

POWER PURCHASE AGREEMENT

BETWEEN

ANTELOPE EXPANSION 1B, LLC

AND

NORTHERN CALIFORNIA POWER AGENCY

Dated as of [_____], 2017

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND INTERPRETATION	1
Section 1.1 Definitions.....	1
Section 1.2 Interpretation.....	26
ARTICLE II EFFECTIVE DATE, TERM, AND EARLY TERMINATION	27
Section 2.1 Effective Date	27
Section 2.2 Term.....	27
Section 2.3 Survivability.....	27
Section 2.4 Early Termination	28
ARTICLE III DEVELOPMENT OF THE FACILITY	29
Section 3.1 CEQA Determinations	29
Section 3.2 General.....	29
Section 3.3 Site Confirmation.....	30
Section 3.4 Subcontracts	31
Section 3.5 (a) Certification of Commercial Operation Date	31
Section 3.6 Milestone Schedule.....	32
Section 3.7 Decommissioning and Other Costs.....	33
ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY	33
Section 4.1 General Operational Requirements.....	33
Section 4.2 Operation and Maintenance Plan	34
Section 4.3 After Purchase Option Notice	34
Section 4.4 Environmental Credits	35
Section 4.5 Outages	35
ARTICLE V COMPLIANCE DURING CONSTRUCTION AND OPERATIONS; SECURITY	37
Section 5.1 Guarantees.....	37
Section 5.2 Buyers' Rights to Monitor in General	37
Section 5.3 Effect of Review by Buyer	38
Section 5.4 Quality Assurance Program	38
Section 5.5 No Liens.....	38
Section 5.6 Reporting and Information.....	38

TABLE OF CONTENTS
(continued)

	<u>Page</u>
Section 5.7 Performance Security	38
ARTICLE VI PURCHASE AND SALE OF PRODUCT	41
Section 6.1 Purchases by Buyer	41
Section 6.2 Third Party Sales	41
Section 6.3 Buyers' Failure	42
Section 6.4 Nature of Remedies	42
ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS	42
Section 7.1 In General	42
Section 7.2 Scheduling Coordinator; CAISO Cost Allocation	43
Section 7.3 Forecasting and Scheduling of Energy	43
Section 7.4 Curtailment	46
Section 7.5 No Payment	48
Section 7.6 Title; Risk of Loss	48
Section 7.7 RPS and EPS Compliance	48
ARTICLE VIII ENVIRONMENTAL ATTRIBUTES	49
Section 8.1 Transfer of Environmental Attributes	49
Section 8.2 Reporting of Ownership of Environmental Attributes	49
Section 8.3 Environmental Attributes	49
Section 8.4 WREGIS	49
Section 8.5 Further Assurances	50
ARTICLE IX MAKEUP OF SHORTFALL ENERGY	50
Section 9.1 Makeup of Shortfall	50
Section 9.2 Replacement Product	51
Section 9.3 Shortfall Damages	51
Section 9.4 Availability Requirement	51
Section 9.5 Shortfall Energy Termination	51
ARTICLE X CAPACITY RIGHTS	52
Section 10.1 Capacity Rights	52
Section 10.2 Covenant Regarding Capacity Rights	52

TABLE OF CONTENTS

(continued)

	<u>Page</u>
Section 10.3 Further Assurances.....	52
ARTICLE XI BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES	52
Section 11.1 Billing and Payment.....	52
Section 11.2 Calculation of Energy Delivered; Invoices and Payment	52
Section 11.3 Disputed Invoices.....	53
Section 11.4 Right of Setoff.....	54
Section 11.5 Records and Audits	54
Section 11.6 Electric Metering Devices.....	55
Section 11.7 Taxes	56
ARTICLE XII REPRESENTATIONS, WARRANTIES and COVENANTS	56
Section 12.1 Representations and Warranties of Buyer.....	56
Section 12.2 Representations and Warranties of Seller	57
Section 12.3 Covenants of Seller Related to Site Control Documents	59
Section 12.4 Covenants of Seller to Provide Quarterly Attestations	62
Section 12.5 Additional Covenants of Seller	62
Section 12.6 Storage Technology	63
ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE.....	64
Section 13.1 Default.....	64
Section 13.2 Default Remedy	65
Section 13.3 Cure Rights of Facility Lender and Tax Equity Financing Estoppel.....	66
Section 13.4 Termination for Default	66
ARTICLE XIV MISCELLANEOUS	68
Section 14.1 Authorized Representative.....	68
Section 14.2 Notices	68
Section 14.3 Dispute Resolution.....	69
Section 14.4 Further Assurances; Change in Electric Market Design.....	69
Section 14.5 No Dedication of Facilities	70
Section 14.6 Force Majeure	70

TABLE OF CONTENTS
(continued)

	<u>Page</u>
Section 14.7	Assignment of Agreement 71
Section 14.8	Ambiguity 73
Section 14.9	Attorneys' Fees & Costs 73
Section 14.10	Voluntary Execution 73
Section 14.11	Entire Agreement; Amendments..... 73
Section 14.12	Governing Law 74
Section 14.13	Venue 74
Section 14.14	Execution in Counterparts..... 74
Section 14.15	Effect of Section Headings 74
Section 14.16	Waiver; Available Remedies 74
Section 14.17	Relationship of the Parties 74
Section 14.18	Third Party Beneficiaries 75
Section 14.19	Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability 75
Section 14.20	Severability 76
Section 14.21	Confidentiality 76
Section 14.22	Mobile-Sierra 78
Section 14.23	Taxpayer Identification Number (TIN) 79
Section 14.24	Service Contract..... 79
Section 14.25	Right of First Offer and Right of First Refusal..... 79

Appendices

APPENDIX A-1	CONTRACT PRICE
APPENDIX A-2	[RESERVED]
APPENDIX B-1	FACILITY, PERMITS, AND OPERATOR
APPENDIX B-2	MAP OF FACILITY
APPENDIX C	ANNUAL CONTRACT QUANTITY
APPENDIX D	FORM OF ATTESTATION
APPENDIX E	FORM OF LETTER OF CREDIT
APPENDIX F	INSURANCE
APPENDIX G	QUALITY ASSURANCE PROGRAM
APPENDIX H	QUALIFIED OPERATORS
APPENDIX I	MILESTONE SCHEDULE
APPENDIX J	BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION
APPENDIX K	FORM OF OPTION AGREEMENT
APPENDIX L-1	FORM OF CONSTRUCTION START DATE CERTIFICATION
APPENDIX L-2	FORM OF COMMERCIAL OPERATION DATE CERTIFICATION
APPENDIX M-1	[RESERVED]
APPENDIX M-2	[RESERVED]
APPENDIX N	SITE CONTROL DOCUMENTS
APPENDIX O	FORM OF STORAGE OPTION AGREEMENT

SCHEDULES

SCHEDULE 12.2(h) SPECIFIED UPSTREAM EQUITY OWNERS AND
ORGANIZATIONAL AND OWNERSHIP STRUCTURE OF SELLER
AND UPSTREAM EQUITY OWNERS

POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT (this “**Agreement**”), dated as of this [____] day of [____], 2017, is being entered into by and between the NORTHERN CALIFORNIA POWER AGENCY (“**Buyer**”), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et. seq., (“**Act**”) and the “Amended and Restated Northern California Power Agency Joint Powers Agreement” entered into pursuant to the provisions of the Act among Buyer and Buyer’s members, dated as of January 1, 2008, and Antelope Expansion 1B, LLC, a limited liability company organized and existing under the laws of the State of Delaware (“**Seller**”). Each of Buyer and Seller is referred to individually in this Agreement as a “**Party**” and together as the “**Parties**.”

RECITALS

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

WHEREAS, in 2016, Buyer participated in a request for proposals (“**RFP**”) issued by the Southern California Public Power Authority to acquire renewable energy resources; and

WHEREAS, Sustainable Power Group, LLC responded to the RFP on behalf of its wholly-owned subsidiary, Seller, and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, certain renewable energy, capacity rights and associated environmental attributes for the purchase price set forth in Appendix A-1; and

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

AGREEMENT

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

ARTICLE I DEFINITIONS AND INTERPRETATION

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

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

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

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

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

“**Ancillary Documents**” means (i) the Option Agreement and the Storage Option Agreement, (ii) upon execution, the Generator Interconnection Agreement and the Co-Tenancy Agreement, and (iii) any agreement or document executed and delivered between Buyer, on the one hand and any Seller Party, on the other hand.

“**Annual Contract Quantity**” means, for each Contract Year, the number of MWh set forth on Appendix C. The Parties shall update Appendix C for the first partial Contract Year and the last partial Contract Year upon receipt of notice from Seller of the number of MWhs for each such partial Contract Year.

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

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

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

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

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

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

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

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

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

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

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

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

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

“CAISO” means the California Independent System Operator.

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

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

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

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

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

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

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

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

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

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

“CEQA Determinations” means that:

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

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

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

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

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

“Change in Control” means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions: following which the Ultimate Parent Entity directly or indirectly no longer (i) remains the owner of more than fifty percent (50%) of the equity ownership of Seller, or (ii) retains the power to control the management and policies of Seller; *provided, however*, that a Change in Control shall not include any transaction or series of transactions in which membership or equity interests in Seller or an Upstream Equity Owner are issued or transferred to another Person solely for the purpose of a Tax Equity Financing.

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

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

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

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

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

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

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

(e) Seller has obtained all real property rights, including with respect to the Site Control Documents, and any other easements, rights-of-way, or encroachments necessary for Seller to perform its obligations under this Agreement, the Option Agreement, and the Storage Option Agreement;

(f) Seller has entered into one or more agreements providing for the operation and maintenance of the Facility with one or more Qualified Operators;

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

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

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

(j) Seller has delivered to Buyer a notice with the Annual Contract Quantity for the first and last partial Contract Years, after which the Parties shall update and amend Appendix C; and

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

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

“Conditional Use Permit” means the conditional use permits for the Facility and the Site.

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

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

“Contract Capacity” means seventeen (17) MW, as measured by the sum of inverter nameplate capacity.

“Contract Price” means, for any period of time, the Contract Price set forth in Appendix A-1.

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

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

“Co-Tenancy Agreement” means an agreement or agreements to be entered into for Seller to use the Generator Interconnection Agreement, in a form acceptable to both Parties, such acceptance not to be unreasonably withheld, conditioned, or delayed; provided that if Buyer does not respond within thirty (30) days of receipt of any draft Co-Tenancy Agreement, Buyer will be deemed to have accepted such draft Co-Tenancy Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Effective Date**” means the date on which Buyer provide written notice to Seller that it has executed this Agreement together with an executed copy of the Agreement.

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

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

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

“Energy” means electrical energy.

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

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

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

“Environmental Attributes Value” means the value of Environmental Attributes purchased by Buyer under this Agreement, stated in \$/MWh, determined based on a Renewable Energy Credit pricing index that has been mutually agreed upon by Seller and Buyer or, if such

index is not available, the value of the Environmental Attributes as determined by the average of three (3) nationally-recognized broker quotes for Environmental Attributes that meet the definition of Environmental Attributes set forth in this Agreement; *provided* that such index pricing or broker quotes shall relate to Environmental Attributes that are derived from comparable vintage and generation technology as the Environmental Attributes that are being replaced, and are from a generator that qualifies as an “eligible renewable energy resource” within the meaning of the RPS Law at the time of such pricing or broker quotes, as applicable; *further provided*, that during the period of time the Contract Price is changed pursuant to Section 7.7(b), “Environmental Attributes Value” shall mean Zero Dollars (\$0) per MWh.

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

“EPA” means the United States Environmental Protection Agency.

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

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

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

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

“Excess Energy” means, in any Contract Year, Facility Energy delivered in excess of one hundred and ten percent (110%) of the Annual Contract Quantity for such Contract Year, which deliveries shall be verified in invoices provided by Seller as set forth in Section 11.2(a).

“Facility” means the 17 MW solar photovoltaic power generating facility described in Appendix B-1 and depicted on Appendix B-2, including all property interests and related interconnection facilities owned by Seller.

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

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

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

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

“Facility Lender” means any financing party or Tax Equity Investor providing Facility Debt, including any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations, including any lender to any Upstream Equity Owner or Ultimate Parent Entity with respect to the Facility. For the sake of clarity, Facility Lender does not include any Tax Equity Investor in its capacity as a Tax Equity Investor, but only includes a Tax Equity Investor that provides Facility Debt and then only in such Tax Equity Investor’s capacity as the provider of such Facility Debt.

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

“FERC” means the Federal Energy Regulatory Commission.

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

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

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

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

“Full Capacity Deliverability Status Finding” or **“FCDS Finding”** means (a) Seller has elected Full Capacity Deliverability Status for the Facility and such election is acknowledged by the interconnection provider and CAISO in the Generator Interconnection Agreement, (b) all network and transmission upgrades required in the Generator Interconnection Agreement and associated studies or reports to achieve FCDS have been constructed and placed in service and (c) the Facility’s Net Qualifying Capacity (as defined in the CAISO Tariff) has been confirmed in writing by CAISO (including by posting to the CAISO website).

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

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

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

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

“Guaranteed Commercial Operation Date” means December 31, 2021.

“Guaranteed Generation” means, (a) with respect to each full Contract Year, an amount equal to eighty percent (80%) of the Annual Contract Quantity for such Contract Year, and (b) with respect to (1) the first partial Contract Year, an amount determined by multiplying the Annual Contract Quantity for such partial Contract Year times the sum of the percentages in Table 2 of Appendix C for the month in which the Commercial Operation Date occurs (prorated based on the Commercial Operation Date) and the remaining months in that Contract Year times either sixty percent (60)% if the Commercial Operation Date occurs on or after October 1 or eighty percent (80%) if the Commercial Operation Date occurs prior to October 1; and (2) the last partial Contract

Year, an amount determined by multiplying the Annual Contract Quantity for such partial Contract Year times the sum of the percentages in Table 2 of Appendix C for the months in such Contract Year times eighty percent (80%), which amounts shall be reduced by the aggregate amount of Deemed Generated Energy during all Seller Excused Hours during such Contract Year.

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

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

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

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

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

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

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

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

“**Land Option**” means an irrevocable option(s) to lease the real estate as described in Appendix N.

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

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

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

“Local Capacity Requirement Attributes” means the benefits or attributes now or existing in the future based on the procurement obligations of Buyer with respect to local resource capacity requirements as prescribed by the PUC, the CAISO or other regional entity, and that are associated with the electric generating capability of the Facility.

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

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

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

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

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

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

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

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

“MWh” means megawatt-hours.

“NERC” means the North American Electric Reliability Corporation.

“Non-Consolidation Opinion” means a reasoned opinion of Stoel Rives LLP, in form and substance reasonably acceptable to Buyer, as to the non-consolidation of Seller in a bankruptcy proceeding of any Upstream Equity Owner, addressed and delivered to Buyer on or before the Effective Date.

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

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

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

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

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

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

“Outside Commercial Operation Date” means June 29, 2022, which date may be extended only pursuant to Section 3.6(b).

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

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

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

“Participating Members” means the City of Biggs, City of Gridley, City of Lodi, City of Healdsburg, and the City of Oakland (acting by and through its Board of Port Commissioners).

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

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

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

“Permitted Encumbrances” means (a) the Lien in favor of the Facility Lender, (b) any Lien approved by Buyer in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Encumbrance, (c) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, *provided* that such proceedings end by the expiration of the Agreement Term, (d) suppliers’, vendors’, mechanics’, workman’s, repairman’s, employees’ or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, and (e) easements, rights-of-way, use rights, encroachments, or exceptions of record that have been identified to Buyer by Seller in writing prior to the Commercial Operation Date, and approved by Buyer within 14 business days, and that do not or will not materially interfere with or impair the operation of the Facility or performance of Seller’s obligations under this Agreement.

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

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

“PNode” means the CAISO Pricing Node as defined in the CAISO Tariff to be established by CAISO at the 220kV bus of Southern California Edison Company’s Antelope Substation and Seller shall provide notice to Buyer of the name which CAISO designates for the PNode prior to the Commercial Operation Date.

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

“Point of Delivery” means the PNode, or such other point as mutually agreed in writing by the Parties, *provided* that in the case of Replacement Product, an alternative delivery point may be designated in accordance with Section 9.2.

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

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

“Products” means any and all Facility Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the foregoing that are or can be produced by, or are associated with, the Facility, whether now attainable or established in the future, including delivered energy, renewable attributes, and renewable energy credits. Except as otherwise provided in Section 7.7, the Products shall meet the standard of “Portfolio Content Category 1” as defined by RPS Law.

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

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

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

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

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

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

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

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

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

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

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

“Qualified Issuer” means a Person (a) reasonably acceptable to Buyer, (b) that maintains a United States domestic branch, and a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) “A2” or higher by Moody’s and “A” or higher by S&P, if such Person is rated by both Moody’s and S&P or (2) “A2” or higher by Moody’s, or “A” or higher by S&P if such Person is rated by either S&P or Moody’s or (c) that (1) maintains a United States domestic branch, and a current long-term credit rating (corporate or long-term senior unsecured debt) of (x) “A3” or higher by Moody’s and “A-” or higher by S&P, if such Person is rated by both Moody’s and S&P or (y) “A3” or higher by Moody’s, or “A-” or higher by S&P if such Person is rated by either S&P or Moody’s, and (2) has a tangible net worth that is equal to or in excess of \$500,000,000.

“Qualified Operator” means (a) a Person reasonably acceptable to Buyer that has at least three (3) years of operating experience with at least two (2) utility-scale solar projects of 10 MW

ac or higher, (b) any Person identified on Appendix H or any such Person's Affiliates, or (c) any other Person reasonably acceptable to Buyer.

“Qualified Transferee” means a Person that (a) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of \$150,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A2” or higher by Moody's and “A” or higher by S&P, if such Person is rated by both Moody's and S&P or (ii) “A2” or higher by Moody's, or “A” or higher by S&P if such Person is rated by either S&P or Moody's, or (iii) equivalent ratings by any other credit rating agency of recognized national standing and retains, or causes Seller to retain, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility), or (b) is reasonably acceptable to Buyer and, in each case, (c) executes a written assumption agreement in favor of Buyer pursuant to which any such Qualified Transferee shall assume all the obligations of Seller under this Agreement, Option Agreement and the Storage Option Agreement.

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

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

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

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

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

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

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

“Replacement Energy” means Energy produced by a facility other than the Facility that, at the time delivered to Buyer, (i) is both RPS Compliant and EPS Compliant, (ii) qualifies under RPS law, (iii) includes Environmental Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided and (iv) that has the same or comparable value as the Energy that would have been generated by the Facility during the relevant period considering timing of delivery and the applicable locational marginal pricing values, provided that if the locational marginal price differs between the Replacement Energy Point of Delivery and the

PNode, Buyer and Seller shall cooperate in good faith to either issue a credit or charge, as applicable, for the difference in value; and further provided, that during the period of time the Contract Price is changed pursuant to Section 7.7(b) or after any repeal of the RPS Law or EPS Law, “Replacement Energy” shall mean Energy that has the same or comparable value as the Energy that would have been generated by the Facility during the relevant time period considering timing of delivery and the applicable locational marginal pricing values, provided that if the locational marginal price differs between the Replacement Energy Point of Delivery and the PNode, Buyer and Seller shall cooperate in good faith to either issue a credit or charge, as applicable, for the difference in value.

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

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

“Replacement Product Period” has the meaning set forth in Section 9.2.

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

“Requirement of Law” means any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Seller Party” means each of Seller and Affiliates of Seller as of the Effective Date executing any Ancillary Document.

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

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

“Shared Facilities Agreement” means an agreement or agreements to be entered into for Seller to use the transformer, protective devices and other associated equipment and the interconnection facilities that will be described in the Generator Interconnection Agreement of Q1208, in a form acceptable to both Parties, such acceptance not to be unreasonably withheld, conditioned, or delayed.

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

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

“Shortfall Makeup Period” means the Contract Year following the Contract Year during which Shortfall Energy accrues.

“Site” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B-2 as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines or roadways servicing such Site or the Facility located (or to be located) thereon.

“Site Control” means that the Site Control Documents have been executed by Seller and each counterparty thereto and are in full force and effect and such Site Control Documents are sufficient to permit Seller to fulfill all of its obligations under this Agreement, the Option Agreement and the Storage Option Agreement; except for such easements, rights-of-way, encroachments and other real estate rights which Seller reasonably expects to be timely obtained prior to the Commercial Operation Date in the ordinary course of business.

“Site Control Documents” means (a) each Land Lease, (b) the Shared Facilities Agreement, and (c) the documents listed on Appendix N.

“Site Control Key Milestone” means the Key Milestone requiring Seller to have achieved Site Control.

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

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

(a) shall not (without the prior written consent of Buyer) (i) engage in any dissolution, liquidation, consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets, except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a Special Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction.

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

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

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

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

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

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

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

(i) has not made and will not make loans or advances to any Person or hold evidence of indebtedness issued by any other Person (other than cash and investment securities or as may be permitted under the Shared Facilities Agreement or Generator Interconnection Agreement) or made any gifts or fraudulent conveyances to any Person;

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

(k) has not entered into or been a party to, and will not enter into or be a party to, any material transaction with its members or Affiliates, except in the ordinary course of its business and on terms which are commercially reasonable and comparable with those which could be obtained in a comparable arm’s-length transaction with an unrelated third party (it being acknowledged that Seller has entered into or may enter into Land Leases, Shared Facilities Agreements, the Generator Interconnection Agreement, construction management agreement, development services agreement or Co-Tenancy Agreements with a Seller Affiliate);

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

to be taken in good faith by such manager, member or officer with respect to the development, construction, financing, ownership and operation of the Facility;

(m) has considered and shall consider the interests of its creditors in connection with all limited liability company actions;

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

(o) has complied and will comply with all of the terms and provisions contained in its organizational documents, including the provision requiring that there be an Independent Manager at all times, and has done or caused to be done and will do all things necessary to preserve its existence;

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

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

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

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

(t) has observed, and will observe appropriate limited liability company formalities, including those required under its limited liability company operating agreement;

(u) has not assumed or guaranteed or become obligated for, and will not assume or guarantee or become obligated for the debts of any other Person and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except (i) for the period prior to the conversion or repayment of any construction Facility Debt, which for the avoidance of doubt, shall occur on or around the Commercial Operation Date, in connection

with any Facility Debt or (ii) in connection with the Generator Interconnection Agreement, any Shared Facilities Agreement, or any Co-Tenancy Agreement;

(v) has not acquired and will not acquire securities of its members or any Affiliate, and has not acquired and will not acquire obligations of its members or any Affiliate, except (i) for the period prior to the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, in connection with any Facility Debt or (ii) in connection with the Generator Interconnection Agreement, any Shared Facilities Agreement, or any Co-Tenancy Agreement;

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

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

(y) following the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, has not pledged and will not, pledge its assets for the benefit of any other Person, except for the security posted in favor of Buyer as provided herein, or in accordance with the Generator Interconnection Agreement;

(z) has had, now has and will have articles of organization, a certificate of formation or an operating agreement, as applicable, that includes the requirement that there will be an Independent Manager, and provides that it will not, without the affirmative vote of its Independent Manager: (A) dissolve, merge, liquidate or consolidate; (B) sell, transfer, lease or otherwise convey all or substantially all of its assets (other than as permitted under Section 14.7(c)); (C) engage in any other business activity, or amend its organizational documents with respect to the matters set forth in this definition; or (D) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest;

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

(bb) has and will have no indebtedness other than (i) Facility Debt relating to the development, bridge, construction or permanent financing for the Facility, including any

indebtedness in its replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business relating to its ownership, management, administration, leasing and operation of the Facility and the Facility related contracts, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of Twenty Million Dollars (\$20,000,000) in the aggregate, (iv) the Performance Security and any indebtedness incurred in support of or connection with the Performance Security, and (v) such other liabilities that are permitted pursuant to this Agreement, except that, until the execution of the principal documents for the Facility's construction financing, such limited liability company may (i) satisfy the insurance requirements of this Agreement by or through Seller's parent entities or investors provided that the policies or endorsements extending insurance coverage to Seller shall reference Seller as an independent legal entity and (ii) satisfy any required security/performance assurance, whether due to be provided to Buyer under this Agreement or the CAISO, by or through Seller's parent entities or investors so long as each letter of credit, guaranty or other instrument of such security/performance assurance references Seller as an independent legal entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Ultimate Parent Entity” means (a) as of the Effective Date, [FTP Power LLC], and (b) from and after any other Change in Control or other transfers permitted under Section 14.7(c) where the Ultimate Parent Entity changes, the entity specified by the Parties on Schedule 12.2(h) as being the “Ultimate Parent Entity”.

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

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

“Upstream Equity Owner” means any direct or indirect owner of Seller at any level below the Ultimate Parent Entity.”

“WECC” means the Western Electricity Coordinating Council.

“WREGIS” means Western Renewable Energy Generation Information System.

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

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

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

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

- (a) time is of the essence
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person’s successors and assigns (regardless of whether such Person’s successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (d) reference to any gender includes the other;
- (e) reference to any agreement (including this Agreement), document, act, statute, law, instrument, tariff or Requirement means such agreement, document, act, statute, law, instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, act, statute, law, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements, or successors;
- (f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;
- (g) “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;
- (h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term, regardless of whether words such as “without limitation” are expressly included in the applicable provision;
- (i) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”;
- (j) unless otherwise indicated, reference to time shall always refer to Pacific Prevailing Time; and reference to any “day” shall mean a calendar day, unless otherwise indicated; and

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

ARTICLE II

EFFECTIVE DATE, TERM, AND EARLY TERMINATION

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

Section 2.2 Term.

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

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

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

Section 2.4 Early Termination.

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

(b) **Early Termination for Failure to Provide Performance Security.** Buyer may, in its sole discretion and without penalty to Buyer, terminate this Agreement, effective upon

notice to Seller, if Seller fails to deliver the Project Development Security within ten (10) Business Days after the Effective Date.

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

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

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

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

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

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

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

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

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

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

ARTICLE III DEVELOPMENT OF THE FACILITY

Section 3.1 CEQA Determinations. Buyer has all rights and powers available to it as a responsible agency under CEQA to participate in the CEQA review of the Facility, including commenting on the lead agency's notice of preparation, consulting with and providing comments to the lead agency during preparation of the CEQA Documents. Buyer shall have full discretion to consider the CEQA Documents in order to reach its own decision under CEQA about the Facility, with full authority under CEQA to: (a) adopt and require feasible mitigation measures or alternatives to avoid or lessen significant environmental impacts resulting from the Facility; (b) determine that any significant impacts that cannot be mitigated are acceptable due to overriding concerns; or (c) terminate this Agreement due to the Facility's significant adverse environmental impacts. On or before the thirtieth (30th) day after the lead agency's filing of a notice of determination under CEQA, or the thirtieth (30th) day after the Effective Date, whichever is later, Buyer may issue one of the following: (i) a notice confirming it has complied with CEQA Guidelines sections 15096(a), (f), (g), and (h) by considering the CEQA Documents, adopting applicable alternatives or mitigation measures, making findings, and filing a Notice of Determination for its approval of the purchase of Facility Energy (the "**CEQA Acceptability Notice**"), or (ii) a notice that Buyer, based upon its independent review of the CEQA Documents, has determined not to approve the purchase of the Facility Energy hereunder, and to terminate this Agreement, the Option Agreement and the Storage Option Agreement due to the significant adverse environmental effects from the Facility specified in the CEQA Documents (the "**CEQA Unacceptability Notice**"). If Buyer fails to provide Seller with a notice by the end of such thirty (30) day period, so long as no challenge has been successfully made or is pending against the determination of the lead agency as of such date, Buyer will be deemed to have confirmed that Seller has complied with CEQA Guidelines. The Parties shall work together in good faith to make any necessary amendments to this Agreement required in connection with the CEQA review process. Upon delivery by Buyer of a CEQA Unacceptability Notice, this Agreement, the Option Agreement and the Storage Option Agreement shall automatically terminate.

Section 3.2 General.

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

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

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

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

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

(f) **Recording.** No later than five (5) Business Days after the later of execution of the Land Lease and Seller's receipt of a memorandum of option executed by Buyer, Seller shall record (i) a memorandum of option in the form required by the Option Agreement in the Official Records of Los Angeles County, California, and (ii) a memorandum of option in the form required by the Storage Option Agreement in the Official Records of Los Angeles County, California.

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

Section 3.4 Subcontracts.

(a) Seller shall cause provisions to be included in each Subcontract that provide: (i) Buyer with rights of access to the Facility and the work performed under such Subcontract at all reasonable times (but subject to Site safety protocols and orientation) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information; and (ii) that the personnel of, and consultants to, the applicable contractor and Seller shall be available to Buyer and its agents, representatives and

consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof or the exercise of Buyer's rights under Section 5.2.

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

Section 3.5 (a) **Certification of Commercial Operation Date.** Not less than thirty (30) days prior to the date upon which Seller expects to achieve Commercial Operation, Seller shall give written notice to Buyer of such expected Commercial Operation Date. Seller shall provide Buyer with notice in accordance with Section 14.2 when Seller believes that all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "**Commercial Operation**" have been satisfied; *provided, however*, that Buyer shall not be obligated to accept a Commercial Operation Date that is earlier than December 1, 2020. Within ten (10) Business Days of Seller's notice of Commercial Operation, Buyer shall in writing either accept or reject the notice in its reasonable discretion and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and resubmit the notice. If, during such ten (10) Business Day period, Buyer does not either accept or reject such notice, then for all purposes of this Agreement Buyer shall be deemed to have accepted such notice. Upon Buyer's acceptance or deemed acceptance of such notice as provided in this Section 3.5, the Commercial Operation Date shall be the date upon which the conditions for Commercial Operation of the Facility occurred.

(b) **Consequences of Failure to Obtain an FCDS Finding.** If (a) the network and transmission upgrades required in the Generator Interconnection Agreement and associated studies or reports to achieve FCDS are not in service, or (b) such upgrades are in service but CAISO has not yet confirmed in writing the Facility's Net Qualifying Capacity, in either case by the date when all requirements for Commercial Operation other than the FCDS Finding requirement have been satisfied, then for each billing cycle until such required network and transmission upgrades are placed in service and all other conditions to the Full Capacity Deliverability Status Finding have been satisfied, (1) clauses (b) and (c) in the definition of FCDS Finding shall not apply for purposes of satisfying clause (i) of the definition of "Commercial Operation", and (2) the Contract Price shall be reduced by (x) \$7.00/MWh during the first ninety (90) days after the Commercial Operation Date, and, if applicable (y) \$10.00/MWh thereafter for Facility Energy, pro-rated for partial deliverability amounts and for any amounts of Net Qualifying Capacity that Buyer can obtain and use for its Resource Adequacy purposes. By way of example only, if at the Commercial Operation Date, only 25% of the Contract Capacity has qualified for deliverability status, 75% of the Facility Energy shall receive the reduced Contract Price of \$32.00/MWh for the first 90 days after the Commercial Operation Date and shall receive the reduced Contract Price of \$29.00/MWh thereafter until all conditions of the FCDS Finding have been satisfied.

Section 3.6 Milestone Schedule.

(a) Attached as Appendix I is a milestone schedule with deadlines for the development of the Facility through the Commercial Operation Date (each milestone, a "**Milestone**" and each date by which a Milestone is to be completed, a "**Milestone Date**"). Seller shall achieve each Milestone by the Milestone Date therefor. Until the Commercial Operation

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

(b) Each Milestone Date (including the Outside Commercial Operation Date) may be extended, on a day-for-day basis to the extent Seller is actually, demonstrably and unavoidably delayed in achieving such Milestone due to Force Majeure; provided that the Outside Commercial Operation Date shall not be extended beyond June 29, 2022, for any reason whatsoever.

(c) If Seller fails to achieve any Key Milestone by the applicable Milestone Date, including a failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date (as may be extended pursuant to Section 3.6(b)), Seller shall pay liquidated damages to Buyer in an amount equal to (i) the number of days between the Milestone Date and the date upon which such Key Milestone is achieved (or the Agreement is terminated by Buyer), multiplied by (ii) the applicable daily liquidated damage amount set forth for such Key Milestone in Appendix I (the "**Daily Delay Damages**"). For the avoidance of doubt, if multiple Key Milestones are missed, Seller shall pay Daily Delay Damages for each Key Milestone. If Seller fails to achieve any Key Milestone other than the Guaranteed Commercial Operation Date, by the date that is one hundred eighty (180) days after the Milestone Date for such Key Milestone, Buyer shall have the right in its sole discretion and without penalty to (1) terminate this Agreement for a Default under Section 13.4, or (2) allow Seller to continue to pay the Daily Delay Damages to Buyer, during which time Buyer shall not terminate the Agreement based on Seller's failure to timely achieve such Key Milestone. If Seller achieves the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, then Buyer shall refund to Seller, without interest, any amounts previously paid to Buyer as Daily Delay Damages for failure to achieve the Environmental Compliance Key Milestone and/or the Site Control Key Milestone by the respective Milestone Date therefor. If Seller fails to achieve Commercial Operation by the Outside

Commercial Operation Date (as such date may be extended pursuant to Section 3.6(b)), Buyer shall have the right in its sole discretion and without penalty to terminate this Agreement for a Default under Section 13.4.

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

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

ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY

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

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

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

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

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

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

Section 4.2 Operation and Maintenance Plan.

(a) **General.** Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such

equipment in accordance with Prudent Utility Practices and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

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

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

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

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

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

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

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

Section 4.5 Outages.

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during specified periods of time during each calendar year in accordance with Prudent Utility Practices and this Section 4.5 (such periods, the "***Major Maintenance Blockout***"). No later than one hundred twenty (120) days prior to the anticipated Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices. No later than sixty (60) days prior to the anticipated Commercial Operation Date, and for each calendar year thereafter, no later than one hundred twenty (120) days prior to the deadline for providing the CAISO Resource Adequacy filings and proposed maintenance outages for the following year as described in the CAISO Tariff, Seller shall provide Buyer and the Scheduling Coordinator with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the "***Scheduled Outage Projection***") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with maintenance scheduling requests by Buyer consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (A) the anticipated start and end dates of each Scheduled Outage; (B) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (C) the anticipated MW of operational capacity, if any, during the Scheduled Outage. Seller shall use commercially reasonable efforts to notify Buyer and its Scheduling Coordinator of any change in the Scheduled Outage Projection fifty-five (55) days prior to first day of the month of the originally-scheduled date of the Scheduled Outage but in no event shall Seller notify Buyer later than forty-five (45) days prior to the first day of the month of the originally-scheduled date of the Scheduled Outage. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and shall, to the extent feasible and consistent with Prudent Utility Practices, arrange for Scheduled Outages to

occur between October 1 and May 1 of each year (or such other period as reasonably determined by Buyer from time to time) and coincident with planned transmission outages, but not to overlap with the Major Maintenance Blockout. In the event of a System Emergency, Seller shall use commercially reasonable efforts to reschedule any Scheduled Outage previously scheduled so that it occurs during the System Emergency.

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

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

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

ARTICLE V

COMPLIANCE DURING CONSTRUCTION AND OPERATIONS; SECURITY

Section 5.1 Guarantees. Seller warrants and guarantees that it will perform, or cause to be performed, all development, engineering, design and construction in a good and workmanlike manner and in accordance with the Requirements. Seller warrants that to Seller's knowledge, after due inquiry, at the Commercial Operation Date, the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering and construction and covenants and agrees that it will obtain from the manufacturer(s) of the equipment installed in the Facility limited warranties in line with current solar industry practices, but with no less than, in each case, twenty (20) year limited power warranties on the photo voltaic panels installed at the Facility, ten (10) year limited product warranties on the photo voltaic panels installed at the Facility and five (5) year limited warranties on the inverters installed at the Facility. Seller further warrants that, throughout the Delivery Term: (a) the Facility will be free and clear of all Liens other than Permitted Encumbrances, and (b) the Facility will be designed, constructed and tested in compliance with the Requirements. Seller also warrants and guarantees that throughout the

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

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

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

Section 5.4 Quality Assurance Program. Seller agrees to maintain and comply with a written quality assurance policy ("*Quality Assurance Program*") attached hereto as

Appendix G, and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

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

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

Section 5.7 Performance Security.

(a) Within ten (10) Business Days after the Effective Date, Seller shall furnish to Buyer (i) one or more letters of credit issued by Qualified Issuers substantially in the form attached hereto as Appendix E or otherwise reasonably acceptable to Buyer, or (ii) cash (to be held in an escrow account pursuant to an escrow agreement with a Qualified Issuer in form and substance satisfactory to Buyer (an “**Escrow Account**”)), or a combination of the two, in the aggregate amount of One Million Nine Thousand Four Hundred Twenty-Nine Dollars (\$1,009,429), which shall guarantee Seller’s obligations under this Agreement (the “**Project Development Security**”) *provided*, that if (1) any collateral security interests granted by Seller to secure any Facility Debt also secures obligations of the borrower or of its Affiliates with respect to any project other than the Facility or (2) the Facility Debt is in an amount that, in the aggregate, exceeds seventy percent (70%) of the Facility Cost, then, in each case, the amount of the Project Development Security shall be increased by Ninety-Seven Thousand Four Hundred Sixty-Seven Dollars (\$97,467), for an increase in total of One Hundred Ninety-Four Thousand Nine Hundred Thirty-Four Dollars (\$194,934) in the event there is a coincident occurrence of both (1) and (2), during such period as the grant of collateral security interests by Seller remains in place or the Facility Debt exceeds seventy percent (70%) of the Facility Cost, as applicable. For the avoidance of doubt, the total amount of additional security Seller may be required to post shall be One Hundred Ninety-Four Thousand Nine Hundred Thirty-Four Dollars (\$194,934) in the event that there is a coincident occurrence of both (1) and (2) above. Seller shall maintain the Project Development Security until Seller posts the Delivery Term Security pursuant to Section 5.7(b), or until Buyer is required to return the Project Development Security under Section 5.7(c).

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer (1) one or more letters of credit issued by Qualified Issuers substantially in the form attached hereto as Appendix E or otherwise reasonably acceptable to Buyer, or (2) cash (to be held in an Escrow Account), or (3) a performance and payment bond from a Qualified Bond Issuer in form and substance acceptable to Buyer, or any combination of the foregoing (subject to the limitation on any performance and payment bond as provided below), in the aggregate amount of Two Million Five Hundred Eight Thousand Five Hundred Thirty-Six Dollars (\$2,508,536) which shall guarantee Seller's obligations under this Agreement (collectively, the "***Delivery Term Security***"); provided that under no circumstances shall any performance and payment bond provided as part of the Delivery Term Security exceed the amount of Nine Hundred Nine Thousand Six Hundred Eighty-Nine Dollars (\$909,689). From and after the end of the tenth (10th) Contract Year, the required amount of the Delivery Term Security shall be reduced to One Million One Hundred Sixty-Five Thousand Five Hundred Thirty-Nine Dollars (\$1,165,539) and shall consist of (1) one or more letters of credit issued by Qualified Issuers substantially in the form attached hereto as Appendix E or otherwise reasonably acceptable to Buyer, or (2) cash (to be held in an Escrow Account), or any combination of the foregoing. From and after the Commercial Operation Date, Seller shall maintain the Delivery Term Security in the required amount until the end of the Delivery Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.7(c).

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

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

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, Seller shall replace the Performance Security from the Person that has suffered the Downgrade Event within ten (10) Business Days of Seller's knowledge of the occurrence of such Downgrade Event. Such replacement security shall meet the

requirements of this Section 5.7. If the replacement Performance Security is not provided by Seller, Buyer shall have the right to demand payment of the full amount of the Performance Security, and Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that if and to the extent such amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement have been paid or performed in full.

(f) If any Performance Security is in the form of a letter of credit, then Seller shall provide, or cause to be provided, a replacement letter of credit from a Qualified Issuer, in the amount required under this Section 5.7 within ten (10) Business Days of notice from Buyer to Seller requesting such replacement Performance Security after the occurrence of any one of the following events: (i) the failure of the issuer of the letter of credit to extend such letter of credit at least fifteen (15) Business Days prior to the expiration of such letter of credit; (ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or (iii) the issuer of the letter of credit becomes Bankrupt. If the replacement letter of credit is not delivered in accordance with this Section 5.7(f), Buyer shall have the right to demand payment of the Performance Security, and Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that, if and to the extent such retained amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement shall have been paid or performed in full.

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

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

ARTICLE VI PURCHASE AND SALE OF PRODUCT

Section 6.1 Purchases by Buyer.

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

(b) Subject to the terms of this Agreement, and except as set forth in Section 6.1(d), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with

Facility Energy (other than Excess Energy) and the Replacement Product at the applicable Contract Price set forth in Section 2 of Appendix A-1.

(c) Subject to this Agreement, and except as set forth in Section 6.1(d), on and after the Commercial Operation Date and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Excess Energy at the applicable Contract Price set forth in Section 3 of Appendix A-1.

(d) Seller shall use good faith efforts to ensure that the Facility is CEC Certified following the Commercial Operation Date. During the period of time between the Commercial Operation Date and the day that is one (1) day following the date upon which Seller delivers evidence to Buyer that the Facility is CEC Certified (the “***Pre-Certification Period***”), Buyer shall have the right to retain a portion of any payment to be made to Seller under Section 6.1(a) and Section 6.1(c) in an amount equal to the difference between (i) the applicable Contract Price, and (ii) SP-15 Price for the respective hours in which Facility Energy was generated. Buyer shall release such retained amount, without interest of any kind, within thirty (30) days following Buyer’s receipt from Seller of the CEC certificate confirming that the Facility is CEC Certified, but only to the extent that Buyer is able to apply the REC’s generated by the Facility during the Pre-Certification Period towards compliance with Buyer’s obligations under RPS Law.

Section 6.2 Third Party Sales. Except as provided in ARTICLE IX, in no event shall Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement. Except with the prior written consent of Buyer or as otherwise provided in Section 6.3 or Section 7.4, Seller shall not sell or otherwise transfer all or any part of the Products required to be delivered by Seller under this ARTICLE VI, ARTICLE VII, ARTICLE VIII or ARTICLE X to someone other than Buyer. Buyer will cooperate with Seller to enable scheduling of any Products resold to a third party as permitted herein and shall promptly remit any net revenues received by Buyer in connection with such third party sales. A violation of this Section 6.2 shall be an immediate Default, and in addition to any other rights and remedies available to it under Section 13.2, Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting (A) the price per MWh that would have been payable by Buyer for the Products not delivered from (B) the Replacement Price. Buyer shall provide Seller prompt written notice of the Replacement Price, together with back-up documentation.

Section 6.3 Buyers’ Failure. Unless excused by Force Majeure, a System Emergency, or Seller’s failure to perform and except during any Curtailment Period, if Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy or Replacement Product required to be received by Buyer under this ARTICLE VI, ARTICLE VIII, or ARTICLE X, Buyer shall, on the date payment would otherwise be due to Seller, pay Seller Cover Damages; *provided* that Seller shall use commercially reasonable efforts to resell any Facility Energy and Environmental Attributes not able to be received by Buyer; provided that Buyer shall provide notice to Seller in writing if it elects to receive the Environmental Attributes associated with Facility Energy to be sold to third parties, and if Buyer so elects, Seller shall deliver to Buyer the Environmental Attributes associated with Facility Energy sold to third parties. “***Cover Damages***” means the positive difference, if any, obtained by subtracting (A) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy or Replacement

Product, and, if applicable Environmental Attributes, (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (B) the price that would have been payable by Buyer for the Facility Energy, Replacement Product, or Environmental Attributes, if applicable, not received by Buyer, plus any reasonable and documented costs incurred by Seller in connection with the resale or attempted resale of such Facility Energy, Replacement Product, or Environmental Attributes, if applicable. Seller shall provide Buyer prompt notice of the Cover Damages together with back-up documentation.

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

ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

Section 7.1 In General.

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

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

Section 7.2 Scheduling Coordinator; CAISO Cost Allocation. Buyer or Buyer's designee shall act as Scheduling Coordinator for the Facility and shall have the full right and obligation to Schedule all Energy from the Facility (including but not limited to any Energy Seller needs to sell in mitigation of damages as required hereunder) in accordance with all CAISO and other applicable requirements. The Facility shall have a separate resource ID with CAISO for

scheduling purposes. Seller shall pay Buyer Forty-Four Thousand Two Hundred Dollars (\$44,200) each Contract Year for the Scheduling Coordinator services provided by Buyer. Buyer shall be financially responsible for and shall pay for all CAISO Costs; provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges under a Settlement Statement (i) incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement, (ii) incurred by Buyer because of any outages, including Scheduled Outages and Forced Outages, for which notice has not been provided as required under this Agreement, or (iii) to the extent arising as a result of Seller's failure to comply with a Curtailment Order under Section 7.4 if such failure results in incremental costs to Buyer.

Section 7.3 Forecasting and Scheduling of Energy.

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

(b) Seller and Buyer, as Scheduling Coordinator, will take all actions, at Seller's sole cost and expense, required to cause the Facility to be a certified Participating Intermittent Resource and to cause the Facility to become and remain a participant in PIRP, as soon as reasonably possible, consistent with the CAISO Tariff, following the Commercial Operation Date. Prior to the effective date of the PIRP certification, (x) Buyer, as Scheduling Coordinator, shall submit bids to CAISO consistent with the most recently available valid forecast provided by Seller to Buyer under Section 7.3(c), and (y) provided that Buyer has complied with subsection 7.3(b)(x), Seller will reimburse Buyer for fifty percent of all imbalance costs, expenses and charges related to the Facility up to \$4,800 per month (i.e. Seller's total obligation to Buyer under this subsection 7.3(b)(y) is up to \$2,400 per month) until the earlier of (I) the Facility is a certified Participating Intermittent Resource, and (II) ninety (90) days after the Commercial Operation Date. Seller shall provide Buyer and the Scheduling Coordinator with a copy of the notice from the CAISO certifying the Facility as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification. Following certification and whenever applicable, Seller and Buyer shall comply with PIRP, and all additional protocols issued by the CAISO relating to Participating Intermittent Resources during the Delivery Term. All the provisions relating to Scheduling of the Facility and other matters covered by PIRP shall be interpreted and applied as may be reasonably necessary to comply with PIRP.

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

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

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

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

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

(v) By 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Facility Energy and Replacement Product during the Delivery Term, a copy of a non-binding hourly forecast of deliveries of Facility Energy and Replacement Product for each hour of the immediately succeeding day. Any forecast provided on a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall, by 10:00 a.m. Pacific Prevailing Time, provide to Buyer and the Scheduling Coordinator a copy of any updates to such forecast indicating a change in forecasted Facility Energy from the then-current forecast.

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

(d) Seller shall notify Buyer and the Scheduling Coordinator via email, telephone, or other mutually acceptable method, of any hourly changes due to a change in Facility availability or an outage no later than one-hundred five (105) minutes prior to the start of such Scheduling hour, or such other limit as specified in the CAISO Tariff. Seller shall notify Buyer

and the Scheduling Coordinator of other unanticipated changes in availability by email or telephone as promptly as reasonably possible. Any notice delivered under this Section 7.3(d) shall include the reason for the outage and an estimated duration of the outage. Once the outage has ended, Seller shall notify Buyer and the Scheduling Coordinator that the outage has ended, the cause of the outage, and the actions taken to resolve the outage in order for the CAISO outage report to be updated accordingly.

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

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

(ii) Read-only access via secure login credentials to Energy output information collected by the SCADA system for the Facility; *provided* that if Buyer or the Scheduling Coordinator is unable to access the Facility's SCADA system, then upon written request from Buyer or the Scheduling Coordinator, Seller shall provide Energy output information and meteorological measurements through such other format as may be mutually acceptable to Seller and Buyer, all as may be updated from time to time based on advancements in technology in accordance with Prudent Utility Practices; and

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

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

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

Section 7.4 Curtailment.

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

(b) In addition to the curtailments described in Section 7.4(a), Buyer may curtail deliveries of Facility Energy, at any time and for the duration specified by Buyer. For the avoidance of doubt, if no dispatch orders or instructions are received by Buyer or the Scheduling Coordinator, or if dispatch orders or instructions are received from CAISO to produce less Facility Energy from the Facility than the CAISO final market forecast amount to be produced from the Facility for any period of time (or if there is no CAISO market forecast, then, an amount of MWh calculated based on an equation that incorporates relevant Facility availability, weather and other pertinent data for the period of time during the curtailment event in order to approximate the amount of Facility Energy that would have been delivered during any period of time), in either case, solely and directly resulting from Buyer's bidding and scheduling strategies and activities, the Facility will be deemed to have been curtailed pursuant to this Section 7.4(b) for which Buyer will be required to reimburse Seller as set forth herein. Buyer, Buyer's real-time operators or the Scheduling Coordinator shall provide to Seller a dispatch notice in accordance with CAISO scheduling timelines set forth in the CAISO Tariff of its request for curtailment under this Section 7.4(b), and Seller shall comply with such request in accordance with Prudent Utility Practices, provided that the dispatch order is consistent with the Facility's operational characteristics as then-currently modeled in the CAISO Master File. The curtailment notice to Seller shall indicate the amount of any Facility Energy to be produced in each applicable Settlement Interval. Seller shall respond to curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Seller shall provide the capability to implement curtailment notices, including adjustments to operating constraints, such as ramp rates, megawatt output, and megavar output, in real-time by means of set points received by the SCADA system of Seller. Buyer shall pay Seller only for any Deemed Generated Energy in excess of an aggregate of 850 MWh (50 hours multiplied by the Contract Capacity) per Contract Year that accrues during any curtailment by Buyer under this Section 7.4(b), in an amount equal to the Contract Price multiplied by such excess Deemed Generated Energy; *provided, however*, Seller, with the Scheduling Coordinator, shall use commercially reasonable efforts to sell Facility Energy (but not the Environmental Attributes or Capacity Rights associated therewith) equaling the amount of Deemed Generated Energy to third parties at a positive price to the extent permitted under the CAISO Tariff. To the extent any Facility Energy is sold to a third party under this Section 7.4(b), the obligation to pay the amounts set forth for a curtailment by Buyer under this Section 7.4(b) shall be reduced accordingly by an amount equal to the net proceeds Seller receives from such sales of Facility

Energy (after subtracting any Scheduling fees, wheeling charges, and other associated costs, fees, and reasonable expenses incurred in connection with such sales). All Environmental Attributes and Capacity Rights associated with such Facility Energy sold to third parties shall be delivered at no additional cost to Buyer.

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

(d) Within thirty (30) days after any curtailment pursuant to Section 7.4(a) and 7.4(b), Buyer, as Seller’s SC, shall provide Seller with all necessary information needed and reasonably requested by Seller, whether from Buyer or CAISO, including CAISO “flags” with respect to the curtailments, for Seller to determine if payments are owed to Seller by Buyer pursuant to Section 7.4(b).

Section 7.5 No Payment. Buyer shall not be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Delivery for any reason (including Force Majeure), except as otherwise stated in Section 6.3 and Section 7.4(b).

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

Section 7.7 RPS and EPS Compliance.

(a) Seller warrants and guarantees that from the time it receives notice from the CEC that the Facility is CEC Certified, and at all times thereafter until the expiration or earlier

termination of the Agreement, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be both RPS Compliant and EPS Compliant (if EPS Law is applicable to the Facility), except if the Facility fails to be RPS Compliant or EPS Compliant (if EPS Law is applicable to the Facility) as a result of (i) a Change in Law making it impossible, after the use of commercially reasonable efforts as required under Section 7.7(b), for the Facility to be RPS Compliant or EPS Compliant, or (ii) any repeal of the RPS Law or EPS Law.

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

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

ARTICLE VIII ENVIRONMENTAL ATTRIBUTES

Section 8.1 Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by and between Buyer and Seller to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term associated with the Facility Energy and any Replacement Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller’s production or acquisition of the Environmental Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such

Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes except with respect to any sales by Seller pursuant to Section 6.3. Buyer and Seller acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the Contract Price.

Section 8.2 Reporting of Ownership of Environmental Attributes. During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it except with respect to any sales by Seller pursuant to Sections 6.3, 7.4, and during a Buyer Force Majeure.

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

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

Section 8.5 Further Assurances. In addition to and not in limitation of Section 8.4, Seller shall document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for the Environmental Attributes associated with Facility Energy

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

ARTICLE IX MAKEUP OF SHORTFALL ENERGY

Section 9.1 Makeup of Shortfall. Within thirty (30) days after (i) the end of the first full Contract Year and (ii) the end of each succeeding Contract Year, Seller shall provide Buyer with a calculation of Facility Energy for such Contract Year. If Seller fails during any Contract Year to deliver Facility Energy in an amount equal to the Guaranteed Generation for the Facility, then Seller shall make up the shortfall of Facility Energy ("**Shortfall Energy**") in accordance with this ARTICLE IX. During the Shortfall Makeup Period, the amount of Shortfall Energy shall be reduced by the amount of any Facility Energy or Deemed Generated Energy delivered or deemed to be delivered above the Guaranteed Generation, including Excess Energy, during the applicable Shortfall Makeup Period. If Seller fails to make up the full amount of any Shortfall Energy by the end of the Shortfall Makeup Period, or the end of an RPS Compliance Period, as applicable, Buyer may elect, in its sole discretion, to receive, for any deficiency in Shortfall Energy, Replacement Product in accordance with Section 9.2 or Shortfall Damages in accordance with Section 9.3.

Section 9.2 Replacement Product. If Buyer elects to receive Replacement Product under Section 9.1, such Replacement Product shall be delivered to the Point of Delivery or such other point of delivery as is mutually agreed upon by the Parties (which point of delivery shall be deemed the "Point of Delivery" for such Replacement Product for purposes of ARTICLE VII and the other Scheduling and delivery provisions hereof) and on a delivery schedule mutually agreed to by Seller and Buyer. Any additional costs or expenses associated with delivery of Replacement Product to a Point of Delivery designated under this Section 9.2 shall be borne by Seller. To the extent Seller is unable to deliver or provide sufficient Replacement Product to make up the remaining Shortfall Energy within sixty (60) days after the end of the Shortfall Makeup Period (the "**Replacement Product Period**"), then Seller shall pay Buyer damages for the then-remaining amount of Shortfall Energy in accordance with Section 9.3. Notwithstanding the foregoing, at the end of each RPS Compliance Period during the Delivery Term, if there is any Shortfall Energy at such time, Buyer may elect in its sole discretion to require Seller to pay Buyer damages in accordance with Section 9.3 for the amount of Shortfall Energy in the last calendar year of such RPS Compliance Period.

Section 9.3 Shortfall Damages. If Buyer has elected to receive Shortfall Damages under Section 9.3, or Seller fails to make up the full amount of any Shortfall Energy by the end of

the Replacement Product Period, Seller shall within thirty (30) days after the end of the applicable period pay Buyer damages, which damages shall be an amount, for each MWh of remaining Shortfall Energy, equal to the positive difference, if any, obtained by subtracting (a) the Contract Price from (b) the Replacement Price, and adding the amount of all documented and reasonable out-of-pocket costs and expenses incurred by Buyer to purchase such Replacement Product (“**Shortfall Damages**”). If Seller fails to pay Buyer the Shortfall Damages within such thirty (30) day period, Buyer shall have the right to immediately draw the applicable amount of Shortfall Damages owed to Buyer from the Delivery Term Security.

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

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

ARTICLE X CAPACITY RIGHTS

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

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

Section 10.3 Further Assurances. Seller shall execute and deliver such documents and instruments and take such other action as required by the CAISO and as Buyer’s Authorized Representative may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

ARTICLE XI
BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES

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

Section 11.2 Calculation of Energy Delivered; Invoices and Payment.

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

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

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

(d) Notwithstanding Section 11.2(c), if Buyer believes that it has insufficient information to verify the amount of Deemed Generated Energy calculated by Seller in the invoice, or if Buyer requires additional time to verify such information, Buyer shall notify Seller thereof within thirty (30) days after receipt of an invoice from Seller, and timely pay the amounts set forth in such Monthly invoice not related to Deemed Generated Energy. Within thirty (30) days after receipt by Buyer of additional information regarding such Deemed Generated Energy calculation, or on the date mutually agreed to by the Parties, Buyer shall pay to Seller the amount specified in the invoice or notify Seller of any discrepancies with respect to its calculation of the Deemed Generated Energy, in which event such invoice shall be subject to the provisions of Section 11.3.

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

(f) Except with respect to disputed invoices where the dispute is first raised within six months after the applicable Monthly billing period and for any adjustments made pursuant to Section 11.2(e) and Section 11.6(a), Buyer shall not be required to make invoice payments if the invoice is received more than six (6) Months after the applicable Monthly billing period.

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

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

Section 11.5 Records and Audits. Seller shall maintain, and the Authorized Auditors shall have access to, all records and data pertaining to the performance and management of this Agreement (including compliance with the Requirements) and related Subcontracts, and as necessary to properly reflect all costs claimed to have been incurred hereunder and thereunder, including (a) in their original form, all (i) documents provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, employee time sheets, accounting procedures and practices, and (iv) records of financial transactions, and (b) other evidence, regardless of form (for example, machine readable media such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities). If Seller is required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. In the event of a Dispute, records

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

Section 11.6 Electric Metering Devices.

(a) Facility Energy shall be measured using a CAISO-approved revenue-quality Electric Metering Device that complies with the CAISO Tariff and relevant protocols and is dedicated exclusively to the Facility. The Electric Metering Device may be installed on the low-side of Seller's transformer and will include adjustments to reflect losses to the Point of Delivery. Seller shall also install an Electric Metering Device at the Facility at a location agreed to by Buyer. Seller shall arrange and bear all costs associated with the installation of the Electric Metering Devices needed for the registration, recording and transmission of information regarding the Facility Energy. Seller hereby agrees to provide a mutually agreed set of meter data to Buyer,

which data shall be accessible to, and usable by, Buyer. In addition to providing Buyer with its meter data, Seller shall use commercially reasonable efforts to support any efforts by Buyer to obtain CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports from the CAISO. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised Monthly invoices, pursuant to this ARTICLE XI covering the entire applicable time period in order to fully conform such adjustments to the meter data. Seller shall submit any revised invoices no later than thirty (30) days after the date on which the CAISO provides Seller with binding adjustments to the meter data.

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

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

Section 11.7 Taxes. Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state, and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Site or any other assets of Seller, the Products or the transaction arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction from (but excluding) the Point of Delivery to Buyer. If Seller is required by a Requirement of Law to remit or pay Taxes that are the responsibility of Buyer hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

ARTICLE XII REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

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

Section 12.2 Representations and Warranties of Seller. Except as otherwise set forth in Section 12.2(b), Section 12.2(h)(ii) and Section 12.2(n)(ii), Seller makes each of the following representations and warranties to Buyer as of the Effective Date and continuing throughout the Agreement Term; provided that Seller makes the representation and warranty set forth in Section 12.2(o) as of the Effective Date only.

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

(b) At the time such Ancillary Documents are executed, Seller has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement and all Ancillary Documents requiring execution by such Seller, and Seller has delivered to Buyer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct, and complete, and (ii) an incumbency certificate signed by the

secretary of Seller certifying as to the names and signatures of the authorized representatives of Seller.

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

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

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

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

(g) Seller is not in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement or any Ancillary Document except as may be otherwise provided in Section 7.7.

(h) (i) Seller is a Special Purpose Entity and (ii) the corporate organizational structure and ownership of Seller and the Upstream Equity Owner(s) up to the Ultimate Parent Entity, as of the Effective Date, is set forth on Schedule 12.2(h) and as of the date of each update to Schedule 12.2(h) (as provided in Section 12.4), Schedule 12.2(h) (as then updated) sets forth the corporate organizational structure of Seller and each Upstream Equity Owner.

(i) Seller has (i) not entered into this Agreement or any Ancillary Document to which it is a party with the actual intent to hinder, delay or defraud any creditor, and (ii) received

reasonably equivalent value in exchange for its obligations under this Agreement and any Ancillary Document to which it is a party. No petition in bankruptcy has been filed against Seller, and Seller has never made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

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

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

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

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

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

(o) As of the Effective Date, Seller has complied with all of the assumptions made with respect to Seller in the Non-Consolidation Opinion.

Section 12.3 Covenants of Seller Related to Site Control Documents.

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

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

(c) For each Site Control Document capable of being recorded, Seller shall cause either a memorandum of such Site Control Document or the Site Control Document itself to

be recorded in the applicable county for such Site Control Document promptly upon execution and delivery thereof.

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

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

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

(g) After Seller's execution and delivery of a Site Control Document, Seller shall not terminate or cancel, or permit or suffer the termination or cancellation of any Site Control Document; *provided, however*, that prior to December 31, 2018, Seller may modify the Site Control Documents to add parcels to, or remove parcels from, the Site Control Documents so long as (a) Seller owns, leases or has a recorded option to purchase or lease the parcels and (b) such parcels are covered by the Conditional Use Permit; and further provided that Seller is permitted to terminate the Land Option in connection with its exercise and execution of the Land Lease. In addition, subject to the foregoing, after Seller's execution and delivery of a Site Control Document, Seller shall not (i) modify, change, amend or assign the Site Control Document in any way that would be reasonably likely to result in a material adverse effect on Seller's performance of its obligations under this Agreement or would be reasonably likely to result in a material adverse effect on Buyer's rights under the Option Agreement or Storage Option Agreement, or (ii) waive, excuse, condone, or in any way release or discharge the counterparty to any Site Control Document of or from the obligations, covenants, conditions, and agreements by such counterparty under such Site Control Document in any way that would be reasonably likely to result in a material adverse effect on Seller's performance of its obligations under this Agreement or would be reasonably likely to result in a material adverse effect on Buyer's rights under the Option Agreement or Storage Option Agreement, in each case, without the prior written consent of Buyer. In the event

of any update to the Site pursuant to this Section, Seller will provide a notice with an updated Appendix B-2 to reflect any changes to the Site, which such updated Appendix B-2 will be deemed to replace the existing Appendix B-2.

(h) On or before the Commercial Operation Date Seller shall use commercially reasonable efforts to cause each counterparty under a Site Control Document to provide Buyer with an estoppel certificate that states that: (i) the relevant Site Control Document is in full force and effect and has not been supplemented, amended, assigned or subleased; (ii) there are no uncured defaults under the relevant Site Control Document and no event or circumstance has occurred and is continuing which, with the giving of notice, the passage of time or both, would constitute a default under the Site Control Document; (iii) for any Site Control Document that does not recognize and allow for the Right of First Refusal, Right of First Offer and Project Purchase Option, evidences such counterparty's consent to Seller's grant of the Right of First Refusal, Right of First Offer and Project Purchase Option and to the assignment of such Site Control Document to Buyer following exercise of the Right of First Refusal, Right of First Offer or Project Purchase Option; and (iv) evidences such counterparty's consent to the right of Buyer to cure any payment default by Seller under the Site Control Documents prior to termination thereof.

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

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

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

(l) Subject to the terms of a Facility Lender Consent and to the extent permissible under applicable Requirements of Law, in the event that a petition under the Bankruptcy Code shall be filed by or against Seller, Seller hereby presently, absolutely, irrevocably, and unconditionally grants and assigns to Buyer the sole and exclusive right to instruct Seller to elect to assume and assign or reject the Land Lease pursuant to Section 365 of the Bankruptcy Code, and Seller agrees that any election, if made by Seller or Seller's trustee without the prior consent of Buyer shall be void at inception and of no force or effect. Absent (i) the consent of any Facility Lender or Tax Equity Investor to a rejection of the Land Lease, or (ii) Seller's representation that (a) it cannot cure, or provide adequate assurance that it will promptly cure, all defaults under the Land Lease, (b) it cannot compensate, or provide adequate assurance

that it will promptly compensate, a party other than Seller to the Land Lease for any actual pecuniary loss to such party arising from such default, and (c) it cannot provide adequate assurance of future performance under the Land Lease, Buyer shall instruct Seller to assume the Land Lease. Buyer shall have the right, but not the obligation, to instruct Seller or Seller's trustee as to such assumption and assignment of the Land Lease, and Seller shall, or shall cause Seller's trustee to, comply with such instructions.

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

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

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

Section 12.5 Additional Covenants of Seller.

(a) **Material Adverse Effect.** In the event of a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller or an “event of default” (as defined in the O&M Agreement) by Seller or the operator under the O&M Agreement, Seller shall promptly notify Buyer thereafter. With respect to material adverse effects on Seller or defaults under the O&M Agreement that would reasonably be expected to result in a material adverse effect on the performance of Seller under this Agreement or the operations of the Facility, Seller shall, within thirty (30) days after providing such notice, provide Buyer with a plan or report, including with respect to any operational problem related to the Facility, if reasonably requested by Buyer, the report (at Seller’s sole cost and expense) of a Licensed Professional Engineer that demonstrates in detail reasonably acceptable to Buyer, that the material adverse effect or event of default by Seller or the operator under the O&M Agreement has been mitigated or cured, or is reasonably expected to be mitigated or cured within a reasonable period or within the cure periods provided therefor (and listing, in detail, the actions that Seller has taken, is taking, or proposes to take with respect to such condition or event), or that such material adverse effect or event of default by Seller or the operator under the O&M Agreement will not have a material adverse effect on the performance of Seller under this Agreement or the operation of the Facility. A failure to provide such plan or report within thirty (30) days, or to use commercially reasonable efforts to undertake any of the actions set forth under such plan or report, will be deemed a failure by Seller to perform under Section 13.1(b).

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

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

(d) **Facility Debt.** On and after the Effective Date and prior to the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, Seller shall not permit Facility Debt in an amount that, in the aggregate, exceeds eighty percent (80%) of the Facility Cost, so long as Seller provides the additional security as required by Section 5.7(a) if the Facility Debt exceeds seventy percent (70%) of the Facility Cost. Following the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date., Seller shall not permit Facility Debt in an amount that, in the aggregate, exceeds seventy percent (70%) of the Facility Cost. On January 1, April 1, July 1, and October 1 of each year commencing on the Effective Date, Seller shall provide to Buyer a certificate of an officer, director or member of Seller attesting to the Facility Debt as being equal to or less than seventy percent (70%) of the Facility Cost as of such date, which certificate shall be accompanied by supporting documentation in reasonable detail, including Seller’s most recent annual and quarterly financial statements and a statement of the Facility’s then-current Facility Debt and Facility Cost values.

Section 12.6 Storage Technology.

(a) **[Reserved]**

(b) **Interconnection.** Provided that Buyer provides reasonable direction as to storage technology and design, Seller shall complete and submit a material modification request (the “**MMR**”) with the CAISO for the installation of an energy storage system to the Facility location, in an amount equal to 4 MW, or as otherwise mutually agreed by the Parties (the “**Storage Capacity**”). Seller shall promptly forward all material communication with the CAISO to Buyer regarding the MMR. If CAISO determines that the MMR does not constitute a material modification, Seller shall use commercially reasonable efforts to reserve the Storage Capacity for Buyer’s installation of an energy storage system in accordance with the Storage Option Agreement. If CAISO determines that such request is a material modification, at Buyer’s request, Seller shall assist Buyer with a new interconnection request and interconnection agreement. Buyer shall pay all costs exceeding \$44,200 in connection with the MMR.

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

(d) **Permit.** Provided that Buyer provides reasonable direction as to storage technology and design, Seller shall, at Buyer’s request, use commercially reasonable efforts, but incurring no more than \$44,200 of costs, to obtain a conditional use permit modification to allow for the installation and operation of an energy storage system at the Facility location.

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

ARTICLE XIII

DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

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

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

(b) **Performance Default.** Failure by a Party to perform any of its duties or obligations under this Agreement (other than any failure that is separately listed as a Default of Seller under this Section 13.1) that is not cured within thirty (30) days after receipt of notice thereof from the other Party; *provided* that if such failure is curable, but cannot be cured within such thirty

(30) day period despite reasonable commercial efforts and such failure is not a failure to make a payment when due, such Party shall have up to sixty (60) additional days to cure.

(c) **Breach of Representation and Warranty.** Any representation, warranty, certification or other statement made by a Party in this Agreement or any Ancillary Document, or, in the case of Seller, made in a certification delivered pursuant to Section 12.4, is false or inaccurate at the time made and materially and adversely affects Seller's ability to perform its obligations hereunder; *provided* that no Default shall exist if such falsity or inaccuracy is remedied within thirty (30) days after receipt of notice thereof from another Party; and further provided that if such falsity or inaccuracy is curable, but cannot be cured within such thirty (30) day period despite reasonable commercial efforts, such Party shall have up to sixty (60) additional days to cure.

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

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

(f) **Insurance Default.** The failure of Seller to maintain and provide acceptable evidence of the required Insurance for the required period of coverage as set forth in Appendix F that is not cured within five (5) Business Days after receipt of notice of such failure from Buyer.

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

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

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

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

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

Section 13.2 Default Remedy.

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

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

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

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement, (ii) termination of this Agreement pursuant to Section 13.4, and (iii) on and after the tenth (10th) anniversary of the COD exercise of the Project Purchase Option as provided in the Option Agreement. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power by Buyer.

Section 13.3 Cure Rights of Facility Lender and Tax Equity Financing Estoppel. In connection with any financing or refinancing of the Facility, Buyer shall in good faith negotiate and agree upon a consent to collateral assignment of this Agreement that is commercially reasonable and customary in the industry for limited or non-recourse project financing transactions and in form and substance satisfactory to Buyer; *provided, however*, the terms of such financing, documentation relating thereto and consent shall not conflict with the applicable terms and conditions of this Agreement (such consent, the "**Facility Lender Consent**"). The Facility Lender Consent shall provide the Facility Lender or its agent notice of the occurrence of any Default described in Section 13.3 and the opportunity to cure any such default. In addition, in connection with any Tax Equity Financing, Buyer shall in good faith negotiate an estoppel certificate that is commercially reasonable and customary in the industry for tax equity financing transactions and in a form and substance satisfactory to Buyer.

Section 13.4 Termination for Default.

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

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

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

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

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation of the Termination Payment shall be submitted to the dispute resolution process provided in Section 14.3.

Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) as determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

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

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

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

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

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

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

ARTICLE XIV MISCELLANEOUS

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

Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative's contact information.

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

Section 14.3 Dispute Resolution.

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

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

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

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

Section 14.4 Further Assurances; Change in Electric Market Design.

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

(b) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the Dispute resolution process set forth in Section 14.3. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure.

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

Section 14.6 Force Majeure.

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

(b) The term “***Force Majeure***” means any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout of a national scope, act of the public enemy, war, insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by Governmental Authority, military or lawfully established civilian authorities, or other occurrence that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in clause (iv) above shall be construed so as to require a Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an “***Unexcused Cause***”): (1) any requirement to comply with a RPS Law or any change (whether voluntary or mandatory) in any RPS Law, or other Change in Law, that may affect the value of the Products; (2) events arising from the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller’s ability to sell any Facility Energy at a price in excess of those provided in this Agreement or Buyer’s ability to purchase Product or any part thereof at a price lower than those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service; (7) failure of third parties to provide goods or services essential to a Party’s performance; (8) Facility or equipment failure of any kind; (9) any changes in the financial condition of Buyer, any Seller Party, the Facility Lender or any subcontractor or supplier affecting the affected Party’s ability to perform its obligations under this Agreement; or (10) Seller’s inability to obtain sufficient fuel, including due to lack of wind, sun or other fuel source of an inherently intermittent nature, or power to operate the Facility.

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

(d) Any termination of this Agreement under Section 14.6(c) shall be “no-fault” and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, each Party shall pay the other Party for any and all amounts hereunder that may be owing, including Seller’s obligation to make payments to Buyer for any existing Shortfall Energy, or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the

Performance Security (less any amounts drawn by Buyer in accordance with this Agreement). The exercise by Buyer of its right to terminate the Agreement shall not render Buyer or Seller liable for any losses or damages incurred by the other Party whatsoever.

Section 14.7 Assignment of Agreement.

(a) Buyer may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, the Option Agreement and the Storage Option Agreement in whole or in part without the consent of Seller to a Qualified Buyer Assignee; provided that any one or more assignments to the City of Biggs and/or the City of Gridley may not exceed one (1) MW in total. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of Buyer under this Agreement, the Option Agreement, and the Storage Option Agreement, thereby relieving the assignor Buyer from its duties and obligations hereunder and thereunder.

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

(c) Buyer's consent shall not be required in connection with the collateral assignment or pledge of this Agreement to any Facility Lender for the purposes of financing the Facility, the assignment of this Agreement to a Qualified Transferee by a Facility Lender following or in connection with the exercise of remedies by a Facility Lender, or the assignment of this Agreement in connection with a Tax Equity Financing utilizing a lease or inverted lease structure; *provided, however*, that (1) the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement, the Option Agreement, and the Storage Option Agreement as applicable, (2) in connection with any such assignment or pledge and the exercise of remedies by any Facility Lender, the Facility Lender acknowledges and agrees to be bound by the requirement that the Facility be operated and maintained by a Qualified Operator and (3) in the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender shall be bound by the covenants and agreements of Seller in this Agreement, the Option Agreement and the Storage Option Agreement. Without limiting the foregoing, following the conversion or repayment of any construction Facility Debt, which, for the avoidance of doubt, shall occur on or around the Commercial Operation Date, the collateral of Seller securing the Facility Debt of any Upstream Equity Owner or Ultimate Parent Entity shall (i) secure only the obligations under financing agreements providing for the Facility Debt that are allocated to the Facility and (ii) not secure any obligations of any other project of the borrower or any of its affiliates. Seller shall provide Buyer with sixty (60) days' prior notice of any such collateral assignment or pledge. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Products (not including the proceeds thereof) to any Facility Lender.

(d) Seller shall provide sixty (60) days' written notice to Buyer prior to the occurrence of any (i) Change in Control or (ii) any Tax Equity Financing.

(e) A Change in Control is permitted if (i) Buyer has given prior written consent to the transaction or transactions constituting the Change in Control, or (ii) the Change in Control occurs in connection with the exercise of remedies by a Facility Lender (including a transfer of direct or indirect interests in the Facility by a Facility Lender following the exercise of remedies) and the new Upstream Equity Owner following the Change in Control meets the criteria set forth in clause (a) or (b) of the definition of Qualified Transferee. In connection with any Change in Control under Section 14.7(e)(i), at Buyer's request, Seller shall cause the resulting Ultimate Parent Entity and Upstream Equity Owners to deliver an estoppel certificate to Buyer confirming that this Agreement and the Ancillary Documents remain in full force and effect.

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

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

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

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

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

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

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

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

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

Section 14.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

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

Section 14.16 Waiver; Available Remedies. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Except to the extent this Agreement expressly provides an exclusive

remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief; provided that where this Agreement provides an exclusive remedy, then specific performance and injunctive relief are not available. The rights granted herein are cumulative except where otherwise provided herein.

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

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

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

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless Buyer, Participating Members, and all of their respective commissioners, officers, agents, employees, advisors, and Authorized Representatives and assigns and successors in interest (collectively, “*Indemnitees*”) and, at the option of Buyer, to defend such Indemnitees from and against any and all suits and causes of action (including proceedings before FERC), claims, charges, damages, demands, judgments, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Seller’s employees and agents, or third persons, or damage or destruction to any property of either Party or third persons, in any manner arising by reason of any breach of this Agreement by Seller, any failure of a representation, warranty or guarantee of Seller hereunder to be true in all material respects, the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of the Seller’s officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of any such Indemnitee.

(b) **Damage or Destruction.** If there is a casualty event or other event causing the destruction of the Facility that renders the Facility incapable of generating 50% or more of the Annual Contract Quantity, Seller shall, within four (4) months of such event, enter into a contract

for the design of a replacement facility designed to be capable of satisfying the obligations of Seller under this Agreement.

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

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

(e) **Limitation of Liability.** EXCEPT TO THE EXTENT INCLUDED IN THE LIQUIDATED DAMAGES, INDEMNIFICATION OBLIGATIONS RELATED TO THIRD PARTY CLAIMS, OR OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY OR, IN THE CASE OF BUYER, ITS INDEMNITEES, BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER COSTS, BUSINESS INTERRUPTION DAMAGES RELATED TO OR ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER STATUTE, CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY AT LAW OR IN EQUITY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES OF SUCH DAMAGES, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, CONTRIBUTORY, CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

Section 14.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and

effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 14.21 Confidentiality.

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

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

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

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

(iii) to governmental officials or the public as required by any law, regulation, order, rule, ruling or other Requirement of Law, including laws or regulations requiring disclosure of financial information and information material to financial matters and filing of financial reports and responding to oral questions, discovery requests, subpoenas, civil investigations or similar processes; and

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

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall

provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

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

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

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

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

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

Section 14.23 Taxpayer Identification Number (TIN). Seller declares that its authorized TIN is 81-4665713. No payment will be made under this Agreement without a valid TIN.

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

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

(a) Buyer has a "***Right of First Offer***" (or "***ROFO***") and a "***Right of First Refusal***" (or "***ROFR***") for any proposed sale of the Facility and related assets (the "***Facility Assets***") by Seller.

(b) Prior to Seller (or Seller's Affiliate), as applicable, commencing the negotiation of a sale of the Facility Assets (other than in connection with a Tax Equity Financing or the exercise of remedies by a Facility Lender prior to the conversion or repayment of any construction Facility Debt (including a sale of the Facility Assets by a Facility Lender following the exercise of remedies), in which case the provisions of this Section 14.25 shall not apply), Seller shall provide notice to Buyer of Seller's proposed transaction (a "***Proposed Sale Notice***"). Upon

receipt of such Proposed Sale Notice, Buyer shall have ninety (90) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility Assets from Seller or its Affiliates, which notice shall include Buyer's proposed purchase price for the Facility Assets, as applicable (a "***Proposed Purchase Notice***"). If Buyer provides such Proposed Purchase Notice, then the Parties shall undertake for a period of up to ninety (90) days from the date of Buyer's Proposed Purchase Notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility Assets to Buyer.

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

(d) If Seller fails to (i) present a Notice of Proposed Third Party Sale within six (6) months after the expiration of the ninety (90) day period set forth in Section 14.25(b), or (ii) consummate the sale of the Facility Assets to a third party within forty-five (45) days after the expiration of the ninety (90) day period set forth in Section 14.25(c), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO and ROFR processes hereunder) before commencing or continuing negotiations with any third party or consummating a sale of the Facility Assets.

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

BUYER:

NORTHERN CALIFORNIA POWER
AGENCY

By: Randy S. Howard
Its: General Manager
Date: _____

Approved as to Form:

By: _____
Its: General Counsel
Date: _____

*Signature Page to Power Purchase Agreement between Antelope Expansion 1B, LLC
and Northern California Power Agency*

SELLER:

ANTELOPE EXPANSION 1B, LLC

By: _____

Its: _____

Date: _____

*Signature Page to Power Purchase Agreement between Antelope Expansion 1B, LLC
and Northern California Power Agency*

APPENDIX A-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

CONTRACT PRICE

1. Test Energy. The Contract Price for Products associated with Test Energy is equal to \$23.40 per MWh.
2. Facility Energy. The Contract Price for the Products associated with all Facility Energy other than Test Energy and Excess Energy is \$39.00 per MWh.
3. Excess Energy. The Contract Price for Products associated with Excess Energy \$23.40 per MWh.

**APPENDIX A-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC
[RESERVED]**

APPENDIX B-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC
FACILITY, PERMITS AND OPERATOR

1. Name of Facility: Antelope Expansion Phase 1 Solar Facility






Location: City of Lancaster, Los Angeles County, California
2. Owner: Antelope Expansion 1B, LLC
3. Operator: To be designated after Effective Date
4. Equipment:
 - (a) Type of Facility: Solar Photovoltaic
 - (b) Capacity: 17 MW
 - (c) Capacity Factor: 33.78%*Total nominal gross nameplate capacity: 17 MW

Total nominal net capacity under expected average Site conditions: 17 MW
5. Expected Commercial Operation Date (from Appendix I): December 31, 2021 unless otherwise agreed to in writing by the Parties
6. Permits:
 - (a) CEQA Determination
 - (b) Conditional Use Permit
 - (c) Building Permit
 - (d) Grading Permit
 - (e) Other permits, if any, required for the construction and operation of the Facility.

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

**APPENDIX B-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF [____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC
MAP OF THE FACILITY**



Los Angeles County, CA		Map Details		Map Description	
		 Controlled Parcels		Antelope Expansion 1 project lands currently under site control	
				Author: JL	
				Date: 12/8/2016	
				Version: 1.0	
				Type: Vicinity Map	
				 Antelope Expansion 1	

APPENDIX C
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC
ANNUAL CONTRACT QUANTITY

Table 1

Contract Year	Annual Contract Quantity, MWh
Initial Partial Contract Year	*
1	50,304
2	50,052
3	49,802
4	49,553
5	49,305
6	49,058
7	48,813
8	48,569
9	48,326
10	48,085
11	47,844
12	47,605
13	47,367
14	47,130
15	46,894
16	46,660
17	46,427
18	46,195
19	45,964
20	45,734
Last Partial Contract Year	*

*To be updated by the Parties at the Commercial Operation Date upon receipt of notice from Seller with the number of MWhs for such partial Contract Years.

Table 2

Month	% of Total
Jan	5.07%
Feb	5.43%
Mar	8.79%
Apr	9.92%
May	11.10%
Jun	11.21%
Jul	11.46%
Aug	10.00%
Sep	8.81%
Oct	7.21%
Nov	5.97%
Dec	5.03%

APPENDIX D
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

FORM OF ATTESTATION

_____(Seller)_____ **Environmental Attribute Attestation and Bill of Sale**

_____(“Seller”) hereby sells, transfers and delivers to Northern California Power Agency (“Buyer”) the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location:

Fuel Type: Capacity (MW):_____ Operational Date:

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

Dates

_____ 20____
_____ 20____
_____ 20____

MWhs generated

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

Seller further attests, warrants and represents as follows:

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

This serves as a bill of sale, transferring from Seller to Buyer all of Seller’s right, title and interest in and to the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the Energy for delivery to the grid.

Contact Person/telephone: _____

APPENDIX E
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

FORM OF LETTER OF CREDIT

**IRREVOCABLE AND UNCONDITIONAL
STANDBY LETTER OF CREDIT NO. _____**

Applicant:

[_____]

Beneficiary:

Northern California Power Agency
651 Commerce Drive
Roseville, CA 95678

Amount:

Expiration Date:

Expiration Place:

Ladies and Gentlemen:

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

A presentation under this Letter of Credit may be made only on a day, and during hours, in which such office is open for business, and payments can be effected via wire transfer (a "Business Day"). Partial drawing of funds shall be permitted under this Letter of Credit, and this Letter of Credit

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

shall remain in full force and effect with respect to any continuing balance; *provided* that the Available Amount shall be reduced by the amount of each such drawing.

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

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

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

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

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

We may, in our sole discretion, increase or decrease the stated amount of this Letter of Credit, and the Expiration Date may be extended, by an amendment to this Letter of Credit in the form of

Exhibit III signed by us. Any such amendment for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

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

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

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

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

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

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

Yours faithfully,

(name of issuing bank)

By _____
Title _____

EXHIBIT I

DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

To Whom It May Concern:

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

DATED: _____, 20__.

NORTHERN CALIFORNIA POWER AGENCY

By_____

Title_____

EXHIBIT II
STATEMENT

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

To Whom It May Concern:

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

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

DATED: _____, 20__.

NORTHERN CALIFORNIA POWER AGENCY

By_____

Title_____

EXHIBIT III

AMENDMENT

Re: Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

Beneficiary:

Applicant:

Northern California Power Agency

To Whom It May Concern:

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

An amendment is effective only when accepted by the Northern California Power Agency, below.

Dated: _____

Yours faithfully,

(name of issuing bank)

By _____
Title _____

ACCEPTED

NORTHERN CALIFORNIA POWER AGENCY

By _____
Title _____
Date _____

EXHIBIT IV
SURRENDER

Re: Your Irrevocable and Unconditional Standby Letter of Credit

No. _____ Dated _____, 20__

[Insert Bank Address]

Notice of Surrender of Letter of Credit

Date: _____

Attention: Letter of Credit Department

Ladies and Gentlemen:

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

Very truly yours,

NORTHERN CALIFORNIA POWER AGENCY

By _____

Title _____

APPENDIX F
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

INSURANCE

I. GENERAL REQUIREMENTS

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

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

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

Such insurance shall not be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to General Manager, Northern California Power Agency,.

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

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned (if applicable), non-owned, and hired vehicles for performance of the work by Seller or its officers, agents, or employees, as required, to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than \$1,000,000.00 combined single limit per occurrence, with a self-insured retention or deductible of no more than \$100,000, and shall apply to all operations of Seller.

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

B. Commercial General Liability

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

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

C. Excess Liability

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

Appendix F-2

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

D. Workers' Compensation/Employer's Liability Insurance

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

E. Builders' Risk

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

F. Property All Risk Insurance

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

G. Professional Liability

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

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

APPENDIX G
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC
QUALITY ASSURANCE PROGRAM

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

Quality at Seller

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

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

The Quality Management Process

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

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

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

Q/A Manual

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

Seller's quality program shall be documented in a Quality Assurance manual (the "Q/A Manual"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers' and suppliers' recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Q/A Manual within ninety (90) days after the Effective Date to Buyer or Buyer's Authorized Representative. The Q/A Manual shall be kept current by Seller throughout the term of this Agreement through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Authorized Representative.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. Furthermore, it shall provide the plan and strategy for quality control and review during the construction period. The Q/A Manual shall strive, at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the Requirements.
- (c) The materials received at the site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties as necessary.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the construction of the Facility.

Appendix G-2

- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) Detailed and complete plan for maintenance and operation during commercial operations consistent with manufacturers' and suppliers' recommendations and best industry practices.

Conceptual Design Review

Seller has a team of professionals who develop and review conceptual design. The team consists of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed in order to assess the solar resource, project constructability, site access, cultural and biological impact, land use restrictions, and landowner requirements. At this stage, the site plan is reviewed, modified as necessary, and used to begin the permitting and public review process. The site plan may be further modified based on comments received during the permitting and public review process. Subsequent to this phase, final third party engineering will commence.

Final Engineering Design

Third party engineering firms, licensed to practice in the state in which the project is to be constructed, will commence the detailed design necessary for the permitting and construction of the Facility. Each firm will have its own quality assurance and quality control procedures, however, Seller and a third party independent engineer will review the final work products to ensure conformance with this Agreement. When Seller and third party independent engineer have completed a multiple phase review process, and all comments have been addressed, the design is considered final and ready for construction permitting.

During the final engineering design process, geotechnical studies will be finalized as needed. If existing subsurface conditions are different from anticipated, the design may be modified to account for any variances. Any changes of this nature will be documented in as-built design drawings and approved in advance by Seller.

Quality Assurance at the Construction Site

Seller will hire a third party general contractor to construct the project. The contractor will be required to have a quality assurance program implemented by its own staff, and utilizing third party inspectors as necessary. The primary areas of focus are assuring conformance of construction to design drawings, conformance of materials to specifications, and to ensure prudent industry standards and best practices are being utilized. The contractor will be required to provide third party inspection and testing as necessary. The contractor will also be required to maintain a set of drawings during the course of construction, which will be used to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller's construction management team prior to implementation.

The contractor will provide the required oversight and training of its installation crew to ensure the construction of the Facility meets its quality guidelines. As necessary, equipment suppliers will have technical advisors on site to inspect, advise, and sign off on installation means and methods. In addition, Seller will have its own construction management team on site consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents and Q/A procedures. The contractor and appropriate equipment suppliers will commission the Facility per prudent industry standards, equipment specifications, and utility requirements. Prior to construction completion, a punchlist will be developed by the contractor, Seller, Seller's representatives, and third party independent engineer. This punchlist is maintained by the contractor, and is signed off by Seller upon completion of all punchlist items. Lastly, the independent engineer will perform periodic audits during construction to oversee critical items, confirm construction progress, and provide independent reporting and assessments to the project stakeholders.

Following completion of the project, the contractor will be required to provide to Seller as-built design drawings, record of all testing documentation, and final permit approvals. This documentation will be maintained at the project site during operations of the Facility.

Quality Assurance During Commercial Operations

Seller shall supply a Quality Assurance Plan for Buyer's review and approval no less than sixty (60) days prior to the anticipated Commercial Operation Date. Upon receipt of Quality Assurance Plan, Buyer shall provide written approval, such approval not to be unreasonably withheld, or comment within ten (10) Business Days.

APPENDIX H
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

QUALIFIED OPERATORS

Sustainable Power Group, LLC
FTP Power LLC
Signal Energy, LLC
First Solar Electric (California) Inc.
NRG Energy, Inc.
SunPower Corporation
Zachry Holdings, Inc.
Swinerton Builders, Inc.
AMEC Kamtech Inc.
Avangrid Renewables, LLC
EDF RenewableEnergy
Fluor Facility and Plant Services, Inc.
Rosendin Electric, Inc.
sPower Services, LLC
Cupertino Electric, Inc.
Blattner Energy
Miller Brothers Solar
Radian Generation
Maxgen Energy Services

APPENDIX I
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

MILESTONE SCHEDULE

No.	<u>Guaranteed Date</u>	<u>Milestone Description</u>	<u>Daily Liquidated Damages</u>
1.	Ten (10) days after the Effective Date	Seller has delivered all certificates and other documents required to establish that Commercial Automobile Liability, Commercial General Liability, Excess Liability and Workers' Compensation/Employer's Liability Insurance meeting the requirements of the Agreement and <u>Appendix F</u> is in full force and effect	
2.	Ten (10) Business Days after the Effective Date	Seller has delivered the Project Development Security	
3.	June 29, 2017	Seller has delivered to Buyer a CEC pre-certification form duly approved by the CEC.	
4.	December 31, 2018	Seller has achieved the Environmental Compliance Milestone	\$2,450 per day
5.	December 31, 2018	Seller has executed and delivered copies of the Site Control Documents and has obtained Site Control; provided that delivery of the Land Option or Land Lease to Buyer shall satisfy this Milestone	\$2,450 per day

Appendix I-1

No.	<u>Guaranteed Date</u>	<u>Milestone Description</u>	<u>Daily Liquidated Damages</u>
6.	March 31, 2021	Seller has entered into a Subcontract for the engineering, procurement, and construction of the Facility that satisfies the requirements set forth in the Agreement and has delivered a copy of such Subcontract to Buyer (with confidential or proprietary information redacted at Seller's discretion).	
7.	March 31, 2021	Seller has notified Buyer of the financing arrangement for the financing of the construction of the Facility.	
8.	June 1, 2021	Seller has obtained all Permits set forth on <u>Appendix B-1</u> (which shall be final and non-appealable), excluding all Permits not yet required for Seller's operation of the Facility but that are reasonably expected to be obtained in due course.	\$2,450 per day
9.	June 15, 2021	Seller has achieved the Construction Start Date.	\$2,450 per day
10.	December 15, 2021	Seller has achieved initial synchronization of the Facility.	
11.	December 31, 2021	Commercial Operation Date	\$4,900 per day

Appendix I-2

APPENDIX J
TO POWER PURCHASE AGREEMENT,
DATED AS OF [____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

AUTHORIZED REPRESENTATIVES;
BUYER AND SELLER BILLING, NOTIFICATION AND
SCHEDULING CONTACT INFORMATION

1. **Authorized Representative.** The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

1.1 Buyer:

Northern California Power Agency
c/o: General Manager
651 Commerce Drive
Roseville, CA 95678

Telephone: 916-781-3636
Facsimile: 916-783-7693
Email: _____

1.2 Seller:

Antelope Expansion 1B, LLC
Attention: Operations & Maintenance
Telephone: 435-421-9022
Facsimile: 801-679-3501
Email: radams@spower.com

2. **Billings.** Billings and payments pursuant to Article XI and Appendix A-1 shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Northern California Power Agency
Attention: Settlements
Telephone: 916-781-3636
Facsimile: 916-781-4255
Email: settlements@ncpa.com; acctspayable@ncpa.com

2.2 If Payment to Buyer:

Northern California Power Agency
Attention: Accounts Payable
Telephone: 916-781-4211
Facsimile: 916-781-4255
Email: Acctspayable@ncpa.com

2.3 If Payment or Billing to Seller:

Antelope Expansion 1B, LLC
Controller
Attention: Accounts Receivables
Telephone: 801-679-3512
Facsimile: 801-679-3501
Email: rliddell@sPower.com

3. **Notices.** Unless otherwise specified by Buyer all notices (other than Scheduling notices, curtailment notices, and Deemed Generated Energy notices):

If to Buyer:

Northern California Power Agency
Attention: General Counsel
Telephone: 916-781-3636
Facsimile: 916-783-7693
Email: _____

If to Seller:

Antelope Expansion 1B, LLC
Attention: General Counsel's Office
Telephone: 801-679-3512
Facsimile: 801-679-3501
Email: smcbride@spower.com

4. **Schedulers.** Unless otherwise specified by Buyer, all notices related to Scheduling of the Facility shall be sent to the following address:

If to Buyer:

Northern California Power Agency

Pre-scheduling: Monthly, weekly, and daily generation schedules are to be provided to NCPA Pre-Scheduling contacts.

<u>Name</u>	<u>Phone</u>	<u>Email</u>
NCPA Preschedulers	916-786-0123	Preschedulers@ncpa.com
	916-786-0124	
Facsimile:	916-781-4239	

Schedule Coordination: Daily generation schedules received after 10:00 am the day prior to being scheduled and all Hour Ahead or Real-Time schedule changes to be provided to NCPA Schedule Coordinator contacts.

<u>Name</u>	<u>Phone</u>	<u>Email</u>
NCPA SC	916-781-4237	SC2@ncpa.com
Facsimile:	916-781-4226	

Outage Coordination: All Planned and/or Forced Outages of generation facilities are to be provided to NCPA Dispatch and NCPA SC.

<u>Name</u>	<u>Phone</u>	<u>Email</u>
NCPA Dispatch	916-786-3518	Dispatch@ncpa.com
NCPA SC	916-781-4237	SC2@ncpa.com
Facsimile:	916-781-4226	

If to Seller:

Antelope Expansion 1B, LLC
Attention: Operations & Maintenance
Telephone: 435-421-9022
Facsimile: 801-679-3501
Email: radams@spower.com

5. **Curtailments.** All notices related to curtailments of the Facility pursuant to Section 7.4 shall be sent to the following address:

If to Buyer:

Northern California Power Agency
(see above)

If to Seller:

Antelope Expansion 1B, LLC
Attention: Operations & Maintenance
Telephone: 435-421-9022
Facsimile: 801-679-3501
Email: radams@spower.com

6. **Deemed Generated Energy.** Unless otherwise specified by Buyer, all notices related to calculations of Deemed Generated Energy shall be sent to the following address:

If to Buyer:

Northern California Power Agency
Attention: Settlements
Telephone: 916-781-3636
Facsimile: 916-781-4255
Email: settlements@ncpa.com

If to Seller:

Antelope Expansion 1B, LLC
Attention: Operations & Maintenance
Telephone: 435-421-9022
Facsimile: 801-679-3501
Email: radams@spower.com

Either Party may update its contact information in this Appendix J by delivering a notice to the other Party pursuant to Section 14.2 of the Agreement.

APPENDIX K
TO POWER PURCHASE AGREEMENT,
DATED AS OF [____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC
FORM OF OPTION AGREEMENT

This Purchase Option Agreement (this “**Agreement**”) is made as of _____ (the “**Effective Date**”), by and between Antelope Expansion 1B, LLC, a Delaware limited liability company (“**Developer**”), and the Northern California Power Agency (“**NCPA**”), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et. seq., (the “**Act**”), and that certain Amended and Restated Northern California Power Agency Joint Powers Agreement entered into pursuant to the provisions of the Act among NCPA and NCPA’s members, dated as of January 1, 2008. Developer and NCPA are sometimes hereinafter individually or collectively called a “**Party**” or the “**Parties**”.

WHEREAS, Developer and NCPA are party to that certain Power Purchase Agreement, dated as of [____] (the “**PPA**”). Terms used but not defined herein shall have the respective meanings given in the PPA.

WHEREAS, pursuant to the PPA, Developer is developing the Facility, a solar photovoltaic power generating facility to be located at the Site, and NCPA will purchase the energy, capacity rights and environmental attributes from the Facility.

WHEREAS, Developer has agreed to offer NCPA the option to purchase the Facility on the terms provided herein, and NCPA has agreed to accept such option to purchase.

WHEREAS, pursuant to the PPA, the Parties have agreed to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, NCPA entering into the PPA, the covenants and agreements herein contained, and other good and valuable consideration, (the receipt and adequacy of which is hereby acknowledged by the Parties), the Parties, intending to be legally bound, hereto agree as follows:

1. **OPTION TO PURCHASE FACILITY.**

1.1 **Grant of Purchase Option.** Developer hereby gives and grants NCPA an irrevocable right and option, to be exercised in its sole discretion, to purchase all of the Developer’s right, title, and interest in and to the Facility on the terms set forth herein (the “**Purchase Option**”) (the occurrence of the transfer of the Facility, the “**Closing**”). So long as no Default by NCPA has occurred and is continuing under the PPA, NCPA may exercise the Purchase Option, (a) with the transfer of the Facility to occur on or about either the tenth (10th), fifteenth (15th) or twentieth (20th) anniversary of the Commercial

Operation Date and (b) after the tenth (10th) anniversary of the COD, upon delivery of notice to Developer that NCPA is exercising its remedies under Section 13.2(d) of the PPA as a result of Developer's Default (each, a "**Purchase Option Date**"). Developer acknowledges that NCPA has no obligation to exercise the Purchase Option and that NCPA may decline to exercise the Purchase Option for any or no reason, as NCPA deems appropriate in its sole discretion.

1.2 Determination of Purchase Price.

(a) *Fair Market Value.* NCPA may request a determination of the purchase price under the Purchase Option (the "**Purchase Price**") (i) with respect to a Purchase Option Date under Section 1.1(a), on or at any time within two hundred ten (210) days before each Purchase Option Date or (ii) with respect to a Purchase Option Date under Section 1.1(b), on or within sixty (60) days after NCPA's delivery of notice to Developer under Section 1.1(b) (the date of such request, the "**Purchase Price Notice Date**"). The Purchase Price shall be the fair market value of the Facility determined in accordance with this Section 1.2; provided that the Purchase Price shall in no event be less than the applicable amount set forth on Exhibit A. The fair market value of the Facility shall be the amount a willing buyer would pay for the Facility and all rights and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell on the applicable Closing Date (as defined below), taking into account all relevant facts and circumstances relating to the Facility, and assuming (except in the case NCPA is exercising its Project Purchase Option as a result of Default under the PPA, in which case the Energy, Capacity Rights, Environmental Attributes and other products generated by the Facility will be assumed to be sold at their fair market price as of the Closing Date for the remaining useful life of the Facility) (a) delivery of the expected generation for the then-remaining term of the PPA at the Contract Price, and (b) that the Facility is able to generate revenue for the remaining useful life of the Facility at a price per MWh equal to the then fair market price for Energy, Capacity Rights, Environmental Attributes and other products generated by the Facility, as may adjusted due to any material casualty or other loss event, real or threatened condemnation proceeding, or other material adverse event affecting all or any portion of the Facility prior to and as of the Closing Date. If NCPA disagrees with Developer's determination of the fair market value, the Parties may meet and attempt to agree on a fair market value.

(b) *Independent Appraiser.* If the Parties are unable to agree on the fair market value, the Parties shall jointly retain an independent appraiser to determine such fair market value (the "**Independent Appraiser**"), NCPA shall be responsible for the costs of the Independent Appraiser. The Independent Appraiser shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Facility, and who specifically has prior experience valuing solar energy generating facilities. The Independent Appraiser shall be reasonably acceptable to both Parties. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties or their respective Affiliates. The Independent Appraiser shall make a determination of the Purchase Price within thirty (30) days after appointment (the "**Price Determination**"). Upon making the Price Determination, the Independent Appraiser shall provide a written notice thereof to both Developer and NCPA, along with all supporting documentation detailing the method of calculation of the Purchase Price. Except in the event of fraud or manifest error, the Price Determination shall be a final and binding determination of the fair market value of the Facility.

Appendix K-2

(c) *Additional Appraisers.* If the Parties are unable to agree upon an Independent Appraiser within thirty (30) days after NCPA submits a request for a determination of the Purchase Price under this Section 1.2, then each of Developer and NCPA shall select and retain an independent appraiser meeting the requirements for an independent appraiser set forth in this Section 1.2. Each Party shall cause its appraiser to make a determination of the Purchase Price within thirty (30) days. Upon completion of the two appraisals, NCPA and Developer shall deliver the results to each other. If the purchase price determinations of the two independent appraisers vary by less than ten percent (10%), the Price Determination shall be the simple average of the price determinations of the two appraisals. If the variance is greater than ten percent (10%), the two independent appraisers shall select a third independent appraiser meeting the requirements for an independent appraiser set forth in this Section 1.2, or if the first two appraisers fail to agree upon a third appraiser within fifteen (15) days, a third independent appraiser shall be appointed by the American Arbitration Association (“AAA”) upon application of either Party in accordance with the applicable rules and regulations of the AAA for such selection. The third appraiser shall select one of the appraisals generated by the first two appraisers within thirty (30) days of his retention and such resulting price shall be the Price Determination. If the third appraiser selects the appraisal originally generated by NCPA’s appraiser, Developer shall pay the fees and costs of the third appraiser. If the third appraiser selects the appraisal originally prepared by Developer, NCPA shall pay the fees of the third appraiser.

(d) *Exercise of Purchase Option.* If NCPA wishes to exercise the Purchase Option following the Price Determination, it shall deliver an exercise notice (the “**Exercise Notice**”) to Developer within one hundred eighty (180) days after receipt of the Price Determination (the “**Exercise Period**”). Any such exercise notice shall be irrevocable once delivered, subject to NCPA’s rights to not Close under Section 4. If NCPA does not exercise the Purchase Option during the Exercise Period, then the Price Determination shall be null and void, and NCPA may not request a new determination of the Purchase Price until the next Purchase Option Date.

1.3 Terms and Date of Facility Purchase. The Parties shall consummate the sale of the Facility to NCPA no later than ninety (90) days following NCPA’s delivery of an Exercise Notice. On the effective date of such sale (the “**Closing Date**”), (a) Developer shall surrender and transfer to NCPA all of Developer’s right, title, and interest in and to all assets, properties, rights and interests of every kind, nature and description (whether real, personal or mixed, whether tangible or intangible, and wherever situated), operated, owned or leased by, or allocated to, Developer for or in connection with the Facility and its intended purpose, operation, and function (other than any assets that NCPA and Developer have mutually agreed to exclude from the transfer and sale, collectively, the “**Excluded Assets**”) and shall retain all liabilities, and profits (including any Environmental Attributes), arising from or relating to the Facility prior to and as of the Closing Date in accordance with Section 1.4; (b) NCPA shall pay the Purchase Price to Developer in readily available funds, and shall assume all liabilities arising from or relating to the Facility after the Closing Date in accordance with Section 1.4; (c) NCPA shall pay all amounts incurred by NCPA due to Developer under the PPA as of the Closing Date net of any amounts owed by Developer to NCPA thereunder; (d) both Developer and NCPA shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the Facility in NCPA, and (ii) deliver such ancillary documents, including releases, resolutions, certificates, third-party consents and approvals, and such similar documents as may be reasonably necessary to complete and conclude the sale of the Facility to NCPA; and (e) the PPA shall automatically terminate. The purchase and sale of the Facility shall be on an “as-is, where-is” basis, except that Developer shall make

representations and warranties regarding title, authority, and liens and shall, prior to the Closing Date, provide disclosures with specificity and in good faith, to the knowledge of Developer, regarding any actions, suits, arbitrations, procedures, and/or claims pending or threatened against Developer or the Facility, which if adversely determined, could adversely affect the Facility or result in a material liability to NCPA. Developer shall, to the extent reasonably possible, transfer or assign to NCPA all manufacturer and third-party warranties with respect to the Facility or any part thereof. NCPA shall pay all transaction and closing costs associated with exercise of the Purchase Option.

1.4 **Allocation of Liabilities.** At the Closing, NCPA shall assume and agree to pay for, perform, fulfill and discharge after the Closing, the liabilities and obligations relating to the Facility that are first required to be performed after the Closing or arising or occurring after the Closing, other than the Excluded Liabilities (collectively, the “**Assumed Liabilities**”). The Assumed Liabilities shall include all liabilities and obligations under contracts which are assumed by NCPA at the Closing arising before the Closing Date and becoming due after Closing Date; provided that the Assumed Liabilities shall not include any liabilities arising out of a breach or default thereof by Developer prior to the Closing Date. NCPA shall not assume, and shall not be deemed to have assumed, and shall have no liability with respect to (whether asserted before or after the Closing and regardless of whether the same or the basis therefor may have been disclosed to NCPA by Developer or otherwise be known to NCPA), any liabilities or obligations of any nature, fixed or contingent or known or unknown related to the Facility other than as specifically set forth in this Section 1.4 (with all such unassumed obligations referred to in this Agreement as the “**Excluded Liabilities**”). Without limiting the generality of the preceding sentence, NCPA shall have no liability with respect to any of the following liabilities or obligations (whether asserted before or after the Closing and regardless whether the same or the basis therefor may have been disclosed to NCPA by Developer or otherwise be known to NCPA), all of which are included in the Excluded Liabilities:

(a) Any liability or obligation of Developer in respect of taxes attributable to the Facility for taxable periods ending on or prior to the Closing, including any supplemental tax liability related to activity at the Facility conducted on or before the Closing that arises after the Closing;

(b) Any liability or obligation of Developer relating to the Facility, including arising out of Developer’s ownership and operation of the Facility, arising or occurring on or prior to the Closing;

(c) Any liability or obligation of Developer with respect to the employment or termination of any employee or group of employees by Developer, or the terms thereof, whether union or nonunion, whether the liability or obligation calls for performance or observance before or after the Closing and whether the liability or obligation arises from a collective bargaining agreement, pension trust fund plan, or other agreement or arrangement to which Developer is a party or by which Developer is bound (whether oral or written and whether express or implied in fact or in law) or any past practice or custom or otherwise;

(d) Any liability or obligation of Developer for pension fund payments or unfunded pension fund liabilities;

(e) Any liability or obligation arising from or associated with any of the Excluded Assets;

(f) Any liability or obligation of Developer or its Affiliates to a third party arising from any indemnification claim, injury to or death of any person or damage to or destruction of any property, whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Developer or its Affiliates arising on or prior to the Closing; and

(g) Any liability or obligation of Developer or its Affiliates arising solely in connection with the Facility secured by a Lien of a Facility Lender, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, or benefit monetization, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing, and specifically excluding any obligations associated with any equity investment or Tax Equity Financing provided to Developer, or any Affiliate of Developer, to support the development, construction and operation of the Facility (“**Facility Debt**”), or Liens or encumbrances other than those permitted in writing by NCPA at the Closing.

2. **ACCESS AND DUE DILIGENCE.** Between the Purchase Price Notice Date and the Closing Date (such period, the “Applicable Diligence Period”), upon reasonable advance notice, Developer will (a) afford NCPA and its representatives (and the Independent Appraiser) full and complete access during normal business hours to the Facility and to Developer’s personnel, any and all contracts, permits, books and records, properties, design schematics, blueprints or other similar documents, and any other documents and data (provided that NCPA shall observe, and shall cause its representatives to observe, all of Developer’s security protocols), (b) furnish NCPA and NCPA’s representatives (and the Independent Appraiser) with copies of all such documents and data as NCPA or the Independent Appraiser may reasonably request, and (c) furnish NCPA and its representatives (and the Independent Appraiser) with such additional financial, operating, and other data and information in Developer’s possession or to which Developer has access as NCPA and its representatives (and the Independent Appraiser) may reasonably request. During the Applicable Diligence Period, upon reasonable advance notice (but not less than twenty four (24) hours), Developer shall afford NCPA and its representatives (and the Independent Appraiser), with reasonable access to the Facility for the purpose of inspecting the same, to conduct any performance tests or physical inspections or otherwise, including to conduct a phase 1 environmental site assessment, in such manner so as not to materially disturb or interfere with the normal operations of the Facility.

3. **OPERATION OF THE FACILITY; CONDUCT OF BUSINESS.** During the Applicable Diligence Period, Developer will conduct its business with respect to the Facility in accordance with the ordinary course of business consistent with past practices and Prudent Utility Practices. During the Applicable Diligence Period, Developer shall not (a) sell or otherwise dispose of or encumber any of the Facility assets or any other property or assets which are primarily related to the operation, maintenance and use of the Facility (other than sales, leases, transfers or dispositions in the ordinary course of business consistent with past practice and Prudent Utility Practices), or (b) except as may be required by their terms, and except in the ordinary course of business consistent with past practice, modify, subordinate, amend, terminate, cancel, sever or surrender, or permit or suffer the modification, subordination, amendment, termination, cancellation, severance or surrender of any contract, permit or warranty, without the prior written approval of NCPA.

4. **NOTIFICATION.** During the Applicable Diligence Period, Developer shall give prompt notice (each notice, a “Change Notice”) to NCPA of the occurrence or non-occurrence of any event, change,

effect or development of any kind which could be reasonably expected to result in a: (a) material adverse effect, or (b) breach of any of Developer's covenants under this Agreement. If elected by NCPA, the Purchase Price may be adjusted by an amount (as determined by the Parties in good faith, or absent their mutual agreement, by an Independent Appraiser using the same methodology as set forth in Section 1.2) to take into account each event described in a Change Notice; provided that the Purchase Price shall in no event be less than the applicable amount set forth on Exhibit A. NCPA shall have the right, but not the obligation, to either (i) terminate the Purchase Option with respect to the applicable Purchase Option Date and elect not to purchase the Facility; *provided, however*, that such termination shall not affect NCPA's right to exercise a Purchase Option with respect to a future date, or (ii) proceed with the Closing despite the existence of the Change Notice and pay the Purchase Price, as such Purchase Price may be adjusted pursuant to this Section 4, subject to the minimum purchase price in Exhibit A.

5. MISCELLANEOUS.

5.1 Representations and Warranties of NCPA.

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

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

5.2 Representations and Warranties of Developer.

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

(b) Developer has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement, and Developer has delivered to Developer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of Developer as being true, correct, and

complete, and (ii) an incumbency certificate signed by the secretary of Developer certifying as to the names and signatures of the authorized representatives of Developer.

(c) The execution, delivery and performance by Developer of this Agreement have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

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

5.3 Survival. (a) The rights of NCPA under this Agreement and (b) the Purchase Option shall be prior and superior to the rights of any Facility Lender and prior to and superior to the rights of any other person or entity that subsequently acquires an interest in the Facility. Any person or entity acquiring the Facility or any interest therein of any nature (including, without limitation, via foreclosure or deed-in-lieu of foreclosure by any Facility Lender) shall take the Facility subject to the rights of NCPA to acquire the Facility.

5.4 Waiver of Consequential Damages. THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE FACILITY OR THIS AGREEMENT.

5.5 Assignment. NCPA may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, in whole or in part without the consent of Developer to a Qualified Buyer Assignee that is also the assignee of the PPA. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Developer pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of NCPA under this Agreement, thereby relieving the assignor NCPA from its duties and obligations hereunder. Except as set forth in this Section 5.5, neither Party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

5.6 Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by NCPA and Developer.

5.7 Governing Law and Venue. This Agreement and the Exhibits attached hereto shall be governed by and construed under the laws of the State of California. The parties hereto agree that venue for any action brought to enforce the terms of this Agreement shall be in the applicable courts of the County of Los Angeles and the Parties hereby submit to the jurisdiction of such courts.

5.8 Entire Agreement. The terms of this Agreement and the PPA constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior or contemporaneous agreements, representations, negotiations and understandings of the Parties concerning the subject matter hereof, whether oral or written, are hereby superseded and merged herein.

5.9 Notices. All notices, consents, waivers, demands, requests or other instruments or communications to be given by one Party to the other Party shall be given in accordance with the requirements for such instruments or communications set forth in the PPA.

5.10 PPA Termination. If the PPA expires or is terminated for any reason whatsoever, then the Purchase Option and this Agreement shall automatically terminate and be of no further force or effect.

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

5.12 Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

5.13 No Partnership. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

5.14 Recording. No later than ten (10) Business Days after execution of the Land Lease, Developer shall deliver a memorandum of this Agreement to NCPA, the form and substance of which shall be reasonably acceptable to NCPA, which memorandum shall be executed by the Parties and shall be promptly recorded by Developer in the Official Public Records of the County in which the Site is located.

5.15 Further Assurances. Upon the reasonable request of the other Party, the applicable Party shall execute and deliver such further documents, instruments or conveyances and take, or cause to be taken, all appropriate action of any kind (subject to applicable Requirements of Law) as may be reasonably necessary or advisable to carry out any of the provisions hereof and to otherwise consummate and effectuate the transactions contemplated by this Agreement, all at the sole cost and expense of the requesting Party. Upon NCPA's request and without further consideration, Developer or its Affiliates, as applicable, shall promptly do, execute, acknowledge and deliver all such further acts, assurances and instruments of sale, transfer, conveyance, assignment and confirmation as are reasonably required, and take all such other action as NCPA may reasonably request in order to more effectively (a) transfer, convey and assign the Facility Assets to NCPA in accordance with the provisions set forth in this

Agreement, (b) to the full extent permitted by applicable Requirements of Law, put NCPA in actual possession of and confirm NCPA's title to, all of Developer's right, title and interest in and to any assets related to the Facility, and (c) include within the Facility Assets, and transfer, convey and assign to Developer, free and clear of all Liens other than Liens expressly permitted by NCPA in writing at the closing of the sale of the Facility Assets, any assets necessary for the ownership, operation and maintenance of the Facility that are held or owned by Developer or an Affiliate of Developer on or before the closing.

5.16 **Relationship with PPA; Right of First Offer and Right of First Refusal.** Except as otherwise specifically stated herein, this Agreement is independent of the PPA and, as a separate agreement, shall survive the amendment or modification of the PPA. In the event of a conflict between this Agreement and the PPA, this Agreement shall control. Notwithstanding the foregoing, this Agreement shall not be deemed to limit Buyer's Right of First Offer or Right of First Refusal set forth in the PPA.

5.17 **Equitable Remedies.** The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Seller and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Purchase Option Agreement as of the Effective Date.

ANTELOPE EXPANSION 1B, LLC

By: _____
Name:
Title:

NORTHERN CALIFORNIA POWER AGENCY

By: _____
Name:
Title:

Exhibit A

Minimum Purchase Price

<u>Purchase Option Date</u>	<u>Minimum Purchase Price</u>
10 years	\$16,026,000
15 years	\$15,062,000
20 years	\$14,088,000
Seller default after 10 years after the anniversary of COD	The aggregate amount of outstanding Facility Debt immediately prior to Closing

Appendix K-1

**APPENDIX L-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF [____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC**

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification (“***Certification***”) of the Construction Start Date is delivered by Antelope Expansion 1B, LLC (“***Seller***”) to Northern California Power Agency (“***Buyer***”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“***Agreement***”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the engineering, procurement and construction contract related to the Facility was executed on _____; and
2. the notice provided by Seller to EPC Contractor by which Seller authorizes the EPC Contractor to begin construction of the Facility without any delay or waiting periods was issued on _____ (attached).

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

ANTELOPE EXPANSION 1B, LLC

By: _____

Its: _____

Date: _____

APPENDIX L-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“***Certification***”) of the Commercial Operation is delivered by [independent engineer] (“***Engineer***”) to Northern California Power Agency (“***Buyer***”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“***Agreement***”) by and between **ANTELOPE EXPANSION 1B, LLC** and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

1. Equipment sufficient to generate one hundred percent (100%) of the Contract Capacity of the Facility has been erected in accordance with the equipment manufacturer’s specifications (“***Initial Mechanical Completion***”);
2. The electrical collection system related to the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for the Facility;
3. The substation for the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Facility Energy;
4. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
5. The Facility is operational and interconnected with the CAISO grid and released by the CAISO for Commercial Operation and capable of delivering Facility Energy through the permanent interconnection facilities for the Facility.

For purposes of Section 4 above, “***Initial Commissioning Completion***” means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer’s specifications.

EXECUTED by [INDEPENDENT ENGINEER]
this _____ day of _____, 20__.

[INDEPENDENT ENGINEER]

By: _____
Its: _____

Date: _____

**APPENDIX M-1
TO POWER PURCHASE AGREEMENT,
DATED AS OF [____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC

[RESERVED]**

**APPENDIX M-2
TO POWER PURCHASE AGREEMENT,
DATED AS OF [____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC
[RESERVED]**

**APPENDIX N
TO POWER PURCHASE AGREEMENT,
DATED AS OF [____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC**

SITE CONTROL DOCUMENTS

On or prior to December 31, 2018, Seller may update this Appendix N by Notice to Buyer, to modify Site Control Documents to add parcels to, or remove parcels from, the Site shown on the map set forth in Appendix B-1, in accordance with Section 12.3(g) to the Agreement.

Site Control Documents:

Prior to such time as the Option Agreement is exercised and the Land Lease is executed:
Land Option

After the Land Lease is executed:
Land Lease

After the Shared Facilities Agreement is executed:
Shared Facilities Agreement

[See Attached Map]

APPENDIX O
TO POWER PURCHASE AGREEMENT,
DATED AS OF [_____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC
STORAGE OPTION AGREEMENT

This Storage Option Agreement (this “**Agreement**”) is made as of _____ (the “**Effective Date**”), by and between Antelope Expansion 1B, LLC, a Delaware limited liability company (“**Developer**”), and the Northern California Power Agency (“**NCPA**”), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et. seq., (the “**Act**”), and that certain Amended and Restated Northern California Power Agency Joint Powers Agreement entered into pursuant to the provisions of the Act among NCPA and NCPA’s members, dated as of January 1, 2008. Developer and NCPA are sometimes hereinafter individually or collectively called a “**Party**” or the “**Parties**”.

WHEREAS, Developer and NCPA are party to that certain Power Purchase Agreement, dated as of [_____], 2017 (the “**PPA**”). Terms used but not defined herein shall have the respective meanings given in the PPA.

WHEREAS, pursuant to the PPA, Developer is developing the Facility, a solar energy generating facility to be located at the Site.

WHEREAS, in conjunction with the Facility, NCPA may wish to place an energy storage facility (the “**Storage Project**”) at the Site, on the terms and conditions set forth in this Agreement.

WHEREAS, Developer has agreed to grant NCPA an option to lease certain land and to provide certain assistance and accommodation for the placement of the Storage Project at the Site.

WHEREAS, pursuant to the PPA, the Parties have agreed to enter into this Agreement.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, NCPA entering into the PPA, the covenants and agreements herein contained, and other good and valuable consideration, (the receipt and adequacy of which is hereby acknowledged by the Parties), the Parties, intending to be legally bound, hereto agree as follows:

1. Option.

1.1 Grant of Option. Developer hereby grants to NCPA an option (the “**Option**”) to lease (a) a portion of the Site (the “**Option Property**”) to be determined jointly by Developer and NCPA at the Facility inverter locations or at the Facility Substation location, or any other location

mutually agreed to by the Parties, (b) rights to use Developer's share of the interconnection capacity in an amount equal to 4 MW, or such other amount mutually agreed to by the Parties, under the Generator Interconnection Agreement and pursuant to the terms of the Lease as set forth in Sections 1.3 and 1.5 below, for use of the Storage Project, if, after the MMR process outlined in Section 12.6 of the PPA, CAISO determines that NCPA's use of Developer's share of the interconnection capacity does not constitute an MMR; and (c) rights under the relevant Permits for the purpose of installing, owning, operating, and maintaining the Storage Project; provided that such rights are obtained pursuant to the process outlined in Section 12.6 of the PPA (such rights, the "**Storage Project Rights**"). The Option Property shall be selected and identified by Developer and NCPA jointly at the Facility inverter locations or at the Facility Substation location, or any other location mutually agreed to by the Parties, taking into consideration the design of the Storage Project, provided that the Option Property shall not exceed 2,000 square feet per MW of the Storage Capacity, unless otherwise agreed to by the Parties.

1.2 Option Period. The option period shall run from the Commercial Operation Date and shall continue through the fifteenth (15th) anniversary thereof (the "**Option Period**") unless terminated earlier pursuant to the terms of this Agreement.

1.3 Exercise of Option. NCPA may exercise the Option at any time during the Option Period by delivering to Developer written notice of exercise of the Option ("**Notice of Exercise**"). The Option may be exercised once or twice, at NCPA's election, provided that if the Option is exercised twice, the combined Storage Project resulting from both exercises shall be subject to all requirements of this Agreement. Upon delivery by NCPA of a Notice of Exercise, NCPA and Developer shall promptly negotiate in good faith to execute a mutually agreeable lease and storage implementation agreement (each such agreement, a "**Lease**") any necessary changes to the Shared Facilities Agreement, if applicable, and such other agreements, as appropriate, to afford NCPA the Storage Project Rights; provided that any Lease shall preserve the economic "benefit of the bargain" to both Parties of the PPA without regard to the operation of such Storage Project Rights and shall not adversely affect any other right, benefit, risk or obligation of the Parties thereunder. Each Lease shall contain terms and conditions consistent with the terms set forth in Section 1.5 of this Agreement, other customary terms and conditions, and such other terms and conditions as the Parties may mutually agree. If the Option is exercised twice, the second Lease shall be in a form substantially identical to the first Lease. Upon execution of a second Lease, this Agreement shall terminate.

1.4 Arbitration/Remedies. If the Parties have failed to agree upon the terms and conditions of a Lease within ninety (90) days after Developer's receipt of a Notice of Exercise, then NCPA shall have the right to initiate arbitration proceedings with respect thereto in accordance with this Section 1.4. Any such arbitration proceedings shall be conducted in Los Angeles, California before a single arbitrator under the auspices and then-current Commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall have substantial professional experience in electric power purchase and sale transactions, with experience in energy storage projects. Within twenty (20) days following selection of the arbitrator, each Party shall submit to the arbitrator a proposed form of Lease. Thereafter, the arbitrator may conduct such hearings, allow such discovery and make such inquiries as the arbitrator deems appropriate, provided that the arbitrator shall be directed (i) to select one of the submitted forms of Lease as most consistent with this Agreement, without compromise (aka "baseball" arbitration), as his

Appendix O-2

award, and (ii) to deliver his award within sixty (60) days following his retention. NCPA and the Developer shall give full access to the arbitrator. The Parties shall execute and deliver the Lease selected by the arbitrator within ten (10) days following his award and, if either Party fails to do so, the aggrieved Party may seek specific performance of the award from the court pursuant to Sections 14.12 and 14.13 of the PPA. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award thereon shall be maintained in confidence by the Parties. If the arbitrator selects the Lease submitted by NCPA, Developer shall pay the fees and costs of the arbitrator. If the arbitrator selects the Lease submitted by Developer, NCPA shall pay the fees and costs of the arbitrator. Except for the foregoing, each Party shall pay its own legal fees and other costs of the arbitration.

1.5 Lease Terms.

(a) The annual rent is \$1 for the Storage Project Rights and any and all necessary and desirable equipment reserved for or to accommodate the Storage Project, including the excess capacity of the inverters.

(b) NCPA will be responsible for all engineering, procurement and construction costs of the Storage Project, including Facility modifications necessary to integrate the Storage Project, and operating and maintenance costs of the Storage Project. NCPA will install additional protective devices at Developer's reasonable request to isolate the Storage Project from the Facility inverters in the event of a fault or other event. Developer shall assist with NCPA's efforts as set forth in Section 3.3.

(c) NCPA may elect to engage Developer to operate and maintain the Storage Project. If Developer agrees to be so engaged, the Parties shall enter into a mutually agreeable operation and maintenance agreement and operation and maintenance shall be in accordance with Prudent Utility Practices and in compliance with any equipment warranty requirements or recommendations of the equipment manufacturers and/or vendor.

(d) NCPA shall be entitled to utilize the inverter to flow electricity from the Storage Project on to the grid when the inverter has available capacity subject to the terms and conditions of the Shared Facilities Agreement, Generator Interconnection Agreement, CAISO requirements, including any requirement included in the MMR, and subject to Section 1.3.

(e) NCPA shall be entitled to redirect some of the Energy generated by the Facility into the Storage Project and draw from the Storage Project as it needs, provided that such operations do not conflict with the terms of the Facility's Generator Interconnection Agreement, CAISO requirements, including any requirements included in the MMR, the Lease or the Shared Facilities Agreement.

(f) NCPA shall pay Developer at the Contract Price for Energy the Facility would have otherwise generated and delivered to the Point of Delivery during a redirection of Energy into the Storage Project, but shall not be required to pay Developer for the Storage Project charge/discharge cycle.

(g) The Parties shall agree upon detailed operating procedures for the operation of the Storage Project, including metering protocols and procedures to appropriately measure the Energy output of the Facility into the inverters and to the Point of Delivery and Energy output of the Facility into the Storage Project.

(h) The Lease shall contain such other terms and conditions as necessary to reflect the financing and ownership structure for the Storage Project, as well as other terms and conditions customary in such leases and storage implementation agreements.

(i) The Lease shall automatically terminate upon the termination or expiration of the PPA for any reason.

1.6 Failure to Exercise Option. If the Option has not been exercised as of 5:00 p.m. Pacific time on the last day of the Option Period, then the Option shall automatically expire and this Agreement automatically terminate, without further action by any Party, and the rights granted to NCPA hereunder shall be of no further force or effect. In the event the last day of the Option Period falls on a Saturday, Sunday or holiday, the Option Period shall be extended to the next business day.

2. Access to Option Property. During the Option Period and subject to the Shared Facilities Agreement, Developer shall provide NCPA and its employees, agents, consultants and contractors (“**NCPA Personnel**”) with reasonable access to the Option Property, during normal business hours and upon two (2) days prior notice by NCPA, for the purpose of undertaking reasonable feasibility studies and due diligence review. NCPA will cause NCPA Personnel to abide by Developer policies and safety protocols at all times during periods of access to Option Property and shall conduct its activities in such a manner so as to avoid damage to the Site and avoid materially interfering with the operations of the Facility.

3. Storage Project.

3.1 Storage Project Development; Ownership. Except as specifically set forth below, and in a Lease, NCPA shall be solely responsible, at its sole cost and expense, for engaging an EPC contractor, securing financing and constructing and installing the Storage Project. Unless otherwise agreed to by the Parties, upon completion, NCPA shall be the owner of the Storage Project. The foregoing notwithstanding, upon exercise of the Option, Developer shall have the right of first offer to provide financing for the Storage Project, including lease financing, or Storage Project ownership by Developer. NCPA shall reasonably consider any such offer of financing provided by Developer.

3.2 Storage Project Characteristics. The Storage Project shall have a nameplate capacity no greater than 4 MW unless mutually agreed to by the Parties. The Storage Project shall connect to the AC or DC portion of the Facility, as mutually agreed to by the Parties.

3.3 Developer Responsibilities. In addition to and without limiting any of Developer’s obligations under the PPA, including Section 12.6, Developer agrees to reasonably cooperate with NCPA’s efforts to develop and install the Storage Project, including providing qualified personnel to assist with the activities set forth herein and providing information about the Facility. In

particular, at NCPA's request, Developer shall use commercially reasonable efforts to assist NCPA with the following installation tasks, provided that Developer shall not be required to incur third party costs or expenses in excess of Eighty-Eight Thousand Four Hundred Dollars (\$88,400) in the aggregate in connection with the obligations of Developer set forth in Section 12.6 of the PPA and this Section 3.3:

- (i) preparing an RFP for the Storage Project.
- (ii) selecting a technology and vendor to install the Storage Project.
- (iii) Managing the installation of the Storage Project.
- (iv) Any other related activities, including interconnection and permitting efforts.

4. Miscellaneous.

4.1 Representations and Warranties of NCPA.

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

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

4.2 Representations and Warranties of Developer.

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

(b) Developer has taken all corporate or limited liability company action required to authorize the execution, delivery, and performance of this Agreement, and Developer has delivered to Developer (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of Developer as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of Developer certifying as to the names and signatures of the authorized representatives of Developer.

(c) The execution, delivery and performance by Developer of this Agreement have been duly authorized by all necessary organizational action, and do not require any consent or approval other than those which have already been obtained.

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

4.3 Waiver of Consequential Damages. THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE FACILITY OR THIS AGREEMENT.

4.4 Assignment. NCPA may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations, under this Agreement, in whole or in part without the consent of Developer to a Qualified Buyer Assignee that is also the assignee of the PPA. Notwithstanding the foregoing, in connection with any such assignment, such Qualified Buyer Assignee shall execute a written assumption agreement in favor of Developer pursuant to which any such Qualified Buyer Assignee shall assume all the obligations of NCPA under this Agreement, thereby relieving the assignor NCPA from its duties and obligations hereunder. Developer shall have the right to assign this Agreement to any permitted assignee of the PPA. Except as set forth in this Section 4.4, neither Party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

4.5 Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by NCPA and Developer.

4.6 Governing Law and Venue. This Agreement and the Exhibits attached hereto shall be governed by and construed under the laws of the State of California. The parties hereto agree that venue for any action brought to enforce the terms of this Agreement shall be in the applicable courts of the County of Los Angeles and the Parties hereby submit to the jurisdiction of such courts.

4.7 Entire Agreement. The terms of this Agreement and the PPA constitute the entire agreement between the Parties pertaining to the subject matter hereof. All prior or contemporaneous agreements, representations, negotiations and understandings of the Parties concerning the subject matter hereof, whether oral or written, are hereby superseded and merged herein.

4.8 Notices. All notices, consents, waivers, demands, requests or other instruments or communications to be given by one Party to the other Party shall be given in accordance with the requirements for such instruments or communications set forth in the PPA.

4.9 PPA Termination. If the PPA expires or is terminated for any reason whatsoever, then the Option Period shall automatically end, and this Agreement shall automatically terminate and be of no further force or effect.

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

4.11 Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

4.12 No Partnership. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

4.13 Recording. No later than ten (10) Business Days after execution of the Land Lease, Developer shall deliver a Memorandum of this Agreement to NCPA, the form and substance of which shall be reasonably acceptable to NCPA, which Memorandum shall be executed by the Parties and shall promptly be recorded by Developer in the Official Public Records of the County in which the Site is located.

4.14 Further Assurances. Upon the reasonable request of the other Party, the applicable Party shall execute and deliver such further documents, instruments or conveyances and take, or cause to be taken, all appropriate action of any kind (subject to applicable Requirements of Law) as may be reasonably necessary or advisable to carry out any of the provisions hereof and to otherwise consummate and effectuate the transactions contemplated by this Agreement, all at the sole cost and expense of the requesting Party.

4.15 Equitable Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Developer and that NCPA may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

4.16 Successors and Assigns. All covenants, promises and agreements by or on behalf of the Parties contained in this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Storage Option Agreement as of the Effective Date.

ANTELOPE EXPANSION 1B, LLC

By: _____
Name:
Title:

NORTHERN CALIFORNIA POWER AGENCY

By: _____
Name:
Title:

**SCHEDULE 12.2(h)
TO POWER PURCHASE AGREEMENT,
DATED AS OF [____], 2017
BETWEEN
NORTHERN CALIFORNIA POWER AGENCY
AND
ANTELOPE EXPANSION 1B, LLC**

**SPECIFIED UPSTREAM EQUITY OWNERS AND ORGANIZATIONAL AND
OWNERSHIP STRUCTURE OF SELLER AND UPSTREAM EQUITY OWNERS**