, or

(ii) a Curtailment Order for the purpose of the calculation of Deemed Delivery Energy when there is a Negative LMP that is greater than the Negative LMP Strike Price, subject to the following clarification, if Buyer or the SC (1) did not submit a Self-Schedule or Energy Supply Bid, or (2) failed to correctly submit or made an error with respect to a Self-Schedule or Energy Supply Bid, the curtailment shall be treated as a Buyer Bid Curtailment.

**“Buyer Curtailment Order”** means an instruction from Buyer to Seller to reduce Energy from the Facility by the amount, and for the period of time set forth in such instruction (which for avoidance of doubt and without limiting the generality of the foregoing may include a Buyer instruction to reduce Energy when there is a Negative LMP that is equal to or less than the Negative LMP Strike Price), for reasons unrelated to Energy that was not generated due to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) any other action or omission by Buyer (or its agents) including a Buyer Default hereunder which directly causes Seller to be unable to deliver Facility Energy to the Delivery Point; *provided*, the duration of any Buyer Curtailment Period shall be inclusive of the time required for the 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 4.7(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, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services, that comply with the CAISO Tariff, 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 Metered Entity”** has the meaning set forth in the CAISO Tariff.

**“CAISO Operating Order”** means the Operating Instruction or Dispatch Instruction, as each are defined in the CAISO Tariff.

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

**“California Renewables Portfolio Standard”** or **“California RPS Program”** or **“RPS”** means the “California Renewables Portfolio Standard” 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, including without limitation all applicable

eligibility criteria and requirements thereof and implemented under the Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities, as adopted by the CEC on December 22, 2020, and as may be amended from time to time.

**“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 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, California Public Resources Code §§ 21000, et seq. and Chapter 3 of Division 6 of Title 14 of the California Code of Regulations.

**“CEQA Completion Date”** has the meaning set forth in Section 2.7(b).

**“CEAQ Documents”** means an initial study and (as applicable) a negative declaration, environmental impact report or equivalent document relied upon by the lead agency in connection with the CEQA environmental review for the Facility.

**“Change in Law”** means the occurrence, after the Effective Date, of any of the following: (a) the adoption or implementation of any Law; (b) any change in any Law or in the administration, interpretation or application of any Law by any Governmental Authority; (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; (d) any change to a Resource Adequacy Ruling; (e) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CEC or the CPUC or its Energy Division, (f) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC, or (g) any change in STC REC-1, STC REC-2 or STC 6.

**“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; *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) shall be excluded from the total outstanding equity interests in Seller;

*provided further*, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

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

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

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

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

**“Commercial Operation Delay Damages”** means [REDACTED].

**“Compliance Actions”** has the meaning set forth in Section 3.9.

**“Compliance Costs”** has the meaning set forth in Section 3.9.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.9.

**“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.

**“Contract Term”** has the meaning set forth in Section 2.1(a).

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

**“Construction Start Delay Damages”** means [REDACTED].

**“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 or financed its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating this 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.

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

“**Credit Rating**” means,



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

- (a) CAISO orders, directs, alerts, or provides notice to a Party or the SC, including a CAISO Operating Order, 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; or
- (d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

For clarification, any notice, order, or instruction from the CAISO to curtail or reduce Facility Energy and/or the Facility that results from a Buyer Bid Curtailment or a Buyer Curtailment Order is not a Curtailment Order.

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

“**Damage Payment**” means [REDACTED]

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

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

“**Dedicated Interconnection Capacity**” means the maximum instantaneous amount of Facility Energy that is permitted to be delivered to the Delivery Point under the Interconnection Agreement, in the amount of MWs as set forth on the Cover Sheet

“**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall, for any time period, be equal to the difference between (a) the full amount of Energy forecasted to be produced by the Facility in accordance with Section 4.3(d) during a Buyer Curtailment Period, and any adjustments necessary to accurately reflect the Facility’s capacity to produce and deliver energy to the Delivery Point, including applicable losses and manufacturers’ applicable performance data, subject to Buyer’s verification not to be unreasonably withheld, *minus* (b) the amount of energy that the Facility produced and delivered to the Delivery Point during the Buyer Curtailment Period; *provided* that, if the applicable difference between the foregoing clauses (a) and (b) is negative, the Deemed Delivered Energy shall be zero (0). For the purpose of clarity, Deemed Delivered Energy does not include the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Curtailment Period.

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

“**Deficient Month**” has the meaning set forth in Section 4.7(e).

“**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 (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Disclosing Party**” has the meaning set forth in Section 18.1.

“**DOC**” means the U.S. Department of Commerce.

“**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 between the Facility and the Delivery Point, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

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

**“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 Facility.

**“Energy-Only Deliverability Status”** has the meaning set forth in the CAISO Tariff.

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

**“Estoppel Certificate”** has the meaning set forth in Section 14.2 and substantially in the form attached as Exhibit P.

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

**“Excess MWh”** has the meaning set forth in Exhibit C.

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

**“Expected Energy”** means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year or other time period in the quantity specified on the Cover Sheet.

**“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 (but excluding any Shared Facilities) required to deliver Energy to the Delivery Point.

**“Facility Energy”** means Energy delivered to the Delivery Point, 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 and is dedicated exclusively to the Facility.

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

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

“**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 Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event. For the purpose of clarity, a “Forced Facility Outage” is equivalent to a “Forced Outage” as such term is defined in the CAISO Tariff.

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

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

“**Future Environmental Attributes**” shall mean, except to the extent set forth in the last sentence of this definition, any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) which are newly recognized after the Effective Date 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 to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Renewable Energy Incentives including Tax Benefits including without limitation production tax credits or investment tax credits associated with the development, construction, operation or ownership 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, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

“**Gains**” means, with respect to any Non-Defaulting 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 Non-Defaulting 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.

**“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, and in Buyer’s case, its Participating Members as well.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its avoided emission of pollutants and displacement of conventional energy generation. Green Attributes include but are not limited to PCC1 Renewable Energy Credits, as well as: (1) any avoided emission 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 PCC1 Renewable Energy Credits or Green Tag Reporting Rights. Green Tags and PCC1 Renewable Energy Credits are accumulated on a MWh basis and one Green Tag or PCC 1 Renewable Energy Credit represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes as defined herein are limited to Green Attributes that exist under applicable Law as of the Effective Date. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Renewable Energy Incentives including Tax Benefits including without limitation production tax credits or investment tax credits associated with the development, construction, operation or ownership 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.

**“Green Tag Purchaser”** means Buyer.

**“Green Tag Reporting Rights”** means the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 16.5(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emission trading program, including pursuant to the WREGIS Operating Rules.

**“Guaranteed Capacity”** means the amount of generating capacity of the Facility, as measured in MW<sub>AC</sub> at the Delivery Point (i.e., measured at the Facility Meter as such meter

readings at the Facility Meter are adjusted by the CAISO for any applicable Electrical Losses and Station Use to the extent such Electrical Losses and Station Use are not already reflected in the Facility Meter measurements), set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5 of Exhibit B.

**“Guaranteed Commercial Operation Date”** has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

**“Guaranteed Construction Start Date”** has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

**“Guaranteed Energy Production”** means an amount of Adjusted Energy Production equal to [REDACTED] of the Expected Energy for the applicable Performance Measurement Period.

**“Guarantor”** means, with respect to Seller, (a) NextEra Energy Capital Holdings, Inc., (b) an Affiliate of Seller with an Investment Grade Credit Rating, or (c) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of [REDACTED], (iii) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) 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.

**“Independent Report”** has the meaning set forth in Section 2.5(b).

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

**“Installed Capacity”** means the actual generating capacity of the Facility, as measured in MW<sub>AC</sub> at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I hereto; *provided*, the Installed Capacity may not exceed the Guaranteed Capacity.

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

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

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

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

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

“**Investment Grade Credit Rating**” means a Credit Rating of [REDACTED]

“**ITC**” means the investment tax credit established pursuant to Section 48, 48E or other applicable provisions of the United States Internal Revenue Code of 1986, as in effect from time-to-time throughout the Contract Term or any successor provision.

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

“**Joint Powers Agreement**” means the Amended and Restated Northern California Power Agency Joint Exercise of Power Agreement dated as of January 31, 2008, as such agreement may be further amended or amended and restated from time to time, under which Buyer is organized as a Joint Powers Agency in accordance with the Joint Powers Act.

“**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 (a) providing senior or subordinated construction, interim, back leverage, mezzanine, 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 cash or 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 equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, or (d) acting as issuing bank for any Letter(s) of Credit issued pursuant hereto or in connection with the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit, issued by an Acceptable Issuer, in a form substantially similar to the letter of credit set forth in (a) Exhibit K if issued on behalf of Seller for the benefit of Buyer, and (b) Exhibit Q if issued on behalf of Buyer for the benefit of Seller, each as applicable.

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

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

“**Losses**” means, with respect to the Non-Defaulting 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 Non-Defaulting 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, as applicable, and must include the value of Green Attributes and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Section 4.6.

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

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

“**Meter Service Agreement for Metered Entities**” or “**MSA**” has the meaning set forth in the CAISO Tariff.

“**Milestones**” means the development activities for significant interconnection 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 successor.

“**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.

“**NEECH**” has the meaning set forth in the definition of Affiliate.

“**NEER**” means NextEra Energy Resources, LLC.

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

“**Negative LMP Strike Price**” means zero dollars per MWh (\$0/MWh), as such price may be revised by Buyer at its sole discretion (provided the revised price is less than or equal to Zero dollars (\$0)) by providing Notice to Seller in accordance with Exhibit C.

“**NEOP**” has the meaning set forth in the definition of Affiliate.

“**NEP**” has the meaning set forth in the definition of Affiliate.

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

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

“**New PV Trade Measure Event**” means any of the following events, during the period while the applicable ruling request, inquiry, rulemaking, or other filing or proceeding remains pending or subject to appeal before the DOC or other applicable Governmental Authority:

- i. Filing of any anti-circumvention ruling request alleging that manufacturers or importers are circumventing any AD/CVD orders on PV Equipment;
- ii. Initiation of any anti-circumvention inquiry into whether manufacturers or importers are circumventing any AD/CVD orders on PV Equipment or issuance in any such inquiry of any finding or ruling that manufacturers or importers are circumventing any AD/CVD orders on PV Equipment; or
- iii. Filing or initiation of any rulemakings, adjudications, or other proceedings to increase, extend, or expand application of, or impose any new, tariffs, duties (including but not limited to AD/CVD), or other trade measures, or issuance of any related determinations, orders, tariffs, duties, or trade measures, on PV Equipment.

For the avoidance of doubt, the Parties acknowledge that any of the following shall trigger the occurrence of a New PV Trade Measure Event with respect to the Auxin Anti-Circumvention Proceeding: (a) any legislative, judicial, or administrative challenge to, or withdrawal (in whole or in part) of, (I) that certain Declaration of Emergency and Authorization for Temporary Extensions of Time and Duty-Free Importation of Solar Cells and Modules from Southeast Asia, by the President of the United States, dated June 6, 2022, or supporting Presidential Determination Pursuant to Section 303 of the Defense Production Act, or (II) any implementation thereof by the DOC or other Governmental Authority, including through any rulemaking; or (b) any legislative, judicial, or administrative challenge that seeks to expand the scope of the DOC’s final affirmative circumvention determinations, as published on August 23, 2023 in 88 Fed. Reg. 57,419, to cover companies or activities excluded in such final affirmative determinations, or to narrow the scope of, or vacate or reverse, any negative circumvention determinations or guidance on avoiding circumvention in such published issuance.

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

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

“**Participating Generator Agreement**” has the meaning set forth in the CAISO Tariff.

“**Participating Member**” means a member of Buyer that is signatory to the Third Phase Agreement. As of the Effective Date, such Participating Members are \_\_\_\_\_; if the Participating Members change after the Effective Date, Buyer shall provide written notice to Seller confirming the then-current list of Participating Members that are signatory to the Third Phase Agreement, and such written notice shall not be considered to be an amendment to this Agreement.

“**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 Year periods during the Delivery Term, calculated on a non-rolling basis such that no Contract Year is included in more than one Performance Measurement Period. The first Performance Measurement Period shall include Contract Years 1 and 2. The second Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on.

“**Performance Security**” means (a) cash or (b) a Letter of Credit or (c) a Guaranty in the amount set forth on the Cover Sheet.

“**Permitted Transfer**” means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; provided (i)(A) Ultimate Parent retains the authority, directly or indirectly, to control the entity that is the Seller after such transactions, or (B) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility, and (ii) if such transactions transfer this Agreement to any entity other than the entity that is the Seller before such transactions (including transfers by operation of law pursuant to transactions in which Seller is not the surviving entity), the transferee (A) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (B) satisfies the Seller Development Security requirements and Performance Security requirements;

(b) A Change of Control of Ultimate Parent;

(c) Any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that does not result in the transfer of

ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender;

(e) An assignment of the Agreement, or the transfer of the Facility or the direct or indirect ownership of equity interests in Seller, to a Permitted Transferee; or

(f) A transfer of the Facility (or the direct or indirect ownership of equity interests in Seller) in connection with any of the following transfers: (i) all or substantially all of the assets of NEER, NEECH, or Ultimate Parent; (ii) all or substantially all of NEER's or Ultimate Parent's renewable energy generation portfolio; or (iii) all or substantially all of NEER's or Ultimate Parent's solar generation and/or energy storage portfolio; or (iv) the direct or indirect transfer of shares of, or equity interests in, Seller to a person in which, following the transfer, an Affiliate of NEER continues to hold an economic interest in the Facility; *provided*, that in the case of each of (i) through (iv) above: (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller credit security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

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

(i) A Tangible Net Worth of [REDACTED]

[REDACTED]; and

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

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include its Ultimate Parent, NEER, NEECH, NEOP, and NEP, and their respective direct or indirect subsidiaries.

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

**"Planned Outage"** means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.5(a). For the purpose of clarity, a "Planned Outage" is equivalent to a "Planned Outage" as such term is defined in the CAISO Tariff.

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

**“Portfolio”** means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that entails assets in the United States, that is pledged as collateral security in connection with a Portfolio Financing.

**“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 Financing”** means any equity (including tax equity) financings or debt transactions entered into by an Affiliate of Seller that is secured only by a Portfolio.

**“Portfolio Financing Entity”** means any Affiliate of Seller that enters into a tax equity transaction or incurs debt in connection with any Portfolio Financing.

**“Product”** has the meaning set forth on the Cover Sheet. For the purpose of clarity, Product shall include (i) Facility Energy, and (ii) Green Attributes, including, but not limited to, Portfolio Content Category 1 Renewable Energy Credits (in each case not to exceed the quantity of Facility Energy and associated Green Attributes available from the Installed Capacity).

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

**“Proposed Contract Price Increase”** has the meaning set forth in Section 2.5(b).

**“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 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 in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the applicable 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 or 45Y or other applicable provisions of the United States Internal Revenue Code of 1986, in effect at the time of the Effective Date.



**“PTC Amount”** means the amount, on a dollar per MWh basis, equal to the PTCs that Seller would have earned in respect of Facility Energy at the time, grossed up on an After-Tax Basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment, Buyer Curtailment Order, or any other action or omission by Buyer (or its agents) including a Buyer Default which causes Seller to be unable to deliver Facility Energy to the Delivery Point, with the applicable MWh figure to be calculated by reference to the amount of Deemed Delivered Energy.

**“PV Equipment”** means solar photovoltaic cells, modules, onboard sensors, control components, inverters, or any of their components.

**“Qualified Operator”** means Seller (either itself or through the engagement of an Affiliate) or an operator of photovoltaic solar generation facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated two (2) or more photovoltaic solar generation facilities, each having a nameplate capacity rating of twenty (20) MW or more, for not less than two (2) years.

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

**“Real-Time Forecast”** has the meaning set forth in 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.

**“Receiving Party”** has the meaning set forth in Section 18.1.

**“Recurring Certificate Transfer”** has the meaning set forth in Section 4.7(a).

**“Remedial Action Plan”** has the meaning set forth in Section 2.4.

**“Renewable Energy Credit”** or “**REC**” means a renewable energy credit as defined by and in accordance with Section 399.12(h) of the California Public Utilities Code, including the right to claim title to the Green Attributes attributable to the generation of electric generation from an Eligible Renewable Energy Resources, 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 production of electricity from, or the construction, operation or the ownership of, the Facility or any part thereof (including the Tax Benefits and other credits under Sections 38, 45, 45Y, 46, 48, and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American

Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute, or Future Environmental Attribute.

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

“**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.

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

“**Security Interest**” has the meaning set forth in Section 8.10.

“**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 4.7(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages; *provided*, that the Parties agree that the value of Green Attributes and Renewable Energy Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

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

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

“**Settlement Quality Meter Data**” 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 Affiliates and/or other third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

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

**“Site Control”** means that Seller or its Affiliate for the Delivery Term: (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.

**“SP-15”** means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

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

**“Station Use”** means:

(a) The Energy generated 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 generated by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

For the purpose of clarity Seller shall not use Energy generated by the Facility to charge a battery energy storage system and claim such as Station Use.

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

**“Tangible Net Worth”** means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

**“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 Benefits**” means the PTC, ITC, and any other state, local and/or federal tax benefit or incentive, including energy credits determined under Sections 38, 45, 45Y, 46, 48 and 48E of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production, sale, or storage of renewable energy and/or the operation, construction, investments in or ownership of, the Facility (including any cash payment or grant).

“**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 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.

“**Third Phase Agreement**” means the agreement between Buyer and the Participating Members that sets forth the terms and conditions under which Buyer is authorized to enter into this Agreement on behalf of the Participating Members.

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

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

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

“**UFLPA/WRO Restraint**” means any withhold release order or other import restraint issued by U.S. Customs and Border Protection or other applicable Governmental Authority, including under the Uyghur Forced Labor Prevention Act, that prevents or delays the import or release of any PV Equipment into the United States and such order, despite the use by Seller of commercially reasonable efforts to avoid procurement or sourcing of PV Equipment that was reasonably foreseeable to become subject to such restraint, prevents or delays the delivery of such PV Equipment to Seller for incorporation into the Facility.

“**Ultimate Parent**” means NextEra Energy, Inc., NEER, NEP, NEOP, or NEECH, and includes any combination thereof.

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

“**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 4.7(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 October 1, 2022, 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 Article, 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 terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such terms shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

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

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

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

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

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”); *provided, however*, that subject to Buyer’s obligations in Section 3.6, 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 indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement. The confidentiality obligations of the Parties under Article 18 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 commence upon Seller’s completion of all of the following conditions:

(a) Seller shall have constructed or caused to be constructed the Facility as of the Commercial Operation Date to (i) enable Seller to satisfy the obligations of the Seller under this Agreement subject to Exhibit B, Section 5, and (ii) enable the Facility to provide Product;

(b) The Facility has successfully completed all testing required by Prudent Operating Practice or any requirement of Law to operate the Facility;

(c) 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;

(d) A Participating Generator Agreement and a Meter Service Agreement for Metered Entities 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;

(e) An Interconnection Agreement between Seller or Seller's Affiliate 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;

(f) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are required to be satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect (including CEQA requirements);

(g) Seller has provided notice that Seller (either itself or through the engagement of an Affiliate) will act as the Qualified Operator for the Facility, or Seller has entered into one or more agreements providing for the operation and maintenance of the Facility with one or more other Qualified Operators;

(h) Seller, with the reasonable cooperation of Buyer, has taken all actions and executed and delivered to Buyer and the CAISO all documents that are reasonably capable of being completed prior to the Commercial Operation Date necessary to register and qualify the Facility to participate and operate in the CAISO markets, as set forth in the CAISO Tariff, including satisfying and completing the CAISO New Resource Implementation process (commonly referred to as the "**NRI Process**") with respect to the Facility;

(i) 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);

(j) 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, and other appropriate documentation required to effect Facility registration with WREGIS and to enable PCC1 Renewable Energy Credit transfers related to the Facility within the WREGIS system; and

(k) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8.

(l) Seller has satisfied the insurance requirements to the extent set forth in Section 17.1(a) of this Agreement.

(m) Seller or its Affiliate has obtained Site Control necessary to enable Seller to satisfy the obligations of the Seller under this Agreement.

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 (i.e., quarterly or monthly, as applicable) meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress, such meeting to be held in person or by teleconference as agreed between the Parties. The form of the Progress Report is set forth in Exhibit E. 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, 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 a Development Cure Period, a New PV Trade Measure Event, WRO Restraint, 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 reasonably detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones to the extent possible; *provided*, 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.

2.5 **New PV Trade Measure Events and UFLPA/WRO Restraints.** Notwithstanding anything to the contrary in this Agreement, in connection with any New PV Trade Measure Event or UFLPA/WRO Restraints:

(a) Seller may suspend development and construction of the Facility during, and shall receive a day-for-day extension of the Guaranteed Construction Start Date the Guaranteed Commercial Operation Date, and each other applicable Milestone for, each day of the New PV Trade Measure Event through the end date of such New PV Trade Measure Event or each day of the UFLPA/WRO Restraint through the end date of such UFLPA/WRO Restraint, as applicable, plus any period afterward as is reasonably necessary to accommodate any Seller or industry supply chain mobilization, remobilization, or other adjustment to the outcome of such New PV Trade Measure Event or UFLPA/WRO Restraint, as applicable. Subject to Exhibit B, if



the extension of the Guaranteed Commercial Operation Date exceeds [REDACTED], either Party may within ten (10) Business Days thereof provide a Notice to the other Party terminating this Agreement, provided, however, the Parties may mutually agree to a further extension of time by amending this agreement pursuant to Section 19.2. Neither Party shall have any liability to the other Party as a result of any termination of this Agreement under this Section 2.5(a), and within ten (10) Business Days each Party shall return any Development Security or Buyer Security then held by such Party to Seller or Buyer, as applicable.

(b) Seller may, in its sole discretion at any time prior to sixty (60) days after the occurrence or cessation, as applicable, of such New PV Trade Measure Event, provide written notice to Buyer of a Proposed Contract Price Increase to keep Seller whole with respect to any actual cost increases that Seller incurs as a result of such New PV Trade Measure Event ("**Proposed Contract Price Increase**"); provided, in which case Seller shall deliver to Buyer a report from an independent retained consultant or other qualified person not employed by or affiliated with Seller or Buyer, and where such independent consultant or other qualified person is approved by Buyer, where such Buyer approval cannot be unreasonably withheld, conditioned or delayed, that explains in reasonable detail (i) the cost impact to Seller and the Facility that result from the applicable New PV Trade Measure Event, and (ii) how the Proposed Contract Price Increase was determined, including an explanation of why the Proposed Contract Price Increase is reasonably necessary to keep Seller whole with respect to the cost increase that Seller expects as a result of the New PV Trade Measure Event ("**Independent Report**"). Cost impacts shall be shown in the Independent Report in terms of  $\$/W_{Ac}$  to explain changes to the Contract Price. The Independent Report shall be subject to Article 18 of this Agreement and made available only to Buyer's personnel and representatives who have a need to review the Independent Report in connection with their role for Buyer in implementing this Agreement, and who confirm their agreement to maintain the confidentiality of the Independent Report. Pursuant to the confidentiality requirements of this Agreement, Buyer shall cooperate with Seller to strive to protect the Independent Report from disclosure under the California Public Records Act pursuant to Article 18. If Buyer does not provide written acceptance of the Proposed Contract Price Increase within forty five (45) days after Buyer's receipt of the Proposed Contract Price Increase notice from Seller, then Seller may terminate this Agreement upon written notice to Buyer. Neither Party shall have any liability to the other Party as a result of any termination of this Agreement under this Section 2.5(b), and within ten (10) Business Days each Party shall return any Development Security or Buyer Security then held by such Party to Seller or Buyer, as applicable. If such termination Notice is not provided by Seller within such ten (10) Business Day period, such termination right under this paragraph is forfeited.

2.6 **Seller's Pre-COD Termination Right**. Notwithstanding anything to the contrary in this Agreement, and without limiting Seller's rights to terminate for other reasons set forth in this the Agreement, Seller shall have the right to terminate this Agreement for convenience at any time prior to the Commercial Operation Date in exchange for payment of the Damage Payment to Buyer. Seller's exercise of such termination right shall require that Seller provide at least ten (10) Business Days' Notice of such termination signed by a duly-authorized officer of Seller which specifically provides that Seller is exercising its right to terminate this Agreement and specifically provides that such termination is being made pursuant to this Section 2.6 of the Agreement.

2.7 **CEQA**.

(a) Buyer shall have full discretion to consider the CEQA Documents in order to reach its own decision under CEQA about the Facility, and where it considers it appropriate: (a) adopt and require feasible mitigation measures or alternatives to avoid or lessen significant environmental impacts resulting from the Facility; and (b) determine that any significant impacts that cannot be mitigated are acceptable due to overriding concerns. Seller has and shall continue to comply with all provisions of the CEQA Documents (including performance of all mitigation measures) applicable to Seller's obligations hereunder at its sole cost and expenses, except to the extent set forth in this Agreement.

(b) The Parties agree that Buyer has no obligation to purchase the Product under this Agreement until the date on which all of the following have occurred (such date, the "**CEQA Completion Date**"): (a) any applicable review under CEQA has been completed and all necessary CEQA approvals for the Facility have been issued; and (b) the applicable period for any legal challenges under CEQA relating to the Facility has expired without any such challenge having been filed or, in the event of any such challenge, the challenge has been determined adversely to the challenger by final judgment or settlement. The existing Environmental Impact Report (EIR) for a smaller version of this project did not find significant unmitigable environmental impacts. If the revised, amended or supplemented EIR or an addendum or subsequent EIR concludes the current project creates a significant unmitigable environmental impact and Buyer cannot find overriding considerations, the parties shall meet and confer on whether Buyer is able to purchase Facility Energy.

### **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. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use 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 component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues.

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.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. Except as otherwise set forth in Exhibit D-1, to the extent there is any Imbalance Energy, any amounts payable or receivable related to such Imbalance Energy shall be 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.

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, if, after the Effective Date the Facility is able to provide Future Environmental Attributes for any reason, including due to a change in market conditions or Law, Buyer shall have the exclusive right to such Future Environmental Attributes and there shall be no increase in the Contract Price; *provided, however*, that such right shall be subject to this Section 3.5(a) and Section 3.5(b) and Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes. 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, and subject to the requirements of, Section 3.5(a), Seller agrees to work with Buyer in good faith to provide reasonably requested documentation and execute reasonable documentation necessary to effectuate the transfer and registration of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.9); *provided*, that the Parties acknowledge and agree such terms shall not 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. As compensation for such Test Energy and associated Product, the payment by Buyer to Seller shall be [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 **CEC Certification and Verification.** Subject to 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 for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the

current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall, subject to Section 3.9 or CEC error or omission, obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

### 3.8 **RPS Standard Terms and Conditions.**

(a) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

(b) Transfer of Renewable Energy Credits. 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. [STC REC-1].

(c) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

(d) With respect to the immediately preceding paragraphs (a) – (c), (i) the reference in Section 3.8(a) to "first delivery under the contract" has the same meaning as "first delivery of Facility Energy under this Agreement", (ii) the references in Section 3.8(c) to "Project" have the same meaning as "Facility", (iii) the reference in Section 3.8(c)(ii) to "the Project's output" has the same meaning as "the Facility Energy", (iv) "qualifies and is certified by the CEC" includes for up to six (6) months after COD CEC pre-certification of the Facility, (v) each reference in the last sentences of Section 3.8(b) and Section 3.8(c) to "commercially reasonable efforts" means efforts consistent with and subject to Section 3.9 below, and (vi) the references in Section 3.8(a) and Section 3.8(b) to "Renewable Energy Credits" means "PCC1 Renewable Energy Credits".

### 3.9 **Compliance Expenditure Cap.**

(a) If a Change in Law occurring after the Effective Date has increased Seller's known or reasonable expected costs to comply with Seller's obligations to cause the Green Attributes to be compliant with the California RPS Program and Section 399.16(b)(1) of the California Public Utilities Code, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("**Compliance Costs**") that Seller shall be required to bear during the Contract 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. Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

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

(e) If Buyer does not respond to a Notice given by Seller under this Section 3.9 within sixty (60) days, or if Buyer does not timely pay the costs and expenses in excess of the Accepted Compliance Costs, 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 or obligation under this Agreement for any failure to take, such Compliance Actions.

(f) If a Change in Law makes it infeasible for Seller to comply with its obligations under this Section 3.9, and it is not possible to overcome the Change in Law through Compliance Actions or the expenditure of money, then, except as otherwise provided or contemplated in this Agreement with respect to how a Change in Law will be addressed, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, and (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the Change in Law.

3.10 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good

faith potential reconfiguration of the Facility or Interconnection Facilities; *provided*, 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. For the avoidance of doubt, and notwithstanding anything in this Agreement to the contrary: (a) as of the Effective Date, the Facility has Energy-Only Deliverability Status; and (b) Seller makes no representation or warranty that the Facility will obtain deliverability or any allocation of TP Deliverability, or achieve Full Capacity Deliverability Status or Interim Deliverability Status.

## **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 shall 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, Electrical Losses, 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. The Facility Energy will be Scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator for the Facility) in accordance with the CAISO Tariff, and the Scheduling and operating procedures developed under Exhibit D-2.

(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) Scheduling Coordination. The Parties agree to coordinate with respect to the dispatch of Energy from the Facility on a periodic basis. The Parties further agree to update Sections 4.3 to 4.4 or Exhibit D-2 as needed by mutual written agreement.

### **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 Operating Rules, or other applicable rules and requirements in the event WREGIS is no longer used to transfer Green Attributes.

4.3 **Forecasting.** Seller shall provide or cause to be provided 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; provided, however, the Parties acknowledge that the Real-Time Forecast is provided by an Approved Forecast Vendor which, at least as of the Effective Date, is not Seller but the CAISO and Seller undertakes no obligations with respect to the accuracy of such CAISO forecasts.

(a) **Annual Forecast of Energy.** No less than thirty (30) 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 (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 at least ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy and expected Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2, or as reasonably agreed to by the Parties ("**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 with a non-binding forecast of Available Generating Capacity, and an Approved Forecast Vendor shall provide Buyer with a non-binding forecast of hourly expected Energy 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 the Available Generating Capacity, and the Approved Forecast Vendor's best estimate of the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer. If Seller or an Approved Forecast Vendor 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.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of Available Generating Capacity of one (1) MW or more, and an Approved Forecast Vendor shall provide Buyer with an updated hourly expected Energy forecast for each Settlement Interval of each hour of the current operating day. The updated forecast of Available Generating Capacity and the hourly expected Energy shall be provided to Buyer 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 (“**Real-Time Forecast**”). Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor each hour and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or the total amount of 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. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer; *provided* that Buyer specifies the method no later than fifteen (15) 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.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer 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) CAISO Tariff Requirements. To the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder.

#### 4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the 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.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders and/or Buyer Bid Curtailments; *provided*, Buyer shall pay Seller for all Deemed Delivered Energy associated with any Buyer Curtailment Period as set forth in Section (b) of Exhibit C.

(c) Failure to Comply. If Seller fails to comply with Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, 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 Curtailment Order, Buyer Curtailment Order, or



notice received from CAISO in respect of a Buyer Bid Curtailment.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as 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 (including adjustments to megawatt output in real-time by means of set points received by the Facility controller of Seller, provided that the dispatch order is consistent with the Facility's operational characteristics as then-currently modeled in the CAISO Master File). If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

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

(a) Facility Maintenance. In developing the Operating Coordination Scheduling and operating procedures set forth in Exhibit D-2, the Parties will work together on a mutually acceptable template to document how maintenance and outages will impact the availability of the Facility to be bid and Scheduled in the CAISO market. Subject to providing Buyer at least sixty (60) days' prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, *provided*, that (i) Seller may adjust the dates of any scheduled maintenance with fewer than sixty (60) days' prior Notice to Buyer so long as (X) Seller makes its request more than ten (10) days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is acceptable to Buyer in its reasonable discretion not to be unreasonably withheld, conditioned or delayed. All scheduled maintenance and outages requested by Seller shall comply with the requirements of the CAISO Tariff. 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 ten percent (10%), unless (i) such outage is required to avoid an emergency or 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, (iv) such outage is in connection with Force Majeure events, (v) such outage is required by Law, the requirements of CAISO or the interconnecting utility, and/or other applicable Governmental Authority, or (vi) 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)(vi), a “**Planned Outage**”).

(b) **Forced Facility Outage**. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage in accordance with the requirements of the CAISO Tariff.

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

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

4.6 **Guaranteed Energy Production**. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Facility Energy delivered during the relevant Performance Measurement Period, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy during such Performance Measurement Period, (2) Energy in the amount it could reasonably have delivered to Buyer during such Performance Measurement Period but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, and Curtailment Periods (“**Lost Output**”). Lost Output shall be measured in the same manner as Deemed Delivered Energy. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period (as determined in **Exhibit G**), Seller shall pay Buyer damages calculated in accordance with **Exhibit G**, which, except as set forth in **Section 11.1(b)(iii)**, shall be Buyer’s sole and exclusive remedy in connection with Seller’s failure to meet the achieve the Guaranteed Energy Production amount.

4.7 **WREGIS**. Seller shall, at its sole expense, but subject to **Section 3.9**, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all PCC1 Renewable Energy Credits corresponding to all Facility Energy (net of any losses if required by Law) 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 PCC1 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. In addition:

(a) Seller shall ensure all applicable steps have been taken to register the Facility with WREGIS that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, and, within the administrative timeframe set forth in the

WREGIS Operating Rules, but no longer than ninety (90) days after Commercial Operation, Seller shall ensure the Facility is registered with active status in WREGIS and is associated with an active account in WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Recurring 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, transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account, and acquiring and arranging for a Qualified Reporting Entity for the Facility and any applicable QRE agreements. Buyer shall be responsible for establishing and maintaining Buyer’s WREGIS Account.

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated (net of any losses if required by Law), 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 (net of any losses if required by Law).

(d) Due to the administrative delay in the creation of WREGIS Certificates, as further set forth in the WREGIS Operating Rules, 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 4.7. 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 Facility Energy (net of any losses if required by Law) 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 Contract Year; *provided, however*, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within one hundred eighty (180) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) delivered to CAISO 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. If a WREGIS Certificate Deficit is caused by an error or omission of WREGIS or the CEC, the Parties shall cooperate in good faith to cause WREGIS or the CEC, as applicable, to correct its error or omission.

(f) Subject to Section 3.9, if WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 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 Facility Energy in the same calendar month.

4.8 **Interconnection Costs**. As between Buyer and Seller, Seller is responsible for all costs and charges associated with Interconnection Facilities and Network Upgrades necessitated by the interconnection of the Facility.

## ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Buyer's income, revenue, receipts or employees). Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes.

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 OPERATIONS AND MAINTENANCE OF THE FACILITY

### 6.1 **Operation and Maintenance of the Facility**.

(a) Seller shall comply with Law and Prudent Operating Practice, and to the extent applicable the CAISO Tariff and the Interconnection Agreement, relating to the operation and maintenance of the Facility and the generation and sale of Product. Seller shall be responsible for maintenance of the Facility, and Buyer shall have no responsibility or liability for the maintenance of the Facility. Seller shall be responsible for the operation of the Facility, and Buyer shall have no responsibility or liability for the operation of the Facility other than with respect to its role as Scheduling Coordinator. Seller will maintain 24-7 remote monitoring of the Facility. This includes advanced alarm management, data analytics, emergency response,

scheduling of preventative and corrective maintenance, troubleshooting, remote resets and dispatch of on-site resources.

(b) Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any requirement of Law; *provided* for the avoidance of doubt, Seller shall not use any Green Attributes to satisfy the foregoing obligations, if any.

(c) Without regard to whether or not there is any applicable Law requiring decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

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 to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or other third parties pursuant to which certain Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing the Dedicated Interconnection Capacity for the Facility in an amount not less than (and not greater than) the Guaranteed Capacity for Buyer's sole use, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID, and (iv) provide that any curtailment of the Shared Facilities that is ordered by Transmission Provider that Seller and its Affiliates have discretion to allocate across generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility in an amount that is higher than Buyer's pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

## ARTICLE 7 METERING

### 7.1 **Metering.**

(a) Seller shall measure the amount of Facility Energy using the Facility Meter,

which Facility Meter shall be dedicated exclusively to the Facility. Subject to meeting any applicable CAISO requirements, the Facility Meter 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. Seller shall arrange and bear all costs associated with the installation of the Facility Meter needed for the registration, recording and transmission of information regarding the Facility Energy. Seller hereby agrees to provide a mutually agreed set of meter data to Buyer in a format to be reasonably agreed to by the Parties. If the CAISO makes any adjustment to any CAISO meter data for a given time period, it will be addressed by the Parties consistent with Section 8.4 of this Agreement. The Facility Meter will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost, and in accordance with the requirements of the MSA. The Parties intend as of the Effective Date that the applicable MSA will be a CAISO Metered Entity; provided, however, Seller may decide that the Facility should be a Scheduling Coordinator Metered Entity or the CAISO may require the Facility to be a Scheduling Coordinator Metered Entity, and in either case Seller shall be responsible for all activities and costs associated with the development of a SQMD Plan, and the collection, validation and submission of meter data to the CAISO in accordance with the CAISO Tariff. Seller may also use the services of a qualified Third Party to act as meter data management agent on behalf of Seller to perform these required functions. If Seller decides that the Facility should be a Scheduling Coordinator Metered Entity, or if CAISO requires the Facility to be a Scheduling Coordinator Metered Entity, Buyer or Buyer's agent, in its role as Scheduling Coordinator for the Facility, shall reasonably cooperate with Seller or Seller's meter data management agent to enable Seller or Seller's meter data management agent to submit the SQMD Plan and Facility Settlement Quality Meter Data to the CAISO, including granting Seller or Seller's meter data management agent access to applicable CAISO system for such purpose (e.g., the CAISO Market Results Interface – Settlements or successor system) to comply with applicable Scheduling Coordinator Metered Entity requirements as set forth in the CAISO Tariff. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. 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 Facility 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.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include as the sole meter for the Facility, the Facility Meter, and (ii) the CAISO requires the Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement. If any of the foregoing mutual understandings in (i) or (ii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any

CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

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 at least 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.

## **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 and any other payment amounts under this Agreement, including the amount of Energy produced by the Facility as read by the Facility Meter, the calculation of Facility Energy, 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) 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; provided, in the event the Facility is Scheduled in a scheduling coordinator portfolio that includes load and assets that are not directly related to the Facility, Buyer may provide such information to Seller in a format that is necessary to protect the confidentiality of settlement and market data that is not directly associated with the Facility.

8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. 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 with respect to this Agreement 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 [REDACTED] (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 Ten Thousand Dollars (\$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 that such meter adjustments are accepted by CAISO for revenue purposes. 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 twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned 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 twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-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 with respect to this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, 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 the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (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 (if any) in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Acceptable Issuer, (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 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 avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.7 or elsewhere in this Agreement, Seller shall have no replenishment obligation with respect to the Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver the Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, 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 maintain the minimum Credit Rating set forth in the definition of Acceptable Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, 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 or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.8 or elsewhere in this Agreement, Seller's replenishment obligation with respect to the Performance Security shall be limited such that the total amount of any replenishments of the Performance Security shall not exceed two (2) times the amount of the original Performance Security (i.e., the total replenishments of the Performance Security shall not exceed \$7,500,000). Seller may at its option (a) exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable, as well as (b) change the issuer of Letter of Credit for any such Development Security or Performance Security.

8.9 **Buyer Credit Support.** If Buyer loses its Investment Grade Credit Rating and if Buyer fails to maintain an ADLH of at least thirty (30) days, then within ten (10) Business Days of such events occurring, Buyer shall provide and maintain for the benefit of Seller credit support in the form of cash or a letter of credit substantially in the form of set forth in Exhibit Q (the "**Buyer Credit Support**") in the amount of [REDACTED]

Buyer shall maintain the Buyer Credit Support in full force and effect; *provided, however,* that if after posting the Buyer Credit Support, Buyer demonstrates compliance with the requirements set forth in Section 8.9 then Buyer shall no longer be required to post the Buyer Credit Support and Seller shall return the Buyer Credit Support to Buyer. Return of any Buyer Credit Support shall not prejudice or diminish Seller's rights or Buyer's obligations with respect to any subsequent failure by Buyer to comply with the requirements of Section 8.9, which subsequent failure shall trigger the requirement for Buyer to repost the Buyer Credit Support in accordance with the terms of this Section 8.9. Subject to this Section 8.9 and the other terms of this Agreement governing the Buyer Credit Support requirements, Buyer may change the type and/or issuer (as applicable) of the Buyer Credit Support from time to time and at any time. If the Buyer Credit Support is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Acceptable Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Contract Term, or (iii) fails to honor Seller's properly documented request to draw on such Letter of Credit by such issuer, Buyer shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Buyer Credit Support. For avoidance of doubt, and notwithstanding anything to the contrary in this Section 8.9 or elsewhere in this Agreement, Buyer shall have no replenishment obligation with respect to the Buyer Credit Support.

**8.10 First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, each Party (the "**Posting Party**") hereby grants to the other Party (the "**Secured Party**") 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, Buyer Credit Support, or any other cash collateral and cash equivalent collateral posted by the Posting Party pursuant to Sections 8.7, 8.8, and/or 8.9, as applicable, 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 the Secured Party, and the Posting Party agrees to take all action as the Secured Party reasonably requires in order to perfect the Secured Party's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of an Event of Default caused by the Posting Party, an Early Termination Date resulting from an Event of Default caused by the Posting Party, or an occasion provided for in this Agreement where the Secured Party is authorized to retain all or a portion of the Development Security, Performance Security, or Buyer Credit Support, as applicable, the Secured Party may do any one or more of the following (in each case subject to the final sentence of this Section 8.10):

(a) Exercise any of its rights and remedies with respect to the Development Security, Performance Security, and Buyer Credit Support, 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 the Secured Party as Development Security, Performance Security, or Buyer Credit Support; and

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

The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Posting Party's obligations under this Agreement; *provided*, that the Posting Party shall remain liable for any amounts owing to the Secured Party after such application, except to the extent limited in this Agreement, subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

#### 8.11 **Financial Statements.**

(a) From the Effective Date, Buyer shall provide to Seller unaudited quarterly financial statements within sixty (60) days of the end of each quarter and audited financial statements within one hundred eighty (180) days after the end of each fiscal year; *provided, however*, that this requirement shall be satisfied if such financial statements are publicly available by such applicable dates on Buyer's website. Buyer's annual financial statements shall have been prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

(b) 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 or Guarantor's ultimate parent (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, and if applicable, as posted on the website of the Guarantor's ultimate parent or the Securities Exchange Commission.

### ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Except as provided in Exhibit D-1, 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 United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled next Business Day 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; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm prevailing Pacific Time, on the next Business Day, *provided* that notice by electronic communication will not be deemed effective until

confirmed by return electronic communication from the recipient; or (d) 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 (including hail); explosion; fire; volcanic eruption; flood; epidemic or pandemic ((including COVID-19) and the efforts of any Governmental Authority to combat such events including any quarantine related to any such epidemic or pandemic); any temporary restraint or restriction imposed by applicable Law or any directive from a governmental authority; landslide; mudslide; sabotage; cyberattack; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party; or a failure of any final step-up transformer used by the Facility.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy electric energy 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; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure, except if such equipment failure is caused by a Force Majeure Event or with respect to the failure of any final step-up transformer used by the Facility as set forth above in Section 10.1(b); or (vii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation of the Facility following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that

would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed, *provided* the suspension of performance due to a claim of Force Majeure Event shall include any reasonable time period for mobilization/re-mobilization. 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, (b) suspend or excuse the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) subject to Section 4 of Exhibit B, and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

10.3 **Notice.** Within five (5) Business Days of becoming aware of the commencement and effect of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of becoming aware of the commencement and effect of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure of the claiming Party to provide written notice as required in the preceding sentence constitutes a waiver of a Force Majeure claim for all periods prior to other Party's receipt of such written notice to the extent the non-claiming Party is materially adversely affected by the claiming Party's failure to provide timely notice. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to take reasonable actions. The claiming Party shall promptly 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. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date 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 a consecutive twelve (12)-month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party; provided, however, that Seller shall be entitled to up to an additional six (6) months to remedy the Force

Majeure Event if (a) Seller has been unable to remedy the Force Majeure Event within the original twelve (12)-month period despite exercising diligent efforts, and (b) Seller provides to Buyer prior to the expiration of the original twelve (12)-month period (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, with such acceptance not to be unreasonably withheld, conditioned or delayed, licensed in the State of California, that explains how Seller will restore the Facility; (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably have been restored to operational status within the original twelve (12)-month period but is reasonably likely to be restored to operational status within the additional six (6)-month period by Seller's execution of the plan described in this Section 10.4; (iii) detailed monthly reports (due no later than the 15th day of each month) describing the progress of Seller's efforts to remedy the Force Majeure Event during the prior month; and (iv) Seller continues to make reasonable progress in implementing the detailed plan provided to Buyer or in otherwise resolving the Force Majeure Event. 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 this Section 10.4, and Buyer shall promptly return to Seller any Performance Security then held by Buyer and Seller shall promptly return to Buyer any Buyer Credit Support then held by Seller, each 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) day 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 (A) failures to curtail the Facility the exclusive remedies for which are set forth in Section 4.4(c), (B) failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.6, and (C) failures related to the timely submission of Settlement Quality Meter Data consistent with the SQMD Plan, the exclusive remedies for which are set forth in the last sentence of Exhibit D, Section (i)), 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 Article 14, if applicable;

(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, other than in compliance with other provisions of this Agreement;

(vii) the failure by such Party to satisfy the collateral requirements pursuant to Section 8.7, Section 8.8, or Section 8.9, as applicable, within ten (10) Business Days after Notice from the other Party, including the failure to replenish the Performance Security amount or the Buyer Credit Support, as applicable, in accordance with this Agreement in the event such other Party draws against it for any reason other than to satisfy a Termination Payment; or

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of [REDACTED];

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

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

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

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

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

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

(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;

(ii) the failure by Seller to achieve Commercial Operation within [REDACTED] after the Guaranteed Commercial Operation Date;

(iii) if, in any Performance Measurement Period during the Delivery Term, the Adjusted Energy Production amount is not [REDACTED] of the Expected Energy amount;

(iv) 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) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Acceptable Issuer, 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 in connection with this Agreement;

(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.

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; 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*, 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, and *further provided*, promptly upon Buyer’s receipt of the Damage Payment or Termination Payment, as applicable, Buyer shall return to Seller the Development Security or the Performance Security to the extent either of them, as applicable, did not comprise (i.e., was not used as) the Damage Payment or the Termination Payment, as applicable, and *further provided*, promptly upon Seller’s receipt of the Termination Payment, as applicable, Seller shall return to Buyer the Buyer Credit Support to the extent it did not comprise (i.e., was not used as) the Termination Payment.

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 outstanding amounts due to or from the Non-Defaulting Party for Product delivered 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 Damage Payment or 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, as applicable and whether the Damage Payment or Termination Payment, as applicable, 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 Damage Payment or Termination Payment, as applicable, 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 Damage Payment or Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or the Termination Payment, as applicable, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Damage Payment or the Termination Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Damage Payment or Termination Payment, as applicable, 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's Pre-COD Liability Limitation.** Notwithstanding any other provision of this Agreement, Seller's aggregate liability under this Agreement, including arising out of a termination of this Agreement, prior to the Commercial Operation Date shall not exceed an amount equal to the Damage Payment.

## 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 INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD, NEITHER

PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY RENEWABLE ENERGY INCENTIVES, 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) INCLUDING AMOUNTS DUE IN CONNECTION WITH THE LOSS OR RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.4(c), 4.6, 11.2, 11.3 AND 11.7, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G 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 or will be 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 (subject to potential management, board, or board committee approvals as and when required for the applicable performance obligations) perform this Agreement and is not prohibited from entering into this Agreement or discharging and (subject to the foregoing parenthetical) 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 (subject to the foregoing parenthetical) 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.

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

(a) Buyer is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to

perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of Buyer's regulatory or governing bodies, other than that which has been obtained; (ii) will not conflict with or constitute a breach of or a default under 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; and (iii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

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

(d) With respect to its contractual obligations under this Agreement, Buyer cannot claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment (collectively, "**Sovereign Immunity**").

13.3 **General Covenants.** Each Party (unless otherwise specified) covenants that commencing on the Effective Date (unless otherwise specified) 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 it is or shall be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

(d) Buyer will not claim immunity on the grounds of Sovereign Immunity

(e) Seller or its Affiliate as of the Commercial Operation Date shall have, and shall maintain during the Delivery Term Site Control necessary to enable Seller to satisfy the obligations of the Seller under this Agreement.



## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, 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, conditioned, or delayed. Any purported assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Neither Party will have any obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of such Party's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Buyer shall cooperate with Seller or any Lender or other financing party to execute or arrange for the delivery of any consents, estoppels, and other documents reasonably requested by Seller, Lender, or such other financing party, including the Collateral Assignment Agreement and Estoppel Certificate as provided in Section 14.2 (provided such agreements or consents do not adversely affect any of Buyer's rights, benefits, risks or obligations under this Agreement), and to consummate any financing or refinancing, including in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement.

14.2 **Collateral Assignment; Financing Cooperation.** Seller has the right to assign this Agreement as collateral for any financing or refinancing of all or a part of the Facility, including through equity or tax equity investments or Portfolio Financings, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility by Seller, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon, execute, and deliver to Seller and Lender (i) a consent to collateral assignment of this Agreement in a form substantially similar to the consent to collateral assignment set forth in Exhibit O ("**Collateral Assignment Agreement**") and (ii) an estoppel certificate in a form substantially similar to the estoppel certificate set forth in Exhibit P ("**Estoppel Certificate**"), such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions, provided that such agreement or certificate does not adversely affect any of Buyer's rights, benefits, risks or obligations under this Agreement. Seller shall be responsible for Buyer's reasonable third-party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any such Collateral Assignment Agreement or Estoppel Certificate.

14.3 **Other Permitted Assignments and Transfers by Seller.** In addition to assignments addressed in Section 14.2, Seller may, without the prior written consent of Buyer:

(a) engage in and consummate any transaction that results in a Permitted Transfer; or

(b) transfer or assign this Agreement or undergo a Change of Control in which the assignee or the entity that is the Seller following such Change of Control is a Permitted Transferee.

## **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 San Francisco County, California.

15.3 **Judicial Reference.** Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

15.4 **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 and informally without significant legal costs. If the Parties are unable to resolve a dispute arising hereunder within thirty (30) days after Notice of the dispute, the Parties may pursue all remedies available to them at Law in or equity.

## **ARTICLE 16 INDEMNIFICATION**

16.1 **Indemnification.** Seller agrees to indemnify, defend and hold harmless Buyer and its members, commissioners, officers, employees and agents from and against all third party claims (for purposes of this provision third party claims include claims from Buyer's employees), demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for

personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of Seller, its Affiliates, or its directors, officers, employees, or agents. Nothing in this Section shall enlarge or relieve a Party of any liability to the other for any breach of this Agreement. Buyer shall not be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct.

## **ARTICLE 17 INSURANCE**

### **17.1 Insurance.**

(a) **Policy Types.** Seller shall maintain, or cause to be maintained at its sole expense, policies of insurance in amounts and with coverage as set forth below in this Section 17.1(a) to the extent such policies are reasonably available (or alternative policies as close thereto as reasonably practicable if such policies as set forth in this Section 17.1(a) are not reasonably available):

(1) **General Liability.** (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED], and an annual aggregate of not less than [REDACTED], endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [REDACTED]. The amount of insurance required above may be satisfied by any combination of primary and excess insurance.

(2) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

(3) **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.

(4) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] 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.

(5) **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 has arrived at the Facility, until the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods.



(6) **Subcontractor Insurance.** Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than [REDACTED]; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of [REDACTED]. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (6)(i) and (6)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(a).

(b) **Evidence of Insurance.** Within forty-five (45) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

## ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes "**Confidential Information**," whether oral or written which is delivered or conveyed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"): (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.** Upon receiving or learning of Confidential Information, the Receiving Party will: (a) treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as set forth in this Article 18; (b) restrict access to such Confidential Information to only those of its Affiliates and its and their employees, officers, directors, advisors (including legal and accounting advisors), agents, contractors, subcontractors, actual and potential lenders, equity investors (including tax equity), and other financing parties (including Lenders), and actual and potential acquirors and assignees, and with respect to Buyer as the Receiving Party Buyer's Participating Members, in each case who reasonably need to know it and are bound by confidentiality provisions no less stringent than those in this Article 18; and (c) use such Confidential Information for purposes of administering this Agreement and, in cases where Seller is the Receiving Party, for the purpose of developing, financing, owning, and operating the Facility. Confidential Information

will retain its character as Confidential Information but may be disclosed by 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; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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, 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.) and that any request made thereunder may be subject to an exception from disclosure.

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 except as otherwise limited under this Agreement, 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 or the posting of any bond.

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 no less stringent than those in this Article 18.

18.5 **Public Announcements.** Except as may otherwise be required by applicable Law, neither Party will, nor will it allow its affiliates, contractors and vendors to, make any public announcement, press release or statement regarding this Agreement unless the public announcement, press release or statement is approved in advance by the other Party, in its sole discretion.

## 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*, 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, and to the extent set forth herein, any Lender and/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 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 Agency 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; Inapplicability/Waiver of Bankruptcy Code Section 366.**

(a) Each Party acknowledges, intends, and to the extent applicable agrees that (i) this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” and at least one of the Parties is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; (ii) all payments made or to be made by a Party pursuant to this Agreement, including the application by a Party of Performance Security or Buyer Credit Support to any amounts due and owing to such Party, constitute “settlement payments” within the meaning of the United States Bankruptcy Code; and (iii) its rights under Section 11.2 of this Agreement constitute a “contractual right to liquidate, terminate or accelerate” or offset under a forward contract within the meaning of §§556, 561 of the Bankruptcy Code.

(b) Each Party acknowledges and agrees that, upon a Party becoming Bankrupt, the other Party shall be entitled to exercise its rights and remedies under this Agreement in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, inter alia, Sections 362(b)(6), 362(b)(17), 362(b)(27), 546(e), 548(d)(2), 556, and 561 thereof.

(c) Each Party acknowledge and agrees that, for all purposes of this Agreement, that the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor are inapplicable, or if found to be applicable each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy case or proceeding wherein such Party is a debtor. In any such bankruptcy case or 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 any other 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.

19.13 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

*[Signatures on following page]*

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

**[SUBSIDIARY OF NEXTERA  
ENERGY RESOURCES  
DEVELOPMENT, LLC], a Delaware  
limited liability company**

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

**NORTHERN CALIFORNIA POWER  
AGENCY, a California Joint Action Agency**

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

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## **EXHIBIT A**

### **FACILITY DESCRIPTION**

**Name of Facility:** Grace Orchard Energy Center, LLC facility re PPA with NCPA

**Owner:** Seller

**Qualified Operator:** Seller shall provide notice of the initial Qualified Operator(s) to Buyer at least thirty (30) days prior to Initial Synchronization

**Site Name:** Grace Orchard Energy Center, LLC site re PPA with NCPA (for clarification, the Facility will comprise only a portion of the entire Grace energy complex)

**Site includes all or some of the following APNs:** Seller to provide at least sixty (60) days prior to the Guaranteed Construction Start Date

**County:** Riverside

**CEQA Lead Agency:** Riverside County

**Type of Generating Facility:** Solar Photovoltaic

**Delivery Point:** Facility PNode described as [State PNODE] in the CAISO Full Network Model.

**P-node:** To be established prior to the Commercial Operation Date at the Colorado River Substation bus. Seller shall promptly notify Buyer following the establishment of the P-node

**Facility Meter:** TBD

**Facility Interconnection Point:** Colorado River Substation

**Participating Transmission Owner:** Southern California Edison Company

## 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 cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Start Delay Damages to Buyer on account of such delay. Construction Start Delay Damages shall be payable to Buyer for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until Seller reaches Construction Start of the Facility, up to 180 days. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Start Delay Damages, if any, accrued during the prior month and, within thirty (30) days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Start Delay Damages set forth in such invoice. Construction Start Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Start Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Guaranteed Construction Start Date, but shall not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1.

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**”), and (ii) Seller has notified Buyer in writing that Seller has met the conditions precedent in Section 2.2 for achieving Commercial Operation. The “**Commercial Operation Date**” shall be the date specified in the COD Certificate. Seller may achieve Commercial Operation prior to the Guaranteed Commercial Operation Date so long as Seller gives written notice thereof to Buyer not less than sixty (60) days prior to the Commercial Operation Date.

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

(b) If Seller achieves Commercial Operation on or prior to the Guaranteed Commercial Operation Date, all Construction Start Delay Damages paid by Seller shall be refunded to Seller. For the purpose of clarity, if Seller does not achieve Commercial Operation on or prior to the Guaranteed Commercial Operation Date, all Construction Start Delay Damages paid by Seller shall not be refunded to Seller. Seller shall include the request for refund of the Construction Start Delay Damages within an 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, up to 180 days. On or before the tenth (10<sup>th</sup>) of each month, Buyer shall invoice Seller for Commercial Operation 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 Commercial Operation 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 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation by the deadline specified in Section 11.1(b)(ii), either Party may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii), 11.2 and this Section 3 of Exhibit B.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both 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) one or more Force Majeure Events;
- (b) despite the exercise of diligent and commercially reasonable efforts by Seller, a delay in the issuance of any permit or approval required to own, construct, interconnect, operate or maintain the Facility, or any Interconnection Facilities or Shared Facilities in order to achieve the Construction Start or Commercial Operation;
- (c) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by at least four (4) months prior to the Guaranteed Operation Date (as in effect before an extension under this Section 4(c)), despite the exercise of diligent and commercially reasonable efforts by Seller; provided for clarification purposes, any such excused delay under this Section 4(c) will be limited only to the amount of such Interconnection Facilities or Network Upgrades delays, and not, for avoidance of doubt, delays of Seller, if any, which may extend beyond the time of such Interconnection Facilities or Network Upgrades delays; 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 total cumulative Development Cure Period extensions granted under Sections 4(a) through 4(c) and extensions granted under

Section 2.5(a) shall not exceed [REDACTED] beyond the Guaranteed Commercial Operation Date set forth on the Cover Page, and for avoidance of doubt, there shall be no time limitation to the extent the delay is due to the reason set forth in Section 4(d) above. For clarity, the permitted extensions under the Development Cure Period extend each of the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date simultaneously on a day-for-day basis. Notwithstanding anything to the contrary herein, no extension shall be given under a Development Cure Period if, and to the extent that (A) the delay was the result of Seller's failure to take commercially reasonable actions to meet its requirements and deadlines, or (B) Seller failed to provide requested documentation as provided below. 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 Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed 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 Capacity, and the Guaranteed 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) Contract Price. For each MWh of Facility Energy in each Settlement Period, Buyer shall pay Seller the Contract Price.

(b) Deemed Delivered Energy. For each Settlement Period, Buyer shall pay Seller the Contract Price plus the PTC Amount for each MWh of Deemed Delivered Energy.

(c) Excess Contract Year Deliveries Over [REDACTED] of Expected Energy.

(i) If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for that additional Facility Energy or Deemed Delivered Energy shall be equal to [REDACTED] plus the PTC Amount for any Deemed Delivered Energy.

(ii) If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for that additional Facility Energy or Deemed Delivered Energy shall be equal to [REDACTED] plus the PTC Amount for any Deemed Delivered Energy.

(d) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility 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 zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(e) No Payments in Violation of Any Curtailment Order. Seller shall receive no compensation from Buyer for Facility Energy provided in violation of a Curtailment Order.

(f) Negative LMP Strike Price. Buyer may change the Negative LMP Strike Price at its sole discretion by providing written notice to Seller at least two (2) Business Days prior to the effective date of such change, which notice must identify the new Negative LMP Strike Price and the effective date for the new Negative LMP Strike Price; *provided, however*, that the Negative LMP Strike Price identified by Buyer must be less than or equal to zero dollars per MWh (\$0/MWh).

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

(h) Tax Benefits. The Parties agree that neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Benefits, or if any Tax Benefits 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 Benefits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Benefits 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 Facility Energy is eligible for, or receives Tax Benefits during the Contract Term.

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## EXHIBIT D-1

### SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (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. Prior to the Commercial Operation Date, Buyer as Scheduling Coordinator shall reasonably assist with the need for the Facility to test, commission and to timely achieve the Commercial Operation Date, and Buyer shall not provide any scheduling instructions which interferes with those purposes. Buyer (as the Facility's Scheduling Coordinator) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and the Scheduling and operating procedures developed under Exhibit D-2 for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other market basis that may develop after the Effective Date, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller shall cooperate with Buyer to provide such notices, information and updates in accordance with the applicable requirements of the CAISO Tariff and the Scheduling and operating procedures developed under Exhibit D-2. 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 electronic mail to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below or elsewhere in this Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be liable for and reimburse Buyer for any and all CAISO costs and penalties incurred by Buyer in its role as Scheduling Coordinator under a CAISO settlement statement because of Seller's failure to perform any covenant or obligation set forth in this Agreement, or Seller's failure

to comply with applicable provisions of the CAISO Tariff or the outage notification requirements set forth in this Agreement (each except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to 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 Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's Scheduling Coordinator) 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 CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall 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 require Buyer to 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 such 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. If requested by Seller, Buyer (as the Facility's SC) shall dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

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

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(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. Buyer (as Scheduling Coordinator) shall be responsible for Buyer's compliance with NERC reliability standards related to Scheduling Coordinators. Unless otherwise specifically provided for herein, the Parties acknowledge that Buyer and Seller are both individually responsible for compliance with the WECC and NERC reliability standards and criteria applicable to the functions for which each Party is respectively registered with NERC. The reference to WECC and NERC reliability standards, if any, throughout this Agreement does not make any alteration to, or enlargement of, the requirements or standards applicable to each Party beyond their individual registrations with NERC; provided, however, each Party shall perform certain functions on behalf of, or in coordination with, the other Party, as further set forth in this Exhibit D-1.

(i) SQMD Reporting. If Seller elects, or is required by the CAISO, to register the Facility as a Scheduling Coordinator Metered Entity, and therefore is required to submit a SQMD Plan for the Facility, then for any time period covered by the CAISO-approved SQMD Plan, and pursuant to Section 7.1(a), Seller shall provide or cause to be provided to Buyer (or Buyer's designee including any Buyer Scheduling Coordinator) with respect to the Facility Meters, Settlement Quality Meter Data no later than eight (8) Business Days after the relevant flow date. In connection with any SQMD Plan or designation of the Facility as a Scheduling Coordinator Metered Entity (as defined in the CAISO Tariff), Buyer (as Scheduling Coordinator) shall reasonably cooperate with Seller regarding the SQMD Plan submission and approval process and shall reasonably cooperate with Seller to enable Seller's performance of the obligations required by the SQMD Plan or the CAISO Tariff applicable to a Scheduling Coordinator Metered Entity, including Seller's or Seller's meter data management agent's submission of Settlement Quality Meter Data to the CAISO (including without limitation submitting required affirmations and attestations (if any)). To enable Seller or Seller's meter data management agent to submit Settlement Quality Meter Data to the CAISO, Buyer shall grant Seller or Seller's meter data management agent access to use the MRI-S System (or any alternate system designated by the CAISO) in accordance with the SQMD Plan and the CAISO Tariff; provided, Seller shall indemnify Buyer against any costs or penalties imposed on Buyer (as Scheduling Coordinator) as a result of Seller's failure to submit or cause to submit Settlement Quality Meter Data consistent with the SQMD Plan to CAISO, with respect to the Facility Meter(s).

## **EXHIBIT D-2**

### **BUYER AND SELLER OPERATING COORDINATION**

The Parties shall work together after the Effective Date to develop Scheduling and operating procedures, which the Parties shall finalize no later than thirty (30) days prior to the Commercial Operation Date, or such other date agreed to by the Parties. Procedures may be reviewed annually (date and time to be mutually agreed), or as needed to account for actual Scheduling and operating requirements, to optimize operations for both Parties. The Parties shall cooperate to integrate the systems and controls necessary to implement such procedures. Such procedures to be developed may pertain to the following subjects or as otherwise agreed by the Parties: (i) voice and data communications; (ii) outage management and operational reliability data; (iii) event reporting; (iv) operating instructions and emergency assistance; and (v) Scheduling and bidding.



## **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 and 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 or the timing of permitting and interconnection/transmission as they may affect the timing development of the Facility.
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. 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.

**EXHIBIT F-1**

**FORM OF AVERAGE EXPECTED ENERGY REPORT**

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
JAN																									
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OCT																									
NOV																									
DEC																									

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**

**FORM OF MONTHLY AVAILABLE GENERATING CAPACITY REPORT**

**Available Generating Capacity, MW Per Hour – [Insert applicable month]**

	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
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

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 G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.6 of the Agreement, 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 = The replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of [REDACTED], plus (b) the market value of Replacement Green Attributes.

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

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

**“Lost Output”** has the meaning given in Section 4.6 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 Green Attributes”** means PCC1 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 PCC1 Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period.

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

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period; *provided* the amount of damages owing shall be adjusted to account for Replacement Green Attributes, 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 Northern California Power Agency, a California joint powers agency (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [SELLER ENTITY] 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 Facility is operational, interconnected, and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity.
3. The Facility’s testing included a performance test, substantially in the form of Exhibit S to the Agreement, demonstrating peak electrical output of no less than ninety percent (90%) of the Guaranteed Capacity for the 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*].
4. The Transmission Provider has provided documentation supporting release for Commercial Operation on [DATE].
5. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [DATE].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

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

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

**EXHIBIT I**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Northern California Power Agency, a California joint powers agency ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

The performance test, substantially in the form of Exhibit S to the Agreement, for the 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 Capacity**").

[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 ENTITY] (“**Seller**”) to Northern California Power Agency, a California joint powers agency (“**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: \_\_\_\_\_ (such description shall amend the description of the Site in Exhibit A of the Agreement).

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**  
**(issued on behalf of Seller for the benefit of Buyer)**

IRREVOCABLE AND UNCONDITIONAL STANDBY LETTER OF CREDIT NO. XXXXXXXX

ISSUING BANK:  
CITIBANK, N.A.  
ATTN: US STANDBY UNIT  
3800 CITIBANK CENTER, BUILDING B, 1ST FLOOR  
TAMPA, FL 33610  
PHONE: 866-945-6284  
FAX NO.: 609-681-2734

BENEFICIARY:  
NORTHERN CALIFORNIA POWER AGENCY, A CALIFORNIA JOINT POWERS AGENCY  
.....  
.....  
.....

APPLICANT:  
.....  
.....  
.....

AMOUNT: USD ..... (..... AND XX/100 UNITED STATES DOLLARS)

EXPIRY DATE: ....., 20..

LADIES AND GENTLEMEN:

BY THE ORDER OF ..... (''APPLICANT''), WE, CITIBANK, N.A. AT 3800 CITIBANK CENTER, BUILDING B, 1ST FLOOR, TAMPA, FLORIDA 33610 ATTN: US STANDBY UNIT (''ISSUER'') HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. XXXXXXXX (THE ''LETTER OF CREDIT'') IN FAVOR OF NORTHERN CALIFORNIA POWER AGENCY, A CALIFORNIA JOINT POWERS AGENCY (''BENEFICIARY''), FOR AN AMOUNT NOT TO EXCEED THE AGGREGATE SUM OF USD ..... (..... AND XX/100 UNITED STATES DOLLARS), PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AGREEMENT DATED AS OF ....., 20.. AND AS AMENDED (THE ''AGREEMENT'') BETWEEN APPLICANT AND BENEFICIARY. THIS LETTER OF CREDIT SHALL BECOME EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON ....., 20.. WHICH IS ONE YEAR AFTER THE ISSUE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE ''EXPIRATION DATE'').

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO BENEFICIARY BY PRESENTATION ON OR BEFORE THE EXPIRATION DATE OF A DATED STATEMENT PURPORTEDLY SIGNED BY YOUR DULY AUTHORIZED REPRESENTATIVE, IN THE FORM ATTACHED HERETO AS EXHIBIT A, CONTAINING ONE OF THE TWO ALTERNATIVE PARAGRAPHS SET FORTH IN PARAGRAPH 2 THEREIN, REFERENCING OUR LETTER OF CREDIT NO. XXXXXXXX (''DRAWING CERTIFICATE'').

THE ORIGINAL OF THIS LETTER OF CREDIT (AND ALL AMENDMENTS, IF ANY) IS NOT REQUIRED TO BE PRESENTED IN CONNECTION WITH ANY PRESENTMENT OF A DRAWING CERTIFICATE BY BENEFICIARY HEREUNDER IN ORDER TO RECEIVE PAYMENT.

ALTERNATIVELY, PRESENTATION OF SUCH DRAWING DOCUMENTS MAY BE MADE BY FAX TRANSMISSION TO 609-681-2734, OR SUCH OTHER FAX NUMBER IDENTIFIED BY CITIBANK, N.A. IN A WRITTEN NOTICE TO YOU. TO THE EXTENT A PRESENTATION IS MADE BY FAX TRANSMISSION, YOU SHOULD (I) PROVIDE TELEPHONE NOTIFICATION THEREOF TO CITIBANK, N.A. TO 866-945-6284 PRIOR TO OR SIMULTANEOUSLY WITH THE SENDING OF SUCH FAX TRANSMISSION AND (II) SEND THE ORIGINAL OF SUCH DRAWING DOCUMENT(S) TO CITIBANK, N.A., 3800 CITIBANK CENTER, BUILDING B, 1ST FLOOR, TAMPA, FL 33610 BY OVERNIGHT COURIER, PROVIDED, HOWEVER, THAT CITIBANK, N.A.'S RECEIPT OF SUCH TELEPHONE NOTICE OR ORIGINAL DOCUMENT(S) SHALL NOT BE A CONDITION TO PAYMENT HEREUNDER.

WE HEREBY AGREE WITH THE BENEFICIARY THAT UPON PRESENTATION ON OR BEFORE THE EXPIRATION DATE OF YOUR DRAWING DOCUMENTS IN CONFORMITY WITH THE FOREGOING, WE WILL ON [THE NEXT BUSINESS DAY] AFTER SUCH PRESENTATION, IRREVOCABLY AND WITHOUT RESERVE OR CONDITION MAKE PAYMENT HEREUNDER IN THE



AMOUNT SET FORTH IN THE DRAWING DOCUMENTS. ALL PAYMENTS MADE UNDER THIS LETTER OF CREDIT SHALL BE MADE WITH ISSUER'S OWN IMMEDIATELY AVAILABLE FUNDS BY MEANS OF WIRE TRANSFER IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS TO BENEFICIARY'S ACCOUNT AS INDICATED BY BENEFICIARY IN ITS DRAWING CERTIFICATE OR IN A COMMUNICATION ACCOMPANYING ITS DRAWING CERTIFICATE. WE AGREE THAT IF, ON THE EXPIRATION DATE, THE OFFICE SPECIFIED ABOVE IS NOT OPEN FOR BUSINESS BY VIRTUE OF AN INTERRUPTION OF THE NATURE DESCRIBED IN THE UNIFORM CUSTOMS ARTICLE 36, THIS LETTER OF CREDIT WILL BE DULY HONORED IF THE SPECIFIED DRAWING DOCUMENTS ARE PRESENTED BY YOU WITHIN THIRTY (30) DAYS AFTER SUCH OFFICE IS REOPENED FOR BUSINESS.

WE AGREE THAT THE TIME SET FORTH HEREIN FOR PAYMENT OF ANY DEMAND(S) FOR PAYMENT IS SUFFICIENT TO ENABLE US TO EXAMINE SUCH DEMAND(S) AND THE RELATED DOCUMENT(S) REFERRED TO ABOVE WITH CARE SO AS TO ASCERTAIN THAT ON THEIR FACE THEY APPEAR TO COMPLY WITH THE TERMS OF THIS LETTER OF CREDIT, AND THAT IF SUCH DEMAND(S) AND DOCUMENTS(S) ON THEIR FACE APPEAR TO SO COMPLY, FAILURE TO MAKE ANY SUCH PAYMENT WITHIN SUCH TIME SHALL CONSTITUTE DISHONOR OF SUCH DEMAND(S).

PARTIAL DRAWS ARE PERMITTED UNDER THIS LETTER OF CREDIT, AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ANY CONTINUING BALANCE.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT THE EXPIRATION DATE SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AN AMENDMENT FOR A ONE YEAR PERIOD BEGINNING ON THE PRESENT EXPIRATION DATE HEREOF AND UPON EACH ANNIVERSARY FOR SUCH DATE, UNLESS AT LEAST SIXTY (60) DAYS PRIOR TO ANY SUCH EXPIRATION DATE WE HAVE SENT TO YOU WRITTEN NOTICE BY OVERNIGHT COURIER SERVICE THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT, IN WHICH CASE IT WILL EXPIRE ON THE DATE SPECIFIED IN SUCH NOTICE. NO PRESENTATION MADE UNDER THIS LETTER OF CREDIT AFTER SUCH EXPIRATION DATE WILL BE HONORED.

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

WE HEREBY ENGAGE WITH YOU THAT YOUR DEMAND(S) FOR PAYMENT IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED AS SET FORTH ABOVE. ALL FEES AND OTHER COSTS ASSOCIATED WITH THE ISSUANCE OF ANY DRAWINGS(S) AGAINST THIS LETTER OF CREDIT SHALL BE FOR THE ACCOUNT OF THE APPLICANT. ALL OF THE RIGHTS OF THE BENEFICIARY SET FORTH ABOVE SHALL INURE TO THE BENEFIT OF YOUR SUCCESSORS BY OPERATION OF LAW.

EXCEPT AS FAR AS OTHERWISE EXPRESSLY STATED HEREIN, THIS STANDBY LETTER OF CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY LETTERS OF CREDITS (2007 REVISION), INTERNATIONAL CHAMBER OF COMMERCE, PUBLICATION NO. 600, AND AS TO MATTERS NOT GOVERNED BY THE UCP 600, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE U.S. FEDERAL LAW.

SHOULD YOU HAVE OCCASION TO COMMUNICATE WITH US REGARDING THIS LETTER OF CREDIT, PLEASE DIRECT YOUR CORRESPONDENCE TO OUR OFFICE, MAKING SPECIFIC MENTION OF THE LETTER OF CREDIT NUMBER INDICATED ABOVE.

THE U.S. GOVERNMENT (INCLUDING, WITHOUT LIMITATION, THE OFFICE OF FOREIGN ASSETS CONTROL OF THE U.S. DEPARTMENT OF THE TREASURY AND THE U.S. DEPARTMENT OF STATE) AND SANCTIONS AUTHORITIES IN OTHER RELEVANT JURISDICTIONS HAVE IN PLACE SANCTIONS AGAINST CERTAIN JURISDICTIONS, INDIVIDUALS, ENTITIES, AND VESSELS (INCLUDING SHIPS AND AIRCRAFT). ALL PARTIES ACKNOWLEDGE AND AGREE THAT CITIGROUP ENTITIES, INCLUDING BRANCHES AND SUBSIDIARIES (TOGETHER 'CITIBANK'), RESERVE THE RIGHT, AT CITIBANK'S REASONABLE DISCRETION, TO REFUSE PERFORMANCE UNDER THIS LETTER OF CREDIT, OR TAKE OTHER ACTION, WHERE CITIBANK DETERMINES THAT ANY PARTY OR ANY ACTIVITY RELATING, DIRECTLY OR INDIRECTLY, TO THE LETTER OF CREDIT ARE THE SUBJECT OF U.S. SANCTIONS OR SANCTIONS ISSUED BY ANY OTHER RELEVANT SANCTIONS AUTHORITY. ALL PARTIES ACKNOWLEDGE AND AGREE THAT CITIBANK WILL NOT BEAR ANY LIABILITY WHERE IT REFUSES PERFORMANCE UNDER THIS LETTER OF CREDIT OR TAKES OTHER ACTION IN SUCH CIRCUMSTANCES.

CITI'S GLOBAL PRIVACY NOTICE FOR INSTITUTIONAL CLIENTS AND ITS CALIFORNIA SUPPLEMENTAL PROVISION CAN BE ACCESSED ONLINE USING DIRECT LINKS ENTITLED 'PRIVACY' AND 'NOTICE AT COLLECTION', WHICH ARE PROMINENTLY DISPLAYED IN THE WEBSITE FOOTER OF WWW.ICG.CITI.COM.

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

DRAWING CERTIFICATE

TO:

ISSUING BANK:  
CITIBANK, N.A.  
ATTN: US STANDBY UNIT  
3800 CITIBANK CENTER, BUILDING B, 1ST FLOOR  
TAMPA, FL 33610  
PHONE: 866-945-6284  
FAX NO.: 609-681-2734

THE UNDERSIGNED, A DULY AUTHORIZED REPRESENTATIVE OF NORTHERN CALIFORNIA POWER AGENCY, A CALIFORNIA JOINT POWERS AGENCY, AS BENEFICIARY (THE 'BENEFICIARY') OF THE IRREVOCABLE LETTER OF CREDIT NO. XXXXXXXX (THE 'LETTER OF CREDIT') ISSUED BY CITIBANK, N.A. (THE 'BANK') BY ORDER OF ..... (THE 'APPLICANT'), HEREBY CERTIFIES TO THE BANK AS FOLLOWS:

1. APPLICANT AND BENEFICIARY ARE PARTY TO THAT CERTAIN RENEWABLE POWER PURCHASE AGREEMENT DATED AS OF ....., 20.. (THE 'AGREEMENT').

2. BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF USD ..... (..... AND XX/100 UNITED STATES DOLLARS) 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

BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF USD ..... (..... AND XX/100 UNITED STATES DOLLARS), WHICH EQUALS THE FULL AVAILABLE AMOUNT UNDER THE LETTER OF CREDIT, BECAUSE APPLICANT IS REQUIRED TO MAINTAIN THE LETTER OF CREDIT IN FORCE AND EFFECT BEYOND THE EXPIRATION DATE OF THE LETTER OF CREDIT BUT HAS FAILED TO PROVIDE BENEFICIARY WITH A REPLACEMENT LETTER OF CREDIT OR OTHER ACCEPTABLE INSTRUMENT WITHIN THIRTY (30) DAYS PRIOR TO SUCH EXPIRATION DATE.

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

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

.....  
(SPECIFY ACCOUNT INFORMATION)

NORTHERN CALIFORNIA POWER AGENCY, A CALIFORNIA JOINT POWERS AGENCY

.....  
NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

DATE: ....., 20..

## EXHIBIT L

### FORM OF GUARANTY

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

#### Recitals

- A. Buyer and [SELLER ENTITY] ("**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 good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full and prompt payment by Seller when due of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA (the "**Obligations**"), 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; *provided*, that the Guarantor's aggregate liability under or arising out of this Guaranty for payment of the Obligations shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) (the "**Guaranteed Amount**"). 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 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 PPA. 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. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay such Guaranteed Amount and Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer. A single written Payment Demand shall be effective as to any specific payment failure by Seller under the PPA that is susceptible of being cured by the payment of money by Guarantor and additional written demands shall not be required until such payment is made.

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), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) the expiration of the Delivery Term (provided that any such expiration shall not affect Guarantor's liability hereunder as to obligations incurred or arising under this Guaranty prior to such date. 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 and which have also been available to Guarantor if Guarantor had been in the same contractual position as Seller under the PPA (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

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 Paragraph 9, 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 Paragraph 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 which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (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 (4) 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 7.

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 the City and County of San Francisco, 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**

**[RESERVED]**

DRAFT

**EXHIBIT N**

**NOTICES**

<b>[Subsidiary of NextEra Energy Resources Development, LLC] ("Seller")</b>	<b>Northern California Power Agency ("Buyer")</b>
[REDACTED]	<b>All Notices:</b>  Street: 651 Commerce Drive City: Roseville, CA 95678 Attn: Contract Administration Phone: 916-781-4229 Email: <a href="mailto:tony.zimmer@ncpa.com">tony.zimmer@ncpa.com</a> Email: <a href="mailto:mike.whitney@ncpa.com">mike.whitney@ncpa.com</a>
[REDACTED]	<b>Reference Numbers:</b> Duns: To be provided separately Federal Tax ID Number: To be provided separately
[REDACTED]	<b>Invoices:</b> Attn: Accounts Payable Phone: 916-781-4221 / 4230 Email: <a href="mailto:AcctsPayable@ncpa.com">AcctsPayable@ncpa.com</a> Facsimile: 916-781-4255
[REDACTED]	<b>Scheduling:</b> Attn: NCPA Scheduling Desk Phone: (DA CAISO Desk) 916-781-4290 Phone: (Real Time Desk) 916-781-4237 Email: <a href="mailto:Preschedulers@ncpa.com">Preschedulers@ncpa.com</a>

<p>[Subsidiary of NextEra Energy Resources Development, LLC] ("Seller")</p>	<p>Northern California Power Agency ("Buyer")</p>
<p>[REDACTED]</p>	<p><b>Confirmations:</b> Attn: Tony Zimmer Phone: 916-781-4229 Email: <a href="mailto:tony.zimmer@ncpa.com">tony.zimmer@ncpa.com</a></p>
<p>[REDACTED]</p>	<p><b>Payments:</b> Attn: See Invoices Phone: See Invoices Email: See Invoices</p>
<p>[REDACTED]</p>	<p><b>Wire Transfer:</b> BNK: Information provided upon request ABA: ACCT:</p>
<p>[REDACTED]</p>	<p><b>Notices of an Event of Default to:</b></p> <p>Attn: Jane Luckhardt, General Counsel Phone: 916-781-4268 Facsimile: 916-781-7693 Email: <a href="mailto:jane.luckhardt@ncpa.com">jane.luckhardt@ncpa.com</a></p> <p>With copy to: Attn: Tony Zimmer Phone: 916-781-4229 Email: <a href="mailto:tony.zimmer@ncpa.com">tony.zimmer@ncpa.com</a></p> <p>And</p> <p>Attn: Mike Whitney Phone: 916-781-4205 Email: <a href="mailto:mike.whitney@ncpa.com">mike.whitney@ncpa.com</a></p>

<b>[Subsidiary of NextEra Energy Resources Development, LLC]</b> ("Seller")	<b>Northern California Power Agency</b> ("Buyer")
[REDACTED]	<b>Emergency Contact:</b> Attn: Dispatch and Scheduling Phone: 916-781-4281 / 4237 Email: Dispatch&Scheduling@ncpa.com

DRAFT

## EXHIBIT O

### FORM OF COLLATERAL ASSIGNMENT AGREEMENT

FORM OF CONSENT AND AGREEMENT  
([NAME OF CONTRACTING PARTY])  
([NAME OF ASSIGNED AGREEMENT])

This **COLLATERAL ASSIGNMENT AGREEMENT** (this “Consent”), dated as of \_\_\_\_\_, 20[ ], is executed by and among [NAME OF CONTRACTING PARTY], a [legal form of Contracting Party] organized under the laws of the State of [\_\_\_\_\_] (the “Contracting Party”), [\_\_\_\_\_] a [\_\_\_\_\_] (the “Project Owner”), and [\_\_\_\_\_] as collateral agent (in such capacity, together with its successors and permitted assigns, the “Collateral Agent”) for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the “Secured Parties”).

A. The Project Owner owns, operates and maintains [\_\_\_\_\_] (the “Project”).

B. The Contracting Party and the Project Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

C. The Borrower, the Project Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [\_\_\_\_\_] , as the Administrative Agent and Collateral Agent, have entered into a Credit Agreement, dated as of [\_\_\_\_\_] (as amended, modified or supplemented from time to time, the “Credit Agreement”), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Project Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Project Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the Assignment and Security Agreement, dated as of [\_\_\_\_\_] between the Project Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “Security Agreement”, and, together with the Credit Agreement and any other financing documents relating to the issuance of the Notes, the “Financing Documents”).

E. It is a requirement under the Credit Agreement that the Project Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE as an inducement for Lenders to make the Loans, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Consent to Assignment. The Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Project Owner in, to and under (but not its obligations, liabilities or duties with respect to) the Assigned Agreement by the Project Owner to the Collateral Agent pursuant to the Security Agreement.

2. Representations and Warranties. The Contracting Party represents and warrants as follows:

(a) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(b) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Project Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(c) No Termination Event; No Disputes. After giving effect to the pledge and assignment referred to in Section 1, and after giving effect to the consent to such pledge and assignment by the Contracting Party, there exists no event or condition (a "Termination Event") that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement. [Except as set forth on Schedule III hereto,] there are no unresolved disputes between the parties under the Assigned Agreement. All amounts due under the Assigned Agreement as of the date hereof have been paid in full [except as set forth on Schedule III hereto].

3. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in *full*, the Collateral Agent shall have the right, but not the obligation, following an Event of Default by the Project Owner under the Assigned Agreement, to pay all sums due under the Assigned Agreement by the Project Owner and to perform any other act, duty or obligation required of the Project Owner thereunder as described in Section 3(c) below; *provided*, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(b) The Contracting Party agrees that it will not (i) terminate the Assigned

Agreement [(other than pursuant to Section [ ] of the Assigned Agreement)]<sup>1</sup> or (ii) suspend the performance of any of its obligations under the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided below. The Contracting Party further agrees that it will not assign any obligation under the Assigned Agreement without the prior consent of the Collateral Agent, which consent shall not be unreasonably withheld, delayed or conditioned, except to the extent the Contracting Party may subcontract such obligations to other parties.

(c) If a Termination Event shall occur [(other than a termination pursuant to Section [ ] of the Assigned Agreement)]<sup>2</sup>, and the Contracting Party shall then be entitled to and shall desire to terminate the Assigned Agreement or suspend the performance of any of its obligations under the Assigned Agreement, the Contracting Party shall, prior to exercising such remedies or taking any other action with respect to such Termination Event, give written notice to the Collateral Agent of such Termination Event. Collateral Agent will have the right, but not the obligation, to cure an Termination Event on behalf of Project Owner, only if Collateral Agent sends a written notice to Contracting Party before the later of (i) the expiration of any cure period under this Agreement, and (ii) fifteen (15) Business Days after Collateral Agent's receipt of notice of such Termination Event from Contracting Party, indicating Collateral Agent's intention to cure. If the Collateral Agent elects to exercise its right to cure as herein provided, it shall have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event specified in such notice if such Termination Event consists of a payment default, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Project Owner (a "Non-monetary Event") the Collateral Agent shall have a period of ninety (90) days after receipt by it of notice from the Contracting Party referred to in the preceding sentence in which to cure the Termination Event so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such Termination Event (or such longer additional period if the Collateral Agent is unable to cure such Termination Event within such initial ninety (90) day period despite exercising commercially reasonable efforts); *provided, however*, that (i) if possession of the Project is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Project Owner, then the time periods specified herein for curing a Termination Event shall be extended for the period of such prohibition; *provided, further*, that in the event of items (i) or (ii) above, such time period shall not exceed one hundred eighty (180) days. Any cure period for the Collateral Agent shall not commence until the later of (i) the end of the cure period of the Project Owner under the Assigned Agreement and (ii) written notice from the Contracting Party to the Collateral Agent of a

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<sup>1</sup> Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

<sup>2</sup> Insert applicable provision, if any, of the Assigned Agreement giving the Contracting Party a right to terminate the Assigned Agreement other than upon a default or other event or condition curable by the Project Owner.

Termination Event.

(d) Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Project Owner under or in respect of the Assigned Agreement.

(e) Following a Termination Event by the Project Entity under the Assigned Agreement, the Contracting Party may require the Collateral Agent, if the Collateral Agent has provided the notice set forth in subsection (c) above, to provide to Contracting Party a report concerning:

- (i) The status of efforts by Collateral Agent to develop a plan to cure the Termination Event;
- (ii) Impediments to the cure plan or its development;
- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which Contracting Party may reasonably require related to the development, implementation and timetable of the cure plan.

Collateral Agent must provide the report to Contracting Party within twenty (20) Business Days after Notice from Contracting Party requesting the report. Contracting Party will have no further right to require the report with respect to a particular Termination Event after that Termination Event has been cured.

**4. REPLACEMENT AGREEMENTS. NOTWITHSTANDING ANY PROVISION IN THE ASSIGNED AGREEMENT TO THE CONTRARY, IN THE EVENT (I) THE ASSIGNED AGREEMENT IS REJECTED OR OTHERWISE TERMINATED AS A RESULT OF ANY BANKRUPTCY, INSOLVENCY, REORGANIZATION OR SIMILAR PROCEEDINGS AFFECTING THE PROJECT OWNER, AT THE COLLATERAL AGENT'S REQUEST, THE CONTRACTING PARTY WILL ENTER INTO A NEW AGREEMENT WITH THE COLLATERAL AGENT OR THE COLLATERAL AGENT'S DESIGNEE FOR THE REMAINDER OF THE ORIGINALLY SCHEDULED TERM OF THE ASSIGNED AGREEMENT, EFFECTIVE AS OF THE DATE OF SUCH REJECTION, WITH THE SAME COVENANTS, AGREEMENTS, TERMS, PROVISIONS AND LIMITATIONS AS ARE CONTAINED IN THE ASSIGNED AGREEMENT, OR (II) IF THE COLLATERAL AGENT OR ITS DESIGNEE, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE) AFTER ANY SUCH REJECTION OR TERMINATION OF THE ASSIGNED AGREEMENT, PROMPTLY AFTER THE CONTRACTING PARTY'S WRITTEN REQUEST, THE COLLATERAL AGENT MUST ITSELF OR MUST CAUSE ITS DESIGNEE TO PROMPTLY ENTER INTO A NEW AGREEMENT WITH THE CONTRACTING PARTY HAVING**



SUBSTANTIALLY THE SAME TERMS AS THE ASSIGNED AGREEMENT FOR THE REMAINING TERM THEREOF, PROVIDED THAT IN THE EVENT A DESIGNEE OF THE COLLATERAL AGENT, DIRECTLY OR INDIRECTLY, TAKES POSSESSION OF, OR TITLE TO, THE PROJECT (INCLUDING POSSESSION BY A RECEIVER OR TITLE BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE), SUCH DESIGNEE SHALL BE APPROVED BY THE CONTRACTING PARTY, NOT TO BE UNREASONABLY WITHHELD.

5. SUBSTITUTE OWNER. THE CONTRACTING PARTY ACKNOWLEDGES THAT IN CONNECTION WITH THE EXERCISE OF REMEDIES FOLLOWING A DEFAULT UNDER THE FINANCING DOCUMENTS, THE COLLATERAL AGENT MAY (BUT SHALL NOT BE OBLIGATED TO) ASSUME, OR CAUSE ANY PURCHASER AT ANY FORECLOSURE SALE OR ANY ASSIGNEE OR TRANSFEREE UNDER ANY INSTRUMENT OF ASSIGNMENT OR TRANSFER IN LIEU OF FORECLOSURE TO ASSUME, ALL OF THE INTERESTS, RIGHTS AND OBLIGATIONS OF THE PROJECT OWNER THEREAFTER ARISING UNDER THE ASSIGNED AGREEMENT. SUCH SALE OR TRANSFER MAY BE MADE ONLY TO AN ENTITY THAT (I) MEETS THE DEFINITION OF “PERMITTED TRANSFEREE” AS DEFINED IN THE ASSIGNED AGREEMENT AND (II) IS AN ENTITY THAT THE CONTRACTING PARTY IS PERMITTED TO CONTRACT WITH UNDER APPLICABLE LAW. IF THE INTEREST OF THE PROJECT OWNER IN THE ASSIGNED AGREEMENT SHALL BE ASSUMED, SOLD OR TRANSFERRED AS PROVIDED ABOVE, THE ASSUMING PARTY SHALL AGREE IN WRITING TO BE BOUND BY AND TO ASSUME THE TERMS AND CONDITIONS OF THE ASSIGNED AGREEMENT AND ANY AND ALL OBLIGATIONS TO THE CONTRACTING PARTY ARISING OR ACCRUING THEREUNDER FROM AND AFTER THE DATE OF SUCH ASSUMPTION, AND THE CONTRACTING PARTY SHALL CONTINUE TO PERFORM ITS OBLIGATIONS UNDER THE ASSIGNED AGREEMENT IN FAVOR OF THE ASSUMING PARTY AS IF SUCH PARTY HAD THEREAFTER BEEN NAMED AS THE “CUSTOMER” UNDER THE ASSIGNED AGREEMENT; PROVIDED THAT IF THE COLLATERAL AGENT OR ITS DESIGNEE (OR ANY ENTITY ACTING ON BEHALF OF THE COLLATERAL AGENT, THE COLLATERAL AGENT’S DESIGNEE OR ANY OF THE OTHER SECURED PARTIES) ASSUMES THE ASSIGNED AGREEMENT AS PROVIDED ABOVE, IT SHALL BE PERSONALLY LIABLE FOR THE PERFORMANCE OF THE OBLIGATIONS THEREUNDER SOLELY TO THE EXTENT OF ALL OF ITS RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT.

6. PAYMENTS. THE CONTRACTING PARTY SHALL MAKE ALL PAYMENTS DUE TO THE PROJECT OWNER UNDER THE ASSIGNED AGREEMENT DIRECTLY INTO THE ACCOUNT SPECIFIED ON SCHEDULE II HERETO, OR TO SUCH OTHER PERSON OR ACCOUNT AS SHALL BE SPECIFIED FROM TIME TO TIME BY THE COLLATERAL AGENT TO THE CONTRACTING PARTY IN WRITING. ALL PARTIES HERETO AGREE THAT EACH PAYMENT BY THE CONTRACTING PARTY AS SPECIFIED IN THE PRECEDING SENTENCE OF AMOUNTS DUE TO THE PROJECT OWNER FROM THE CONTRACTING PARTY UNDER THE ASSIGNED AGREEMENT SHALL SATISFY THE CONTRACTING PARTY’S CORRESPONDING PAYMENT OBLIGATION UNDER THE ASSIGNED

**AGREEMENT.**

**7. NO AMENDMENTS. THE CONTRACTING PARTY ACKNOWLEDGES THAT THE FINANCING DOCUMENTS RESTRICT THE RIGHT OF THE PROJECT OWNER TO AMEND OR MODIFY THE ASSIGNED AGREEMENT, OR TO WAIVE OR PROVIDE CONSENTS WITH RESPECT TO CERTAIN PROVISIONS OF THE ASSIGNED AGREEMENT, UNLESS CERTAIN CONDITIONS SPECIFIED IN THE FINANCING DOCUMENTS ARE MET. THE CONTRACTING PARTY SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD, DELAYED OR CONDITIONED, AMEND OR MODIFY THE ASSIGNED AGREEMENT IN ANY MATERIAL RESPECT, OR ACCEPT ANY WAIVER OR CONSENT WITH RESPECT TO A MATERIAL PROVISION OF THE ASSIGNED AGREEMENT, UNLESS THE CONTRACTING PARTY HAS RECEIVED FROM THE BORROWER OR PROJECT OWNER (AS APPLICABLE UNDER THE FINANCING DOCUMENTS) A COPY OF A CERTIFICATE DELIVERED BY THE PROJECT OWNER TO THE COLLATERAL AGENT TO THE EFFECT THAT SUCH AMENDMENT, MODIFICATION, WAIVER, OR CONSENT IS BEING MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE FINANCING DOCUMENTS, WHICH MAY IN CERTAIN CIRCUMSTANCES REQUIRE THE BORROWER OR PROJECT OWNER (AS APPLICABLE UNDER THE FINANCING DOCUMENTS) TO HAVE OBTAINED THE PRIOR WRITTEN CONSENT OF THE COLLATERAL AGENT, LENDERS, OR OTHER PARTIES THERETO.**

**8. ADDITIONAL PROVISIONS. [TO BE SPECIFIED IF NECESSARY TO CLARIFY THE ASSIGNED AGREEMENT.]**

**9. NOTICES. NOTICE TO ANY PARTY HERETO SHALL BE IN WRITING AND SHALL BE DEEMED TO BE DELIVERED ON THE EARLIER OF: (A) THE DATE OF PERSONAL DELIVERY, (B) POSTAGE PREPAID, REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, OR SENT BY EXPRESS COURIER, IN EACH CASE ADDRESSED TO SUCH PARTY AT THE ADDRESS INDICATED BELOW (OR AT SUCH OTHER ADDRESS AS SUCH PARTY MAY HAVE THERETOFORE SPECIFIED BY WRITTEN NOTICE DELIVERED IN ACCORDANCE HERewith), UPON DELIVERY OR REFUSAL TO ACCEPT DELIVERY, OR (C) IF TRANSMITTED BY FACSIMILE, THE DATE WHEN SENT AND FACSIMILE CONFIRMATION IS RECEIVED; PROVIDED THAT ANY FACSIMILE COMMUNICATION SHALL BE FOLLOWED PROMPTLY BY A HARD COPY ORIGINAL THEREOF BY EXPRESS COURIER:**

The Collateral Agent: [ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Attn: [ \_\_\_\_\_ ]  
Telephone No.: [ \_\_\_\_\_ ]

Facsimile No.: [ ]

The Project Owner:

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The Contracting Party:

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**10. SUCCESSORS AND ASSIGNS. THIS CONSENT SHALL BE BINDING UPON AND SHALL INURE TO THE BENEFIT OF THE SUCCESSORS AND ASSIGNS OF THE CONTRACTING PARTY, AND SHALL INURE TO THE BENEFIT OF THE COLLATERAL AGENT, THE OTHER SECURED PARTIES, THE PROJECT OWNER AND THEIR RESPECTIVE SUCCESSORS, TRANSFEREES AND ASSIGNS.**

**11. COUNTERPARTS. THIS CONSENT MAY BE EXECUTED IN ONE OR MORE COUNTERPARTS WITH THE SAME EFFECT AS IF THE SIGNATURES THERETO AND HERETO WERE UPON THE SAME INSTRUMENT.**

**12. GOVERNING LAW. THIS CONSENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF \_\_\_\_\_.**

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

[NAME OF CONTRACTING PARTY]

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

[\_\_\_\_\_] as Collateral Agent

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

Acknowledged and Agreed:

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

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

Assigned Agreement

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Payment Instructions  
(Section 6)

All payments due to the Project Owner pursuant to the Assigned Agreement shall be made to [INSERT REVENUE ACCOUNT INFORMATION].

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[Schedule III]

[Amounts Due and Unpaid under the Assigned Agreement  
(Section 2(c))]

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**EXHIBIT P**

**FORM OF ESTOPPEL CERTIFICATE**

**ESTOPPEL CERTIFICATE**

**(Renewable Power Purchase Agreement)**

This ESTOPPEL CERTIFICATE (this "Estoppel Certificate"), dated as of \_\_\_\_\_, 202\_, is provided by \_\_\_\_\_, a \_\_\_\_\_ ("Buyer").

**RECITALS**

A. Buyer and \_\_\_\_\_, a Delaware limited liability company (the "Project Company") are parties to that certain Renewable Power Purchase Agreement, dated as of \_\_\_\_\_, 202\_ (the "Power Purchase Agreement"), pursuant to which Buyer agreed to purchase from the Project Company in accordance with the terms and conditions set forth therein certain energy and energy generation-related products from the relevant energy solar generation project described therein ("Solar Project").

B. Pursuant to that certain [Lender Financing Agreement], by and between [\_\_\_\_\_] and [\_\_\_\_\_] (collectively, the "Class B Equity Investors"), the Class B Equity Investors shall acquire the "Class B" membership interests in \_\_\_\_\_, the 100% owner of the Project Company.

C. Pursuant to Section \_\_\_\_ of the [Lender Financing Agreement], the Lender has required that this Estoppel Certificate be delivered as a condition precedent to the consummation of the transactions described therein.

NOW, THEREFORE, in consideration of the foregoing recitals, Buyer hereby certifies, agrees and acknowledges as follows:

1. No default or event of default with respect to Buyer, nor, to the knowledge of Buyer, any other party has occurred under the Power Purchase Agreement, and there are no defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Project Company or Buyer to terminate the Power Purchase Agreement.



2. There exists no event or condition that would, either immediately or with the passage of time or giving of notice, or both, entitle either the Project Company or Buyer to suspend the performance of its obligations under the Power Purchase Agreement.
3. Each representation or warranty made or given by Buyer in Section \_\_\_\_ of the Power Purchase Agreement is complete, true and correct.
4. As of the date hereof, (i) the Power Purchase Agreement is in full force and effect and has not been assigned, amended, supplemented or modified, (ii) there are no pending or threatened disputes or legal proceedings between Buyer and the Project Company, (iii) there is no pending or, to the knowledge of Buyer, threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which purports to affect the legality, validity or enforceability of the Power Purchase Agreement, (iv) Buyer is not aware of any event, act, circumstance or condition constituting an event of force majeure under the Power Purchase Agreement, and (v) the Project Company owes no indemnity payments or other amounts to Buyer under the Power Purchase Agreement.
5. The execution, delivery and performance by Buyer of this Estoppel Certificate have been duly authorized by all necessary action on the part of Buyer and do not require any approval or consent of any other person or entity and do not violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Buyer.
6. Buyer agrees that any notices required to be delivered to Seller under Section [\_\_] of the Power Purchase Agreement, including notices of an [Event of Default], shall be delivered by Buyer to each of the Class B Equity Investors at their respective notice addresses set forth on Exhibit A hereto, and Buyer agrees that the Class B Equity Investors shall have the right (but not the obligation) to cure the defaults listed in any notice of default in accordance with Section [\_\_] of the Power Purchase Agreement within a cure period that is the same length as the cure period afforded to Seller under the Power Purchase Agreement with respect to such event (but in no event less than 90 days), and which starts on the later of (i) the same date that the Seller's cure period expires under the Power Purchase Agreement or (ii) the date that the Class B Equity Investors receive such notice that lists the default or defaults of the Seller under the Power Purchase Agreement.
7. [Additional provisions to be included if necessary to clarify the Power Purchase

Agreement.]

8. This Estoppel Certificate shall be governed by the laws of the State of New York, without regard to principles of conflict of law.

*[Signature page follows]*

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**IN WITNESS WHEREOF**, Buyer has caused this Estoppel Certificate to be executed by its undersigned authorized officer as of the date first set forth above.

\_\_\_\_\_

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

Name:

Title:

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## EXHIBIT Q

### FORM OF LETTER OF CREDIT (issued on behalf of Buyer for the benefit of Seller)

#### DATE OF ISSUANCE:

[Date of issuance]

[Subsidiary of NextEra Energy Resources Development, LLC] (“Beneficiary”)  
700 Universe Blvd.  
Juno Beach, FL 33408  
Attention: Business Management

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the “Letter of Credit”) for the account of [[\_\_\_\_\_] on behalf of] [Buyer name and address] (“Applicant”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain Renewable Power Purchase Agreement dated as of [\_\_\_\_\_], as amended from time to time (the “Agreement”).

- 1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be [*written dollar amount*] United States Dollars (US\$[*dollar amount*]) (such maximum amount referred to as the “Stated Amount”).
- 2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [*bank address*] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “Draw Certificate”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “Draft”), appropriately completed and signed by your authorized officer (signed as such). Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in an aggregate amount not exceeding the Stated Amount specified above. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: \_\_\_\_\_ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). If presentation is made by facsimile transmission, you must contact us at [**insert phone number**] to confirm our receipt of the transmission. In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.
- 3. Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified

in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [\_\_\_\_\_] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [\_\_\_\_\_] time on any Business Day, payment will be made on the fourth succeeding Business Day. We hereby engage with you that provided that the presentation under this Letter of Credit is made on or prior to the Expiration Date and the applicable documents as set forth above conform to the requirements of this Letter of Credit, payment hereunder shall be made.

**4. Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

**5. Expiration.** This Letter of Credit shall terminate and expire on the earliest to occur of (i) the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any) or (ii) our close of business at our aforesaid office on the expiration date as extended in accordance with paragraph 6 below.

**6. Initial Period and Automatic Rollover.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 9*) that we elect not to consider this Letter of Credit extended for any such additional one year period, in which case it will expire on the date specified in such notice.

**7. Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

**8. Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

**9. Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

**10. Irrevocability.** This Letter of Credit is irrevocable.

**11. Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such

undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and Attachment A, Attachment B and Attachment C hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

Sincerely,

[ISSUING BANK]

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address:

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**ATTACHMENT A**

**FORM OF DRAW CERTIFICATE**

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the \_\_\_\_\_ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of \_\_\_\_\_ U.S. dollars (US\$\_\_\_\_\_), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) Beneficiary and [Buyer name] (“**Applicant**”) are parties to that certain Renewable Power Purchase Agreement dated as of [\_\_\_\_\_], as amended from time to time (the “**Agreement**”).
- (4) Beneficiary is making a drawing under this Letter of Credit because a Buyer Event of Default (as such term is defined in the Agreement) has occurred.

Or

Beneficiary is making a drawing under this Letter of Credit because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit instrument within thirty (30) days prior to such expiration date.

- (5) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

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

- (6) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[Buyer name]

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

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

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

**ATTACHMENT B**

**DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO.**

Date:

PAY TO: [Subsidiary of NextEra Energy Resources Development, LLC]

U.S.\$ \_\_\_\_\_

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_.

[Buyer name and address]

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

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

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

DRAFT



**ATTACHMENT C**

**CANCELLATION CERTIFICATE**

Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of [Buyer] (“**Applicant**”), under the that certain Renewable Power Purchase Agreement dated as of [\_\_\_\_\_], as amended from time to time (the “**Agreement**”) have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[Subsidiary of NextEra Energy Resources Development, LLC]

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

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

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

**EXHIBIT R**

**METERING DIAGRAM**

Metering Diagram to be provided at least 60 days prior to the Commercial Operation Date.

DRAFT

**EXHIBIT S**  
**PERFORMANCE TEST**

# Solar Energy Center PV

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## Capacity Test Procedure

Prepared by NextEra Energy Resources

xx/xx/2022

*Procedure preparer to edit blue text to make specific for the project.*





















## 6 Capacity Test Execution

### 6.1 Daily Capacity Test

A capacity value for each calendar day of the Capacity Test period will be calculated according to the procedure outlined in Section 4, using data points subjected to the exclusions described in Section 5.

For each calendar day of the test, the NextEra Test Manager will do the following:

- Confirm all inverters start up at approximately the same time
- Ensure that data is recorded in 1 minute intervals
- Review the Daily Alarm Log and other non-conformance items and ensure that they do not affect the test results

### 6.2 Tested Capacity

The Tested Capacity of the PV Power Plant will be determined using all Valid Data Points collected over the Capacity Test period. The Tested Capacity value will be calculated according to the procedure outlined in Section 4, using data points subjected to the exclusions described in Section 5. This value will be compared to Guaranteed Capacity shown in Section 1, **Table 1** to determine pass/fail.

### 6.3 Site Specific Test Configuration (Optional)

#### Site Pre-Test Assumptions:

1. Xxx
2. Xxx
3. Xxx

#### Site Testing Configuration:

1. Xxx
2. Xxx

- 
- 
- 
- 
- 
- 
-

- 
- 

## 7 Capacity Test Report

Following the conclusion of the Capacity Test, NextEra will issue a Capacity Test Report within **five (5)** business days of the successful completion of the Capacity Test to all relevant parties. The report will include the following:

- Executive summary of testing (e.g., Tested Capacity value, R<sup>2</sup> value, Daily Capacity Values)
- Instrument calibration certificates
- Test data
- Field notes including non-conformance events (See “Daily Log”)
- Capacity calculations
- Conclusions

NextEra will provide the raw test data (consisting of both Valid Data Points and excluded values) and instrument calibration certificates to relevant parties as a separate attachment. This procedure will be appended to the submitted report.

## 8 Reference Documents

- SCADA Design Drawings – [XXXXXXXXXXXXXXXXXXXXXX](#)
- Substation Functional Single Line Diagram – [XXXXXXXXXXXXXXXXXXXXXX](#)

**THIRD PHASE AGREEMENT  
FOR  
RENEWABLE POWER PURCHASE AGREEMENT  
WITH  
GRACE ORCHARD ENERGY CENTER, LLC**

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This THIRD PHASE AGREEMENT (“this Agreement”) is dated as of \_\_\_\_\_, 20\_\_ by and among the Northern California Power Agency, a joint powers agency of the State of California (“NCPA”), and the signatories to this Agreement other than NCPA (“Participants”). NCPA and the Participants are referred to herein individually as a “Party” and collectively as the “Parties”.

## **RECITALS**

A. NCPA has heretofore been duly established as a public agency pursuant to the Joint Exercise of Powers Act of the Government Code of the State of California and, among other things, is authorized to acquire, construct, finance, and operate buildings, works, facilities, and improvements for the generation and transmission of electric capacity and energy for resale.

B. Each of the Participants is a signatory to the Joint Powers Agreement which created NCPA and therefore is a Member.

C. Each of the Participants to this Agreement have executed the Amended and Restated Facilities Agreement, dated October 1, 2014, which establishes the framework under which Project Agreements are created for the development, design, financing, construction, and operation of specific NCPA Projects.

D. The Participants desire NCPA to enter into a Renewable Power Purchase Agreement (“PPA”) with Grace Orchard Energy Center, LLC (“Seller”), to purchase Product produced by the Facility for the benefit of the Participants’ customers.

E. Each Participant is authorized by its Constitutive Documents to obtain the Product for its present or future requirements, through contracts with NCPA or otherwise.

F. To enable NCPA to enter into the Renewable Power Purchase Agreement on behalf of the Participants, pursuant to the terms and conditions of the Amended and Restated Facilities Agreement, NCPA and the Participants wish to enter into this Agreement to provide all means necessary for NCPA to fulfill obligations incurred on behalf of NCPA and the Participants pursuant to the Renewable Power Purchase Agreement, and to enable and obligate the Participants to take delivery of and pay for the Product and to pay NCPA for all costs it incurs for undertaking the foregoing activities.

G. Upon full execution of this Agreement, NCPA will enter into the Renewable Power Purchase Agreement on behalf of the Participants, and such Renewable Power Purchase Agreement shall be deemed a NCPA Project by the Commission.

H. Each of the Parties intends to observe the provisions of this Agreement in good faith and shall cooperate with all other Parties in order to achieve the full benefits of joint action.

I. The Parties desire to equitably allocate costs of NCPA’s provision of services under this Agreement among the Participants.

J. The Participants further desire, insofar as possible, to insulate other Members who are not Participants, from risks inherent in the services and transactions undertaken on behalf of the Participants pursuant to this Agreement.

NOW, THEREFORE, the Parties agree as follows:

**Section 1. Definitions.**

1.1 Definitions. Whenever used in this Agreement (including the Recitals hereto), the following terms shall have the following respective meanings, provided, capitalized terms used in this Agreement (including the Recitals hereto) that are not defined in Section 1 of this Agreement shall have the meaning indicated in Section 1 of the Power Management and Administrative Services Agreement, dated October 1, 2014:

1.1.1 “Administrative Services Costs” means that portion of the NCPA administrative, general and occupancy costs and expenses, including those costs and expenses associated with the operations, direction and supervision of the general affairs and activities of NCPA, general management, treasury operations, accounting, budgeting, payroll, human resources, information technology, facilities management, salaries and wages (including retirement benefits) of employees, facility operation and maintenance costs, taxes and payments in lieu of taxes (if any), insurance premiums, fees for legal, engineering, financial and other services, power management services, general settlement and billing services and general risk management costs, that are charged directly or apportioned to the provision of services under this Agreement.

Administrative Services Costs as separately defined herein and used in the context of this Agreement is different and distinct from the term Administrative Services Costs as defined in Section 1 of the Power Management and Administrative Services Agreement.

1.1.2 "Agreement" means this Third Phase Agreement, including all Exhibits attached hereto.

1.1.3 "All Resources Bill" has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.4 "CAISO" means the California Independent System Operator Corporation, or its functional successor.

1.1.5 "CAISO Tariff" means the duly authorized tariff, rules, protocols and other requirements of the CAISO, as amended from time to time.

1.1.6 "Capacity Damages" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.1.7 "Commission" has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.8 "Commercial Operation Date" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.1.9 "Constitutive Documents" means, with respect to NCPA, the Joint Powers Agreement and any resolutions or bylaws adopted thereunder with respect to

the governance of NCPA, and with respect to each Participant, the California Government Code and other statutory provisions applicable to such Participant, any applicable agreements, charters, contracts, or other documents concerning the formation, operation or decision making of such Participant, including, if applicable, its city charter, and any codes, ordinances, bylaws, and resolutions adopted by such Participant's governing body.

1.1.10 "Defaulting Participant" has the meaning set forth in Section 7.2.

1.1.11 "Electric System" has the meaning set forth in the Power Management and Administrative Services Agreement.

1.1.12 "Event of Default" has the meaning set forth in Section 7.2.

1.1.13 "Facility" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.1.14 "Guaranteed Capacity" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.1.15 "Guaranteed Commercial Operation Date" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.1.16 "Guaranteed Construction Start Date" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.1.17 "General Operating Reserve" means the NCPA General Operating Reserve created through resolution of the Commission, as the same may be amended from time to time.

1.1.18 "Installed Capacity" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.1.19 "MW" means megawatt.

1.1.20 "MWh" means megawatt hour.

1.1.21 "NCPA" has the meaning set forth in the Recitals hereto.

1.1.22 "New PV Trade Measure Event" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.1.23 "Participant" has the meaning set forth in the recitals of this Agreement.

1.1.24 "Party" or "Parties" has the meaning set forth in the preamble hereto; provided that "Third Parties" are entities that are not Party to this Agreement.

1.1.25 "Power Management and Administrative Services Agreement" means the NCPA Power Management and Administrative Services Agreement, dated as of October 1, 2014 between NCPA and the Members who are signatories to that agreement by which NCPA provides Power Management and Administrative Services.

1.1.26 "Product" is defined in the PPA, Section 1.1; "Products" and that definition is hereby incorporated by reference. For the purpose of clarity, Product shall

include (i) Facility Energy, and (ii) Green Attributes, including but not limited to, Portfolio Content Category 1 Renewable Energy Credits, as such terms are defined in the PPA, Section 1.1.

1.1.27 "Project" or "PPA" means the Renewable Power Purchase Agreement, dated as of \_\_\_\_\_, 20\_\_ between NCPA and Seller, under which NCPA, on behalf of the Participants, purchases Product from the Facility located in Riverside County, California, consisting of a separately metered 50 MW<sub>AC</sub> section of a larger solar photovoltaic generating facility commonly known as the Grace Solar Project. Upon final execution of the PPA, the Project shall be deemed a NCPA Project in accordance with the Amended and Restated Facilities Agreement. The PPA has been attached to this Agreement as Exhibit B.

1.1.28 "Project Costs" means all costs charged to and paid by NCPA pursuant to the PPA.

1.1.29 "Project Participation Percentage" has the meaning set forth in the Power Management and Administrative Services Agreement, and are set forth in Exhibit A of this Agreement.

1.1.30 "Revenue" means , with respect to each Participant, all income, rents, rates, fees, charges, and other moneys derived by the Participant from the ownership or operation of its Electric System, including, without limiting the generality of the foregoing: (a) all income, rents, rates, fees, charges or other moneys derived from

the sale, furnishing and supplying of electric capacity and energy and other services, facilities, and commodities sold, furnished, or supplied through the facilities of its Electric System; (b) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to law to its Electric System; (c) the proceeds derived by the Participant directly or indirectly from the sale, lease or other disposition of all or a part of the Electric System; and (d) the proceeds derived by Participant directly or indirectly from the consignment and sale of freely allocated greenhouse gas compliance instruments into periodic auctions administered by the State of California under the California Cap-and-Trade Program, provided that such proceeds are a permitted use of auction proceeds, but the term Revenues shall not include (i) customers' deposits or any other deposits subject to refund until such deposits have become the property of the Participant or (ii) contributions from customers for the payment of costs of construction of facilities to serve them.

1.1.31 "Scheduling Protocols" means the applicable provisions of the Amended and Restated Scheduling Coordination Program Agreement, and any other contractual or other arrangements between NCPA and the Participants concerning the scheduling, delivery and metering of the Renewable Power Purchase Agreement.



1.1.32 "Security Deposit" means the account established by NCPA and funded by the Participants in accordance with Section 5, the funds of which are available for use by NCPA in accordance with the terms and conditions hereof.

1.1.33 "Seller" means Grace Orchard Energy Center, LLC, as set forth in Recital D of this Agreement, or as otherwise set forth in the PPA.

1.1.34 "Term" has the meaning set forth in Section 10.

1.1.35 "Third Party" means an entity (including a Member) that is not Party to this Agreement.

1.1.36 "UFLPA/WRO Restraint" is defined in the PPA, Section 1.1; that definition is hereby incorporated by reference.

1.2 Rules of Interpretation. As used in this Agreement (including the Recitals hereto), unless in any such case the context requires otherwise: The terms "herein," "hereto," "herewith" and "hereof" are references to this Agreement taken as a whole and not to any particular provision; the term "include," "includes" or "including" shall mean "including, for example and without limitation;" and references to a "Section," "subsection," "clause," "Appendix", "Schedule", or "Exhibit" shall mean a Section, subsection, clause, Appendix, Schedule or Exhibit of this Agreement, as the case may be. All references to a given agreement, instrument, tariff or other document, or law, regulation or ordinance shall be a reference to that agreement, instrument, tariff or other document, or law, regulation or ordinance as such now exists and as may be amended

from time to time, or its successor. A reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having a separate legal personality and includes its successors and permitted assigns. A reference to a “day” shall mean a Calendar Day unless otherwise specified. The singular shall include the plural and the masculine shall include the feminine, and *vice versa*.

**Section 2. Purpose.** The purpose of this Agreement is to: (i) set forth the terms and conditions under which NCPA shall enter into the PPA on behalf of the Participants, (ii) authorize NCPA, acting on behalf of the Participants, to engage in all activities related to that basic purpose, and (iii) specify the rights and obligations of NCPA and the Participants with respect to the PPA.

**Section 3. Sale and Purchase of Products.** By executing this Agreement, each Participant acknowledges and agrees to be bound by the terms and conditions of the Agreement, and that the Agreement is written as a “take-or-pay” agreement. Any Product delivered to NCPA under the PPA shall be delivered to each Participant in proportion to such Participant’s Project Participation Percentage as set forth in Exhibit A, and each Participant shall accept and pay for its respective percentage of such Product. To the extent a Participant is unable to accept such deliveries in full, NCPA shall dispose of such surplus in its sole discretion, in such a manner to attempt to maximize Participant value and that Participant shall reimburse to NCPA any costs incurred by NCPA in doing so.

Notwithstanding the above, NCPA may allocate Product procured through the PPA among the Participants in such percentages as NCPA may, in its reasonable discretion, determine are necessary, desirable, or appropriate, in order to accommodate Participant transfer rights pursuant to Section 9.

3.1 Scheduling. Products delivered from Seller shall be scheduled for and to the Participants in accordance with Scheduling Protocols, and the terms and conditions of the PPA.

#### **Section 4. Billing and Payments**

4.1 Participant Payment Obligations. Each Participant agrees to pay to NCPA each month its respective portion of the Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement and the Amended and Restated Facilities Agreement. In addition to the aforementioned monthly payment obligations, each Participant is obligated to fund: (i) any and all required Security Deposits calculated in accordance with Section 5, and (ii) any working capital requirements for the Project maintained by NCPA as determined, collected and set forth in the Annual Budget.

4.2 Invoices. NCPA will issue an invoice to each Participant for its share of Project Costs, Administrative Services Costs, scheduling coordination costs, and all other costs for services provided in accordance with this Agreement and the Amended and Restated Facilities Agreement. Such invoice may be either the All Resources Bill or

separate special invoice, as determined by NCPA. At NCPA's discretion, invoices may be issued to Participants using electronic media or physical distribution.

4.3 Payment of Invoices. All invoices delivered by NCPA (including the All Resources Bill) are due and payable thirty (30) Calendar Days after the date thereof; provided, however, that any amount due on a day other than a Business Day may be paid on the following Business Day.

4.4 Late Payments. Any amount due and not paid by a Participant in accordance with Section 4.3 shall be considered late and bear interest computed on a daily basis until paid at the lesser of (i) the per annum prime rate (or reference rate) of the Bank of America NT&SA then in effect, plus two percent (2%) or (ii) the maximum rate permitted by law.

4.5 Billing Disputes. A Participant may dispute the accuracy of any invoice issued by NCPA under this Agreement by submitting a written dispute to NCPA, within thirty (30) Calendar Days after the date of such invoice; nonetheless the Participant shall pay the full amount billed when due. If a Participant does not timely question or dispute the accuracy of any invoice in writing, then the invoice shall be deemed to be correct. Upon review of a submitted dispute, if an invoice is determined by NCPA to be incorrect, then NCPA shall issue a corrected invoice and refund any amounts that may be due to the Participant. If NCPA and the Participant fail to agree on the accuracy of an invoice within thirty (30) Calendar Days after the Participant has disputed it, then the General Manager shall promptly submit the dispute to the Commission for resolution. If the Commission

and the Participant fail to agree on the accuracy of a disputed invoice within sixty (60) Calendar Days after its submission to the Commission, then the dispute may then be resolved under the mediation and arbitration procedures set forth in Section 12 of this Agreement; provided, however, that prior to resorting to either mediation or arbitration proceedings, the full amount of the disputed invoice must be paid by the Participant.

4.6 Billing/Settlement Data and Examination of Books and Records.

4.6.1 Settlement Data. NCPA shall make billing and settlement data available to the Participants in the All Resources Bill, or other invoice, or upon request. NCPA may also, at its sole discretion, make billing and settlement support information available to Participants using electronic media (e.g. electronic data portal).

Procedures and formats for the provision of such electronic data submission may be established by the Commission from time to time. Without limiting the generality of the foregoing, NCPA may, in its reasonable discretion, require the Participants to execute a non-disclosure agreement prior to providing access to the NCPA electronic data portal.

4.6.2 Examination of Books and Records. Any Participant to this Agreement shall have the right to examine the books and records created and maintained by NCPA pursuant to this Agreement at any reasonable, mutually agreed upon time.

**Section 5. Security Deposit Administration**

5.1 Security Deposit Requirements. Each Participant agrees that any funds deposited at NCPA to satisfy Participant's Security Deposit requirements pursuant to this Agreement shall be irrevocably committed and held by NCPA in the General Operating Reserve, and that such funds may be used by NCPA in accordance with Section 5.1.3. Each Participant's Security Deposit will be accounted separately from and in addition to any other security accounts or deposits maintained pursuant to any other agreement between NCPA and the Participant, or any other such security account or deposits required of Members. In connection with fulfilling the Security Deposit requirements of this Agreement, Participant may elect to use its uncommitted funds held in the General Operating Reserve to satisfy in whole or in part its Security Deposit required under Section 5. If Participant chooses to satisfy in whole or in part its security requirements using its uncommitted funds held in the General Operating Reserve, then Participant is required to execute and deliver to NCPA an Irrevocable Letter of Direction, directing NCPA to utilize Participant's uncommitted General Operating Reserve funds for such purposes, and the designated funds will thereafter be irrevocably committed and held by NCPA to satisfy the requirements of this Agreement.

5.1.1 Initial Amounts. No later than June 1, 2027, each Participant shall ensure that sufficient Security Deposit funds have been deposited with and are held by NCPA in an amount not greater than the highest three (3) months of estimated Project

Costs, as estimated by NCPA. Such Security Deposit requirement may be satisfied by Participant in whole or part either in cash, through irrevocable commitment of its uncommitted funds held in the General Operating Reserve in accordance with Section 5.1, or through a clean, irrevocable letter of credit satisfactory to NCPA's General Manager.

5.1.2 Subsequent Deposits. Periodically, and at least quarterly, NCPA shall review and revise its estimate of Project Costs for which Participant shall be obligated to pay under this Agreement. Following such review, NCPA shall determine whether each Participant has a sufficient Security Deposit balance at NCPA. To the extent that any Participant's Security Deposit balance is greater than one hundred and ten percent (110%) of the amount required herein, NCPA shall credit such amount as soon as practicable to the Participant's next following All Resources Bill, or by separate special invoice. To the extent that any Participant's Security Deposit balance is less than ninety percent (90%) of the amount required herein, NCPA shall add such amount as soon as practicable to such Participant's next All Resources Bill, or as necessary, to a special invoice to be paid by Participant upon receipt. Credits or additions shall not be made to Participants who satisfy these Security Deposit requirements in whole through the use of a letter of credit; provided, that the amount of the letter of credit shall be adjusted, as required from time to time, in a like manner to assure an amount not to

exceed the highest three (3) months of estimated Project Costs is available to NCPA, as determined by NCPA.

5.1.3 Use of Security Deposit Funds. NCPA may use any and all Security Deposit funds held by NCPA (or utilize a letter of credit provided in lieu thereof) to pay any costs it incurs hereunder, including making payments to Seller, without regard to any individual Participant's Security Deposit balance or proportionate share of Project Costs, and irrespective of whether NCPA has issued an All Resources Bill or special invoice for such costs to the Participants or whether a Participant has made timely payments of All Resources Bills or special invoices. Should Participant have satisfied its Security Deposit requirements in whole or part through a letter of credit, NCPA may draw on such letter of credit to satisfy Participant's obligations hereunder at NCPA's sole discretion. Notwithstanding the foregoing, if any Participant fails to pay any costs incurred by NCPA pursuant to this Agreement, NCPA shall first use that non-paying Participant's Security Deposit and shall not use any other Participants' Security Deposit until such non-paying Participant's Security Deposit has been exhausted.

5.1.4 Accounting. If Security Deposit funds or a letter of credit are used by NCPA to pay any costs it incurs hereunder as described in Section 5.1.3, then NCPA will maintain a detailed accounting of each Participant's shares of funds withdrawn, and upon the collection of all or a part of such withdrawn funds, NCPA will credit



back to each non-defaulting Participant the funds collected in proportion to such non-defaulting Participant's share of funds initially withdrawn.

5.1.5 Emergency Additions. In the event that funds are withdrawn pursuant to Section 5.1.3, or if the Security Deposit held by NCPA is otherwise insufficient to allow for NCPA to pay any invoice, demand, request for further assurances by Seller, or claims, NCPA shall notify all Participants of the deficiency. In conjunction with such notice, NCPA shall send a special or emergency assessment invoice to the Participant or Participants that caused or are otherwise responsible for the deficiency. Each Participant of such an invoice shall pay to NCPA such assessment when and if assessed by NCPA within two (2) Business Days of the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit Participant has established for such purposes. In the event that the Participant or Participants that caused or are otherwise responsible for the deficiency cannot, does not or will not pay to NCPA the special or emergency assessment within two (2) Business Days after the invoice date, NCPA shall immediately submit a special or emergency invoice to all remaining Participants, and such remaining Participants shall pay to NCPA such assessment within two (2) Business Days after the invoice date of the assessment, or shall consent to and direct NCPA to draw on any existing letter of credit that Participant has established for such purposes.

5.1.6 Security Deposit Interest. NCPA shall maintain a detailed accounting of each Participant's Security Deposits, and withdrawals of such funds, held by NCPA. Security Deposits held by NCPA shall be invested by NCPA in accordance with the General Operating Reserve policies and investment policies adopted by the NCPA Commission. Interest earned on the Security Deposit funds shall be proportionately credited to the Participants in accordance with their weighted average balances held therein. Any Security Deposit losses caused by early termination of investments shall be allocated among the Participants in accordance with the General Operating Reserve provisions and guidelines approved by the Commission, as the same may be amended from time to time; provided, however, to the extent that either the General Operating Reserve provisions and guidelines do not apply or the Security Deposit is not adequate to cover the losses, then such losses shall be allocated among the Participants in accordance with their proportionate Security Deposit balances.

5.1.7 Return of Funds. Upon termination or a permitted withdrawal of a Participant in accordance with this Agreement, the affected Participant may apply to NCPA for the return of their share of Security Deposit funds ninety (90) days after the effective date of such termination or withdrawal. However, NCPA shall, in its sole but reasonable discretion, as determined by the NCPA General Manager, estimate the then outstanding liabilities of the Participant, including any estimated contingent liabilities

and shall retain all such funds, if any, until all such liabilities have been fully paid or otherwise satisfied in full. After all such liabilities have been satisfied in full, as determined by NCPA's General Manager, any remaining balance of the Participant's share of the Security Deposit will be refunded to the Participant within sixty (60) days thereafter.

**Section 6. Cooperation and Further Assurances.** Each of the Parties 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 any other Party which are consistent with the provisions of this Agreement and which do not involve the assumption of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement. The Parties agree to cooperate and act in good faith in connection with obtaining any credit support required in order to satisfy the requirements of this Agreement.

**Section 7. Participant Covenants and Defaults**

7.1 Each Participant covenants and agrees: (i) to make payments to NCPA, from its Electric System Revenues, of its obligations under this Agreement as an operating expense of its Electric System; (ii) to fix the rates and charges for services provided by its Electric System, so that it will at all times have sufficient Revenues to meet the obligations of this Agreement, including the payment obligations; (iii) to make all such payments due NCPA under this Agreement whether or not there is an interruption in, interference with,

or reduction or suspension of services provided under this Agreement, such payments not being subject to any reduction, whether by offset or otherwise, and regardless of whether any reasonable dispute exists; and (iv) to operate its Electric System, and the business in connection therewith, in accordance with Good Utility Practices.

7.2 Events of Default. An Event of Default under this Agreement shall exist upon the occurrence of any one or more of the following by a Participant (the “Defaulting Participant”):

(i) the failure of any Participant to make any payment in full to NCPA when due;

(ii) the failure of a Participant to perform any covenant or obligation of this Agreement where such failure is not cured within thirty (30) Calendar Days following receipt of a notice from NCPA demanding cure; provided, that this subsection shall not apply to any failure to make payments specified by subsection 7.2 (i));

(iii) if any representation or warranty of a Participant material to the services provided hereunder shall prove to have been incorrect in any material respect when made and the Participant does not cure the facts underlying such incorrect representation or warranty so that the representation or warranty becomes true and correct within thirty (30) Calendar Days after the date of receipt of notice from NCPA demanding cure; or

(iv) if a Participant is in default or in breach of any of its covenants or obligations under any other agreement with NCPA and such default or breach is not cured within the time periods specified in such agreement.

7.3 Uncontrollable Forces. A Party shall not be considered to be in default in respect of any obligation hereunder if prevented from fulfilling such obligation by reason of Uncontrollable Forces; provided, that in order to be relieved of an Event of Default due to Uncontrollable Forces, a Party affected by an Uncontrollable Force shall:

(i) first provide oral notice to the General Manager using telephone communication within two (2) Business Days after the onset of the Uncontrollable Force, and provide subsequent written notice to the General Manager and all other Parties within ten (10) Business Days after the onset of the Uncontrollable Force, describing its nature and extent, the obligations which the Party is unable to fulfill, the anticipated duration of the Uncontrollable Force, and the actions which the Party will undertake so as to remove such disability and be able to fulfill its obligations hereunder; and

(ii) use due diligence to place itself in a position to fulfill its obligations hereunder and if unable to fulfill any obligation by reason of an Uncontrollable Force such Party shall exercise due diligence to remove such disability with reasonable dispatch; provided, that nothing in this subsection shall require a Party to settle or compromise a labor dispute.

7.4 Cure of an Event of Default. An Event of Default shall be deemed cured only if such default shall be remedied or cured within the time periods specified in Section 7.2 above, as may be applicable, provided, however, upon request of the Defaulting Participant the Commission may waive the default at its sole discretion, where such waiver shall not be unreasonably withheld.

7.5 Remedies in the Event of Uncured Default. Upon the occurrence of an Event of Default which is not cured within the time limits specified in Section 7.2, without limiting other rights or remedies available under this Agreement, at law or in equity, and without constituting or resulting in a waiver, release or estoppel of any right, action or cause of action NCPA may have against the Defaulting Participant, NCPA may take any or all of the following actions:

(i) suspend the provision of services under this Agreement to such Defaulting Participant; or

(ii) demand that the Defaulting Participant provide further assurances to guarantee the correction of the default, including the collection of a surcharge or increase in electric rates, or such other actions as may be necessary to produce necessary Revenues to correct the default.

7.6 Effect of Suspension.

7.6.1 Generally. The suspension of this Agreement will not terminate, waive, or otherwise discharge any ongoing or undischarged liabilities, credits or

obligations arising from this Agreement until such liabilities, credits or obligations are satisfied in full.

7.6.2 Suspension. If performance of all or any portion of this Agreement is suspended by NCPA with respect to a Participant in accordance with subsection 7.5(i), then such Participant shall pay any and all costs incurred by NCPA as a result of such suspension including reasonable attorney's fees, the fees and expenses of other experts, including auditors and accountants, or other reasonable and necessary costs associated with such suspension and any portion of the Project Costs, scheduling and dispatch costs, and Administrative Services Costs that were not recovered from such Participant as a result of such suspension.

## **Section 8. Administration of Agreement**

8.1 Commission. The Commission is responsible for the administration of this Agreement. Each Participant shall be represented by its Commissioner or their designated alternate Commissioner ("Alternate") pursuant to the Joint Powers Agreement. Each Commissioner shall have authority to act for the Participant represented with respect to matters pertaining to this Agreement.

8.2 Forum. Whenever any action anticipated by this Agreement is required to be jointly taken by the Participants, such action shall be taken at regular or special meetings of the NCPA Commission.

8.3 Quorum. For purposes of acting upon matters that relate to administration of this Agreement, a quorum of the Participants shall consist of those Commissioners, or their designated Alternate, representing a numerical majority of the Participants.

8.4 Voting. Each Participant shall have the right to cast one vote with respect to matters pertaining to this Agreement. A unanimous vote of all Participants shall be required for action regarding: (i) any transfer of rights to a Third Party as described in Section 9 of this Agreement; and (ii) for matters related to any of the following actions as provided for in the PPA: (a) exercising any early termination provisions as set forth in the PPA, and (b) exercising any assignment rights as set forth in the PPA. For all other matters pertaining to this Agreement, a majority vote of the Participants shall be required for action.

8.5 New PV Trade Measure Events. Section 2.5 of the PPA permits the Seller to extend both the Guaranteed Construction Start Date and Guaranteed Commercial Operation Date if there is a New PV Trade Measure Event or UFLPA/WRO Restraint; provided, however, either Seller or NCPA may terminate the PPA in the event the extension of time exceeds the time limits set forth in Section 3.5 and Exhibit B of the PPA. Section 2.5 of the PPA also provides Seller the right to submit a Proposed Contract Price Increase to NCPA to keep Seller whole with respect to any actual cost increases that Seller incurs as a result of a New PV Trade Measure Event. If the Proposed Contract Price Increase is less than or equal to \$5.00/MWh, or the extension of the Guaranteed



Construction Start Date or Guaranteed Commercial Operation Date is less than three hundred and sixty-five (365) days, the NCPA General Manager is hereby delegated the authority to validate the price increase to confirm if the agreement is still favorable when compared to current market conditions for similar products, and shall notify the Commission of the modifications to the PPA, if any, that are deemed acceptable by the NCPA General Manager at the next available Commission meeting. If the Proposed Contract Price Increase is greater than \$5.00/MWh or the extension of the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date is longer than three hundred and sixty-five (365) days, the proposed modifications to the PPA will be brought to the Commission for discussion and further action.

**Section 9. Transfer of Rights by Participants**

9.1 A Participant has the right to make transfers, sales, assignments and exchanges (collectively “transfers(s)”) of any portion of its Project Participation Percentage and rights thereto, subject to the approval provisions in Section 8.4 of this Agreement, provided that the transferee satisfies all applicable criterion in the PPA. If a Participant desires to transfer a portion or its entire share of the Project for a specific time interval, or permanently, then NCPA will, if requested by such Participant, use its best efforts to transfer that portion of the Participant’s share of the Project.

9.2 Unless otherwise set forth in this Agreement, before a Participant may transfer an excess Project share pursuant to Section 9.1 to any person or entity other than a

Participant, it shall give all other Participants the right to purchase the share on the same terms and conditions. Before a Participant may transfer an excess Project share pursuant to section 9.1 to any person or entity other than a Member, it shall give all Members the right to purchase the share on the same terms and conditions. Such right shall be exercised within thirty (30) days of receipt of notice of said right.

No transfer shall relieve a Participant of any of its obligations under this Agreement except to the extent that NCPA receives payment of these obligations from a transferee.

9.3 The provisions of this Section 9 do not apply to the Exhibit A, unless expressly set forth therein.

**Section 10. Term and Termination.** This Agreement shall become effective when it has been duly executed by all Participants, and delivered to and executed by NCPA (the “Effective Date”). NCPA shall notify all Participants in writing of the Effective Date. The Term of this Agreement shall be coterminous with the PPA, and shall commence on the Effective Date, and shall continue through the term of the PPA.

**Section 11. Withdrawal of Participants.** No Participant may withdraw from this Agreement except as otherwise provided for herein.

**Section 12. Settlement of Disputes and Arbitration.** The Parties agree to make best efforts to settle all disputes among themselves connected with this Agreement as a matter of normal business under this Agreement. The procedures set forth in Section 10 of the

Power Management and Administrative Services Agreement shall apply to all disputes that cannot be settled by the Participants themselves; provided, that the provisions of Section 4.5 shall first apply to all disputes involving invoices prepared by NCPA.

**Section 13. Miscellaneous**

13.1 Confidentiality. The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. Confidential or trade secret information shall be marked or expressly identified as such.

If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any other Party's (the "Supplying Party") confidential data or information, which the Receiving Party has possession of ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days after receipt of the Disclosure Request. Within three (3) Business Days after receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its

sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party's costs reasonably incurred with respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, and the Receiving Party's attorney's fees; or

(ii) that the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

13.2 Indemnification and Hold Harmless. Subject to the provisions of Section 13.4, each Participant agrees to indemnify, defend and hold harmless NCPA and its Members, including their respective governing boards, officials, officers, agents, and employees, from and against any and all claims, suits, losses, costs, damages, expenses and liability of any kind or nature, including reasonable attorneys' fees and the costs of litigation, including experts, to the extent caused by any acts, omissions, breach of contract, negligence (active or passive), gross negligence, recklessness, or willful misconduct of that Participant, its governing officials, officers, employees, subcontractors or agents, to the maximum extent permitted by law.

13.3 Several Liabilities. No Participant shall, in the first instance, be liable under this Agreement for the obligations of any other Participant or for the obligations of NCPA incurred on behalf of other Participants. Each Participant shall be solely responsible and liable for performance of its obligations under this Agreement, except as otherwise

provided for herein. The obligation of each Participant under this Agreement is, in the first instance, a several obligation and not a joint obligation with those of the other Participants.

Notwithstanding the foregoing, the Participants acknowledge that any debts or obligations incurred by NCPA under this Agreement on behalf of any of them shall be borne solely by such Participants in proportion to their respective Project Participation Percentages, and not by non-Participant Members of NCPA, pursuant to Article IV, Section 3(b) of the Joint Powers Agreement.

In the event that a Participant should fail to pay its share of the debts or obligations incurred by NCPA as required by this Agreement, the remaining Participants shall, in proportion to their Project Participation Percentages, pay such unpaid amounts and shall be reimbursed by the Participant failing to make such payments.

13.4 No Consequential Damages. FOR ANY BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED. IF NO REMEDY OR MEASURE OF DAMAGE IS EXPRESSLY PROVIDED, THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE HEREBY WAIVED. IN NO EVENT SHALL NCPA OR ANY

PARTICIPANT OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, REPRESENTATIVES, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INDIRECT, PUNITIVE, OR INCIDENTAL LOSSES OR DAMAGES, INCLUDING LOSS OF USE, LOSS OF GOODWILL, LOST REVENUES, LOSS OF PROFIT OR LOSS OF CONTRACTS EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NCPA AND EACH PARTICIPANT EACH HEREBY WAIVES SUCH CLAIMS AND RELEASES EACH OTHER AND EACH OF SUCH PERSONS FROM ANY SUCH LIABILITY.

The Parties acknowledge that California Civil Code section 1542 provides that: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." The Parties waive the provisions of section 1542, or other similar provisions of law, and intend that the waiver and release provided by this Section of this Agreement shall be fully enforceable despite its reference to future or unknown claims.

13.5 Waiver. No waiver of the performance by a Party of any obligation under this Agreement with respect to any default or any other matter arising in connection with this Agreement shall be effective unless given by the Commission or the governing body of a Participant, as applicable. Any such waiver by the Commission in any particular

instance shall not be deemed a waiver with respect to any subsequent performance, default or matter.

13.6 Amendments. Except where this Agreement specifically provides otherwise, this Agreement may be amended only by written instrument executed by the Parties with the same formality as this Agreement.

13.7 Assignment of Agreement.

13.7.1 Binding Upon Successors. This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assignees of the Parties to this Agreement.

13.7.2 No Assignment. Neither this Agreement, nor any interest herein, shall be transferred or assigned by a Party hereto except with the consent in writing of the other Parties hereto, which consent shall not be unreasonably withheld.

13.8 Severability. In the event that any of the terms, covenants or conditions of this Agreement or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless the court holds that such provisions are not severable from all other provisions of this Agreement.

13.9 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California.

13.10 Headings. All indices, titles, subject headings, section titles and similar items are provided for the purpose of convenience and are not intended to be inclusive, definitive, or affect the meaning of the contents of this Agreement or the scope thereof.

13.11 Notices. Any notice, demand or request required or authorized by this Agreement to be given to any Party shall be in writing, and shall either be personally delivered to a Participant's Commissioner or Alternate, and to the General Manager, or shall be transmitted to the Participant and the General Manager at the addresses shown on the signature pages hereof. The designation of such addresses may be changed at any time by written notice given to the General Manager who shall thereupon give written notice of such change to each Participant. All such notices shall be deemed delivered when personally delivered, two (2) Business Days after deposit in the United States mail first class postage prepaid, or on the first Business Day following delivery through electronic communication.

13.12 Warranty of Authority. Each Party represents and warrants that it has been duly authorized by all requisite approval and action to execute and deliver this Agreement and that this Agreement is a binding, legal, and valid agreement enforceable in accordance with its terms. Upon execution of this Agreement, each Participant shall deliver to NCPA a resolution of the governing body of such Participant evidencing approval of and authority to enter into this Agreement.



13.13 Counterparts. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatories to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

13.14 Venue. In the event that a Party brings any action under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

13.15 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, then each Party shall bear its own fees and costs, including attorneys' fees, associated with the action.

13.16 Counsel Representation. Pursuant to the provisions of California Civil Code Section 1717 (a), each of the Parties were represented by counsel in the negotiation and execution of this Agreement and no one Party is the author of this Agreement or any of its subparts. Those terms of this Agreement which dictate the responsibility for bearing any attorney's fees incurred in arbitration, litigation or settlement in a manner inconsistent

with the provisions of Section 13.2 were intentionally so drafted by the Parties, and any ambiguities in this Agreement shall not be interpreted for or against a Party by reason of that Party being the author of the provision.

13.17 No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties, by any third person or any Third Parties, to be for the benefit of any Third Party, nor shall any Third Party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by the Parties of any of the provisions of this Agreement.

IN WITNESS WHEREOF, NCPA and each Participant have, by the signature of its duly authorized representative shown below, executed and delivered a counterpart of this Agreement.

NORTHERN CALIFORNIA  
POWER AGENCY  
651 Commerce Drive  
Roseville, CA 95678

CITY OF SANTA CLARA  
1500 Warburton Avenue  
Santa Clara, CA 95050

\_\_\_\_\_  
By: Randy S. Howard  
Title: General Manager  
Date: \_\_\_\_\_

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

Approved as to form:

Approved as to form:

\_\_\_\_\_  
By: Jane E. Luckhardt  
Its: General Counsel  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: City Attorney  
Date: \_\_\_\_\_

Attestation (if applicable):

Attestation (if applicable):

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By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF BIGGS  
465 C Street  
Biggs, CA 95917

CITY OF GRIDLEY  
685 Kentucky Street  
Gridley, CA 95948

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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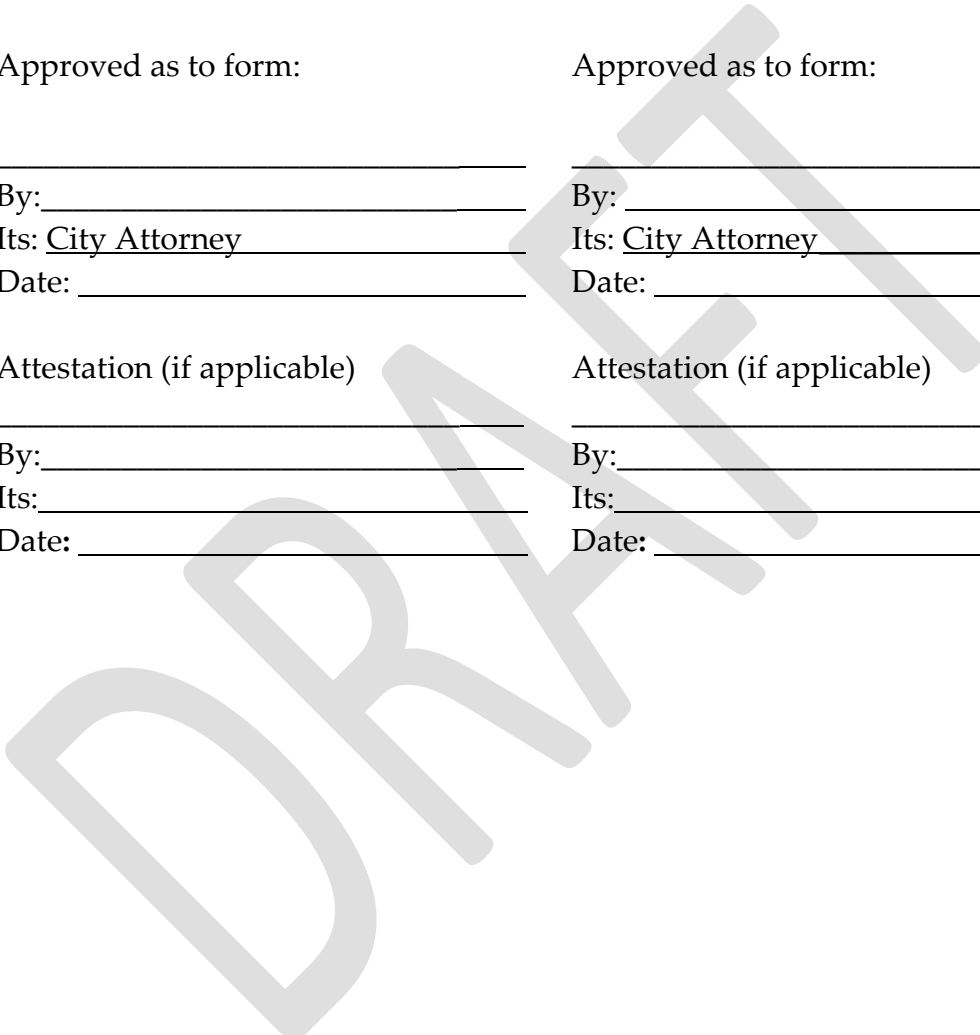
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CITY OF HEALDSBURG  
401 Grove Street  
Healdsburg, CA 95448

CITY OF LODI  
221 W. Pine Street  
Lodi, CA 95240

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

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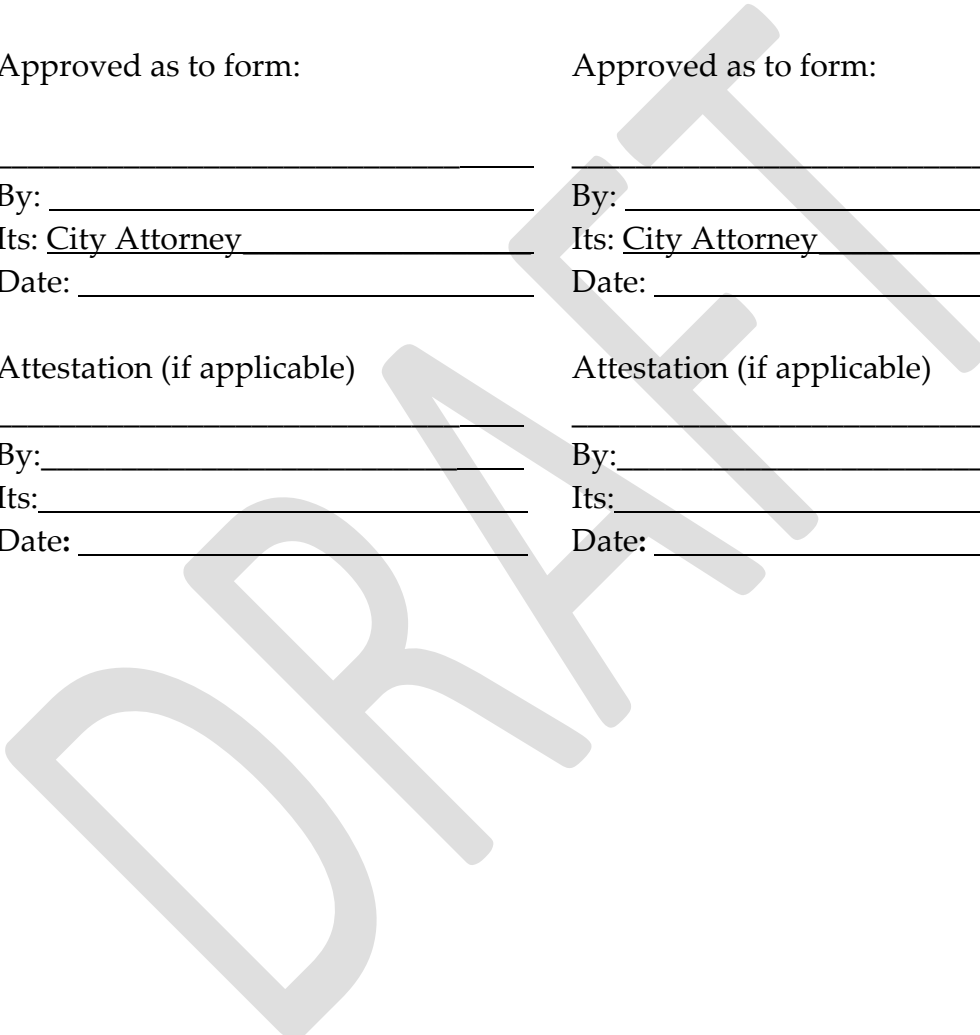
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CITY OF LOMPOC  
100 Civic Center Plaza  
Lompoc, CA 93436

CITY OF OAKLAND, acting  
by and through its  
Board of Port Commissioners  
530 Water Street  
Oakland, CA 94607

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

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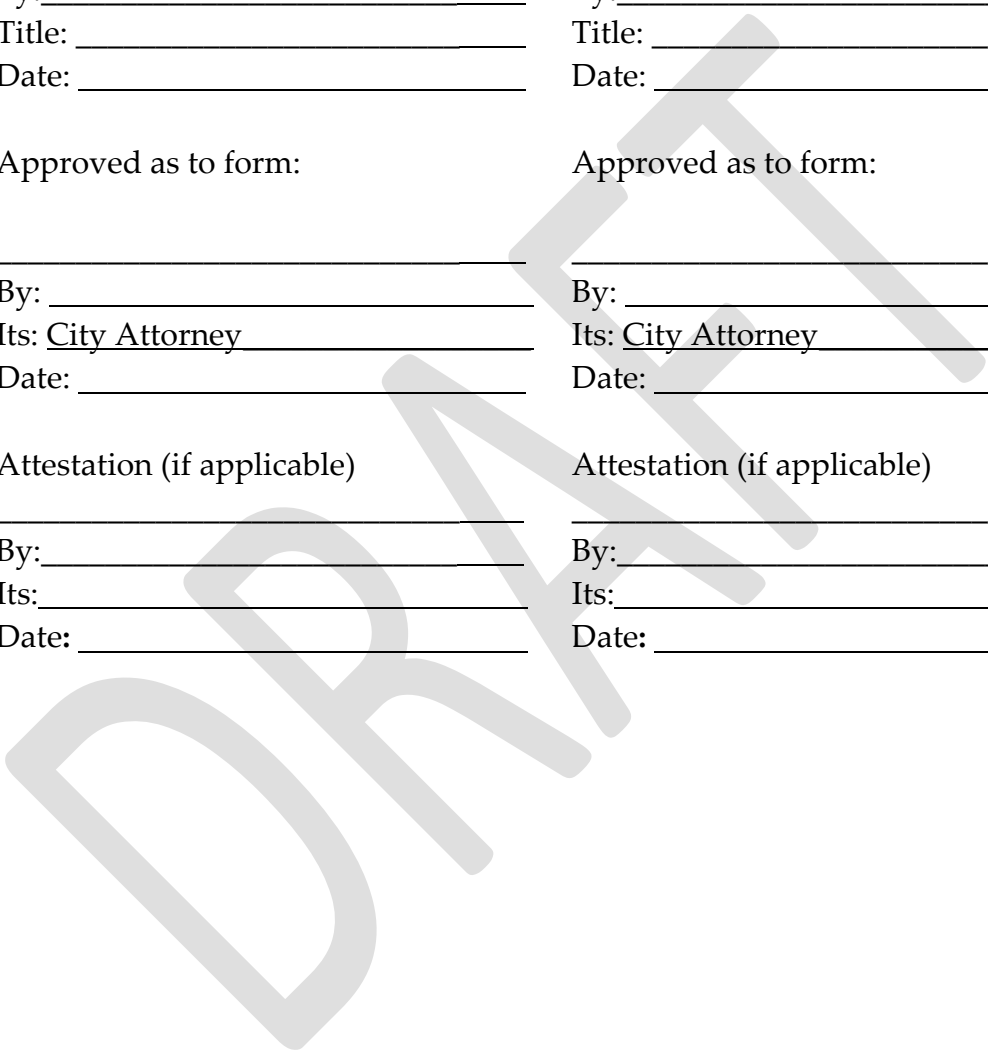
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PLUMAS-SIERRA RURAL  
ELECTRIC COOPERATIVE  
73233 State Highway 70  
Portola, CA 96122

CITY OF SHASTA LAKE  
4332 Vallecito Street  
Shasta Lake, CA 96019

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

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
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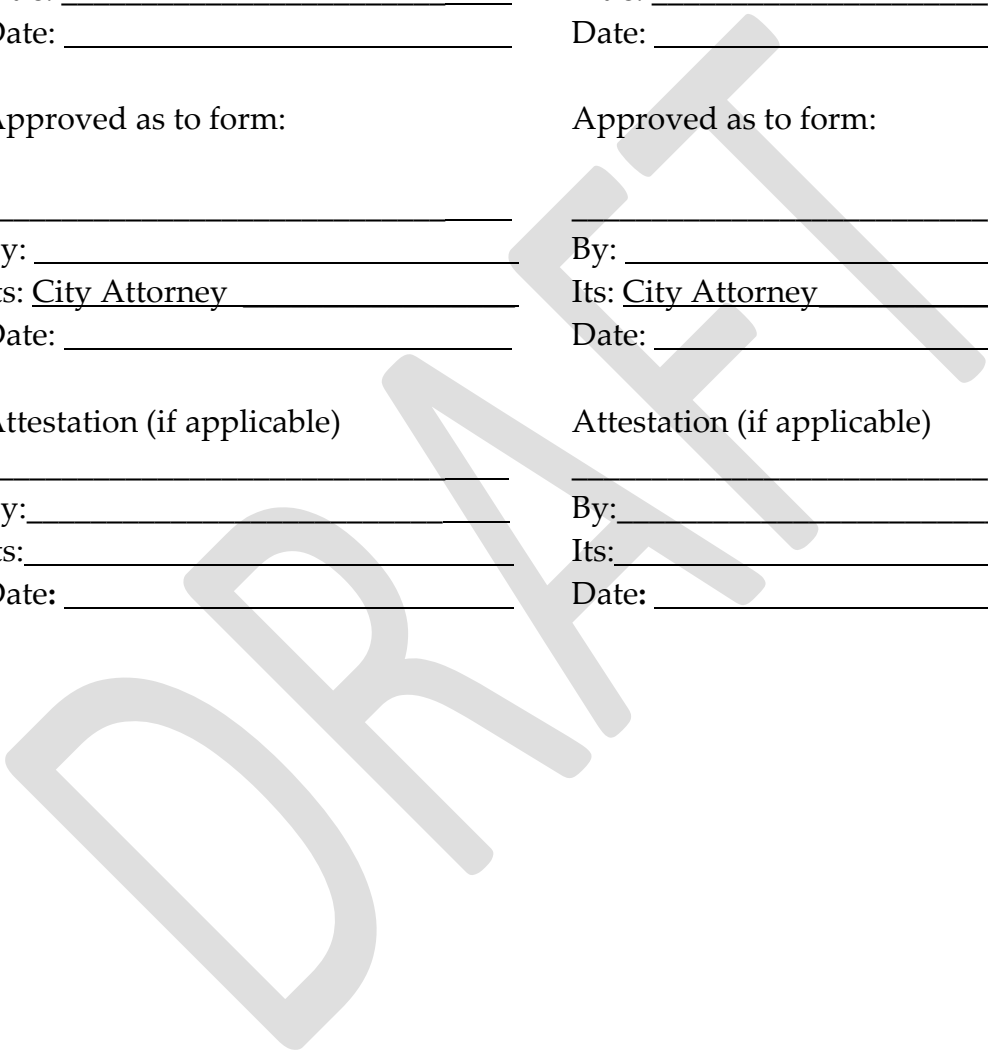
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Its: \_\_\_\_\_  
Date: \_\_\_\_\_



CITY OF UKIAH  
300 Seminary Avenue  
Ukiah, CA 95482

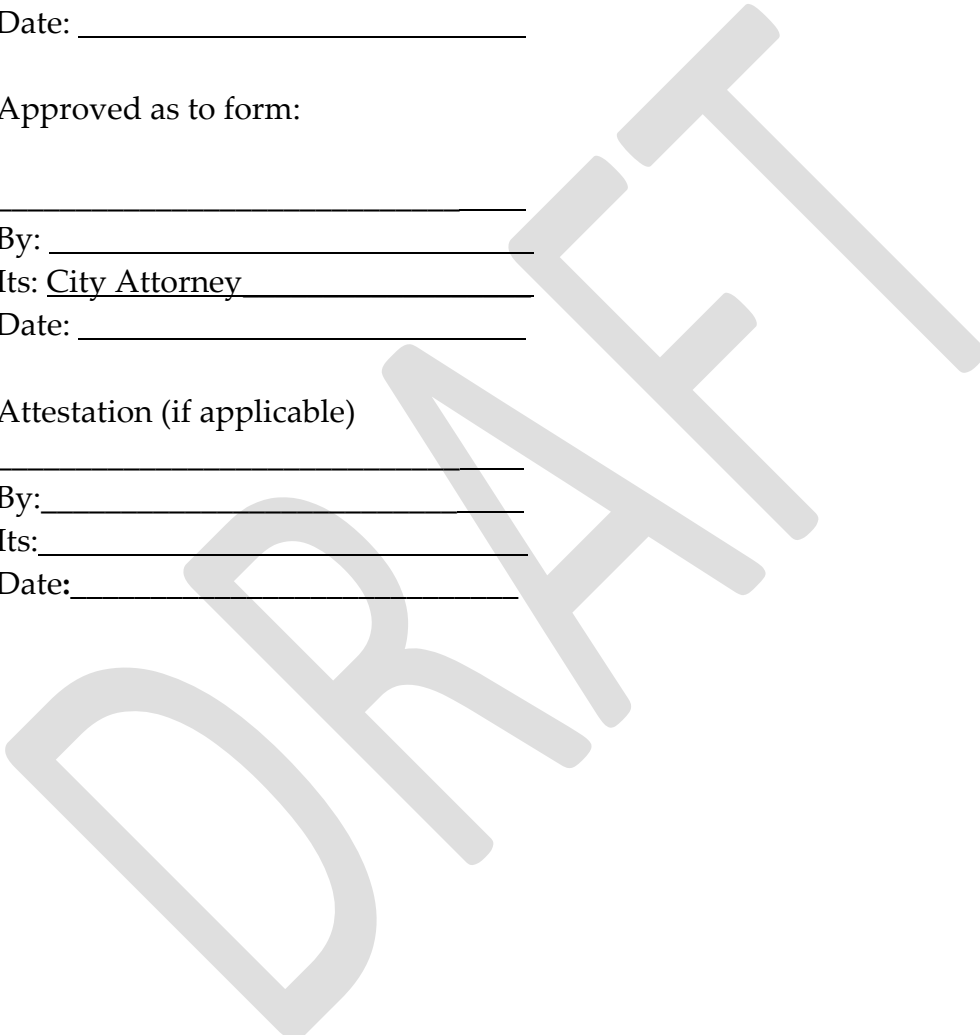
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Its: City Attorney  
Date: \_\_\_\_\_

Attestation (if applicable)

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By: \_\_\_\_\_  
Its: \_\_\_\_\_  
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**EXHIBIT A**  
**PROJECT PARTICIPATION PERCENTAGES**

1. On the Effective Date of the Agreement the initial Participants (“Initial Participants”) who are signatory to this Agreement, and their respective initial Project Participation Percentage share of the Project is set forth in Table 1 of this Exhibit A (“Initial Project Participation Percentages”). The process set forth below is not subject to the requirements of Section 9 of this Agreement, except as set forth below.

**Table 1**  
**Initial Project Participation Percentages**

<b>Participant</b>	<b>Project Participation Percentage (%)</b>	<b>Project Participation Share (MW)</b>
City of Healdsburg	5.20%	2.60
City of Lodi	30.00%	15.00
City of Lompoc	10.00%	5.00
City of Santa Clara	48.80%	24.40
City of Ukiah	6.00%	3.00
<b>Total</b>	<b>100.00%</b>	<b>50.00</b>

2. Thereafter, a Member listed in Table 2 of this Exhibit A and who is not an Initial Participant (“Eligible Member”) may exercise a right to accept a transfer of a portion of the Initial Project Participation Percentages of the Initial Participants in an amount no greater than the amount set forth in Table 2 of this Exhibit A (“Transfer Right”, no later than 180 day after the Effective Date (the “Transfer Completion Deadline”), unless an Initial Participants otherwise agrees in writing to extend the Transfer Completion Deadline. Only the City of Santa Clara may transfer their Initial Project Participation Percentages as long

as their project share does not fall below the amounts set forth in Table 2 of this Exhibit A.

3. In order for an Eligible Member to exercise their Transfer Rights, that Member shall do the following no later than the Transfer Completion Deadline: (i) notify NCPA and Santa Clara of its intention to exercise their right to accept their Table 2 share, and (ii) execute this Agreement. For avoidance of doubt, an Eligible Member must exercise their Transfer Right for their full Table 2 share; any exercise of any lesser portion shall be invalid.

4. For purposes of this Exhibit A only, a Member who becomes a Participant pursuant to Section 3 of this Exhibit A shall be referred to as a "Table 2 Participant." Notwithstanding the foregoing, the Transfer Completion Deadline applies only to the intended assumption of the Project Participation Percentage described in Table 2 of this Exhibit A, and shall not limit or reduce a Participant's rights set forth in Section 9 of this Agreement. Upon written notice and execution of this Agreement as set forth above in Section 3 of Exhibit A, the Table 2 Participant will assume all rights and obligations set forth in this Agreement for the portion of the Project Participation Percentage share of the Project as set forth in Table 2 of this Exhibit A.

5. NCPA shall prepare Table 3 after the Transfer Completion Deadline to reflect the Final Project Participation Percentages of each Participant, and such Table 3 will be added to this Exhibit A as an amendment to this Agreement once adopted by the Commission. In the event an intended Table 2 Participant does not become a Table 2 Participant by the Transfer Completion Deadline, the City of Santa Clara shall retain the Project Participation

6. Percentage of the intended Table 2 Participant as described in Table 2 of this Exhibit A, and such will be reflected in Table 3.

**Table 2**  
**Draft Final Project Participation Percentages**

<b>Participant</b>	<b>Project Participation Percentage (%)</b>	<b>Project Participation Share (MW)</b>
City of Biggs	0.80%	0.40
City of Gridley	2.00%	1.00
City of Healdsburg	5.20%	2.60
City of Lodi	30.00%	15.00
City of Lompoc	10.00%	5.00
Port of Oakland	16.00%	8.00
Plumas-Sierra REC	2.00%	1.00
City of Santa Clara	18.00%	9.00
City of Shasta Lake	10.00%	5.00
City of Ukiah	6.00%	3.00
<b>Total</b>	<b>100.00%</b>	<b>50.00</b>

Pursuant to Section 5 of Exhibit B of the PPA, if the Facility Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred fifty (150) days after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay NCPA Capacity Damages, and each MW (or portion thereof) that the Guaranteed Capacity exceeds the Installed Capacity, the Project Participation Share for the Participants shall be automatically adjusted and reduced, on a pro rata basis, to equal to actual amount of Facility Installed Capacity.

**EXHIBIT B**

**Renewable Power Purchase Agreement**

The Renewable Power Purchase Agreement between Grace Orchard Energy Center, LLC and Northern California Power Agency has been attached to this Agreement as Exhibit B.

DRAFT



# **Grace Orchard Energy Center Renewable PPA and Third Phase Agreement**

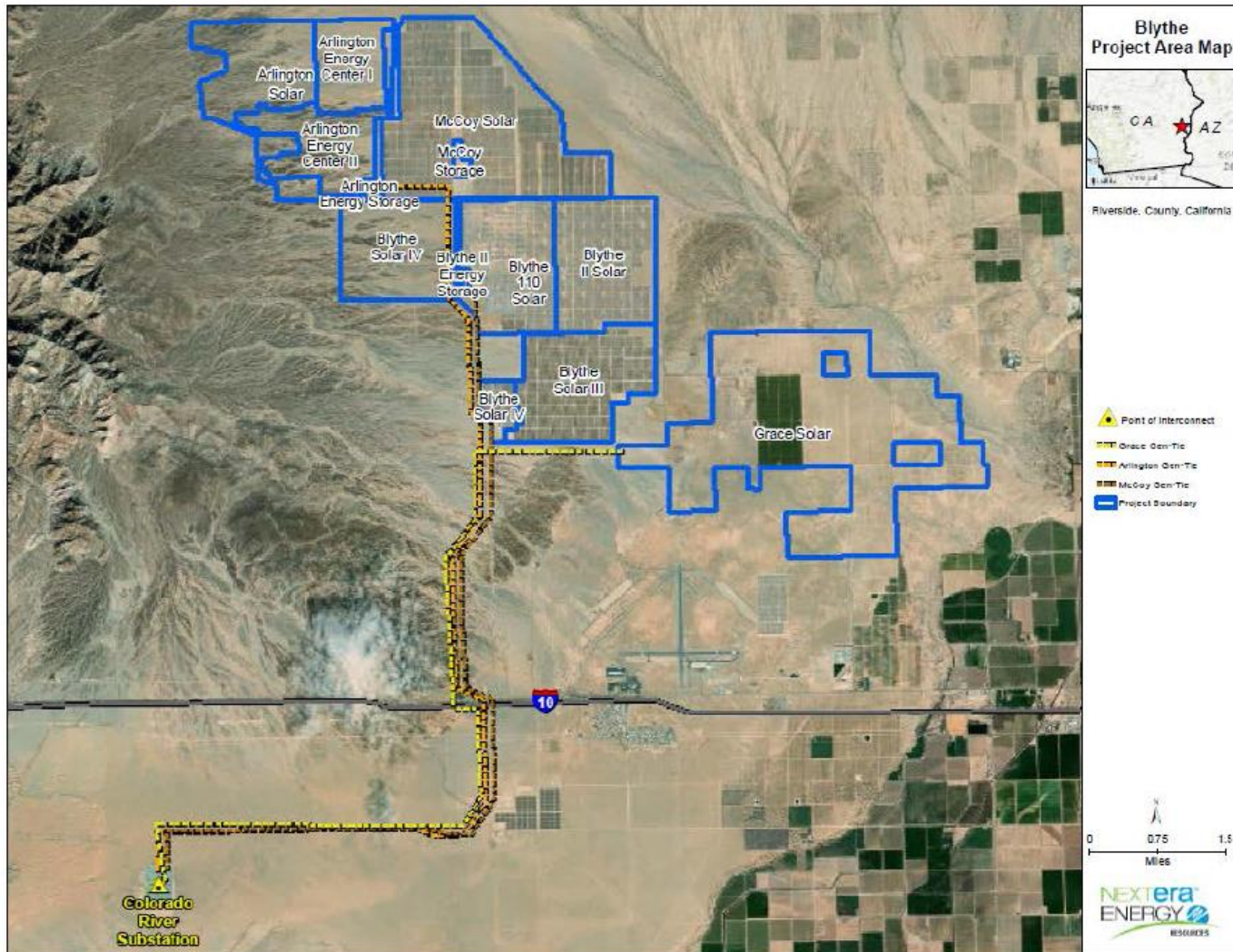
**April 15, 2024  
Facilities Committee Meeting**

# Grace Orchard Energy Center Overview

- Project Details:
  - Developer: Grace Orchard Energy Center, LLC (Seller)
  - Capacity: 50 MW “Slice”; Total 400-500 MW Project
  - Offer Price:
    - To Be Discussed
  - Energy Only – no deliverability at this time (no RA)
  - BAA Interconnection:
    - SCE Colorado River 230 kV substation
    - Blythe, Riverside County, CA
  - Est. COD: December 2027



Site Map:



# Key PPA Terms

- Key PPA Terms:
  - Product: Facility Energy and Green Attributes
  - Term: 20 year Delivery Period
  - NCPA to be SC; retain CAISO revenues and charges
  - Buyer Curtailment vs Operational Curtailment
    - Deemed Delivered Energy: Contract Rate + PTC Rate
  - Development and Performance Security
    - Performance linked to Milestones and other commitments
  - Scheduled as VERS resource; CAISO forecast
  - Seller to act as GO/GOP, and will operate the facility
  - Various Conditions Precedent
  - Other



## Third Phase Agreement

- Agreement between NCPA and the Participating Members to enable NCPA to enter into the PPA
- By executing the Third Phase Agreement, the Participating Members agree to purchase Products produced by the Grace Solar under a “take-or-pay” agreement
- Key Third Phase Agreement Provisions:
  - Specify the rights and obligations of NCPA and the Participants
  - Products will be delivered to the Participants based on their Project Participation Percentage
  - Each Participant agrees to pay for their share of Project Costs, Administrative Services Costs, scheduling coordination costs, and all other related costs
  - Establishes Security Deposit Requirements
  - Establishes rules for governance and other administrative functions

# Third Phase Agreement Assignment

- Possible Structure
  - Two step member assignment
  - Primary Participants initial signatory, with subsequent assignment to other Participating Members
  - Establish projected schedule for assignments
  - If assignments are not completed by the deadline, amounts will be retained by Primary Participants
  - Final project participation schedule will be established after the assignments are complete

**Table 1**

**Initial Project Participation Percentages**

<b>Participant</b>	<b>Project Participation Percentage (%)</b>	<b>Project Participation Share (MW)</b>
City of Healdsburg	5.20%	2.60
City of Lodi	30.00%	15.00
City of Lompoc	10.00%	5.00
City of Santa Clara	48.80%	24.40
City of Ukiah	6.00%	3.00
<b>Total</b>	<b>100.00%</b>	<b>50.00</b>

**Table 2**

**Draft Final Project Participation Percentages**

<b>Participant</b>	<b>Project Participation Percentage (%)</b>	<b>Project Participation Share (MW)</b>
City of Biggs	0.80%	0.40
City of Gridley	2.00%	1.00
City of Healdsburg	5.20%	2.60
City of Lodi	30.00%	15.00
City of Lompoc	10.00%	5.00
Port of Oakland	16.00%	8.00
Plumas-Sierra REC	2.00%	1.00
City of Santa Clara	18.00%	9.00
City of Shasta Lake	10.00%	5.00
City of Ukiah	6.00%	3.00
<b>Total</b>	<b>100.00%</b>	<b>50.00</b>

## Proposed Recommendation

- Facilities Committee recommendation for approval of a Commission Resolution approving (i) the Renewable Power Purchase Agreement between Northern California Power Agency (NCPA) and Grace Orchard Energy Center, LLC (PPA), and (ii) the Third Phase Agreement for Renewable Power Purchase Agreement with Grace Orchard Energy Center, LLC (Third Phase Agreement), and to authorize the General Manager of NCPA to enter into the PPA and Third Phase Agreement on behalf of NCPA, including any modifications to the PPA and Third Phase Agreement approved by the NCPA General Counsel.

# Questions / Comments