*Execution Version*

# POWER PURCHASE AGREEMENT

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**NOTCH PEAK PROJECT, LLC**

**DATED AS OF APRIL 16, 2026**

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# POWER PURCHASE AGREEMENT

## PARTIES

THIS POWER PURCHASE AGREEMENT ("***Agreement***"), dated as of April 16, 2026 (the "**Effective Date**"), is being entered into by and between the Southern California Public Power Authority, a public entity and joint powers authority formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) ("***Buyer***"), and Notch Peak Project, 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 under this Agreement as a "***Party***" and together they are referred to as the "***Parties***."

## RECITALS

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

WHEREAS, on February 14, 2025, Buyer issued a request for proposals to acquire renewable energy resources;

WHEREAS, on May 2, 2025, Seller's indirect parent, Longroad Development Company, LLC, responded on behalf of Seller to Buyer's request for proposals and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, from a photovoltaic solar powered electric generating facility as further described herein, certain renewable energy, capacity and associated environmental attributes; and

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

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

## ARTICLE I
## DEFINITIONS AND INTERPRETATION

**Section 1.1 Definitions**. The following capitalized terms in this Agreement and the appendices hereto shall have the following meanings:

"**Acceptable Form of Performance Assurance**" means, a letter of credit substantially in the form of Appendix M from a Qualified Issuer.

"**AC**" and "**ac**" mean alternating current.

"**Access Failure**" has the meaning set forth in Section 7.3(c).

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

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person. 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 or voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble to this Agreement, and includes Appendixes A through X and Schedule 12.2(h) attached hereto.

"**Agreement Term**" has the meaning set forth in Section 2.3.

"**Ancillary Documents**" means any agreement, instrument, certificate or other document required to be executed and delivered by any Seller Party in connection with this Agreement, including the Option Agreement, any Shared Facilities Agreement, and the Interconnection Agreement.

"**Annual Shortfall Liquidated Damages**" has the meaning set forth in Section 9.3.

"**Approvals**" means each Participating Member's approval, by way of such Participating Member's required board and city council approvals (each to the extent applicable) associated with this Agreement, and the related executions of each of the respective Participating Member Agreements.

"**Approvals Date**" means the date on which all required Approvals have been obtained and written notice thereof is delivered by Buyer to Seller.

"**Approvals Deadline**" means the date that is eight (8) months after the Effective Date (as may be extended by the Parties' mutual agreement in writing).

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

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

"**ASTM**" means American Society for Testing and Materials.

"**Attaining Balancing Authority**" means LADWP in its capacity as Balancing Authority.

"**Attaining Balancing Authority Area**" means the Balancing Authority Area of LADWP.

"**Authorized Auditors**" means representatives of Buyer or Buyer's Authorized Representatives who are authorized to conduct audits on behalf of Buyer.

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

"**AWS**" means American Welding Society.

"**Balancing Authority**" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time.

"**Balancing Authority Area**" means the collection of generation, transmission, and loads within the metered boundaries of the area in which the Balancing Authority maintains load-resource balance.

"**Bankrupt**" and "**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 sixty (60) days.

"**Brown Act**" has the meaning set forth in Section 14.19(e).

"**Budget**" has the meaning set forth in Section 4.7.

"**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 to this Agreement.

"**Buyer Check Meters**" has the meaning set forth in Section 7.3(g).

"**Buyer's Agent**" means such Person as Buyer may designate from time to time to perform certain tasks acting as an agent on Buyer's behalf, including LADWP.

"**Buyer's Members**" means any member of Buyer that has entered into the Joint Powers Agreement.

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

"**CAP**" has the meaning set forth in Appendix S.

"**Capacity Rights**" means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, associated attributes or reserves, services, Resource Adequacy Attributes and all ancillary products or any of the foregoing as may

in the future be defined by any balancing authority, reliability entity or Governmental Authority associated with the electric generating capability of the Facility, including, if applicable any local capacity requirements and 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 the RPS Law.

"**CEC Compliant**" means, when used with respect to the Facility or any other facility at any time, that the Facility or such other facility is CEC Certified and in compliance with the CEC Performance Standard, the RPS Law, or any other applicable CEC requirements (including the then-applicable "Long Term Agreement" requirements) to which it is subject.

"**CEC Performance Standard**" means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for baseload 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 and services from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

"**Certification Eligibility Date**" means the RPS eligibility date specified in the certificate issued by the CEC approving Seller's CEC certification application.

"**Change in Control**" means the occurrence of a transaction or a series of transactions at any time during the Agreement Term, whether voluntary or by operation of law or otherwise, following which (i) the Ultimate Upstream Equity Owner directly or indirectly no longer owns fifty percent (50%) or more of the equity ownership interests of Seller or (ii) the Ultimate Upstream Equity Owner directly or indirectly no longer retains both the power to manage the day-to-day operations of Seller and the control of the management and policies of Seller; provided, however, that a Change in Control shall not include any (a) transaction or series of transactions in which the membership interests or other equity interests in Seller or any Upstream Equity Owner are issued or transferred to another Person solely for the purpose of a Tax Financing or (b) any transfer of membership interests in Seller or any Upstream Equity Owner in connection with the exercise of a Facility Lender's remedies pursuant to any Financing Agreement; provided that such transferee is a Qualified Transferee. Seller shall provide written notice to Buyer prior to the occurrence of any Change in Control in accordance with Section 12.5(a) and Section 14.6.

"**Change in Law**" means a change in any federal, state, local or other law (including any environmental laws, RPS Law or EPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permitting conditions, certification conditions, authorization, approval of a Governmental Authority or WREGIS, including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval, or the issuance of any replacement or substitute law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or

approval, in any case which is binding on a Party, the Parties, or the Facility or any of the products sold therefrom.

"**Closing**" has the meaning set forth in Section 2.6 of the Option Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Commercial Operation**" means, with respect to the Facility, that (i) Seller has demonstrated, and the Independent Engineer has confirmed in writing, that the conditions set forth in the Independent Engineer certificate attached to Appendix N have been met with respect to the Facility, and (ii) Seller has demonstrated, to the reasonable satisfaction of Buyer, that any conditions not certified to by the Independent Engineer on Appendix N have been met with respect to the Facility, and in the case of both (i) and (ii), the certificates associated therewith have been (a) accepted by Buyer and Buyer has provided notice of such acceptance to Seller confirming the Commercial Operation Date, or (b) deemed accepted by Buyer in accordance with Section 3.4.

"**Commercial Operation Date**" means, with respect to the Facility, the date on which Commercial Operation of the Facility shall have occurred.

"**Compensable Curtailments**" has the meaning set forth in Section 7.5(a).

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

"**Compliant**" has the meaning set forth in Section 8.6.

"**Confidential Information**" has the meaning set forth in Section 14.19(a).

"**Consent and Agreement**" has the meaning set forth in Section 13.4 and shall be substantially in the form attached as Appendix O.

"**Construction Commencement Milestone**" means the date upon which Seller demonstrates to the reasonable satisfaction of Buyer's Authorized Representative that (i) Seller's EPC Contractor has commenced installation and construction of the Facility pursuant to Seller's issuance of the NTP, (ii) all permits listed in Appendix K have been obtained, are final and are in full force and effect and (iii) Seller has provided confirmation, including supporting documentation, that Seller has Site Control.

"**Contract Capacity**" means 324 MW (ac), as measured at the Point of Delivery, which is the maximum in any one hour that Buyer is obligated to accept from the Facility under this Agreement.

"**Contract Price(s)**" means each of the applicable prices set forth in Appendix A.

"**Contract Year**" means (i) the Initial Stub Year; (ii) each of the following twenty-nine (29) calendar years, beginning on the first day of January following the end of the Initial Stub Year and each succeeding twelve-month period up to and including the period ending with the December 31 of such twenty-nineth (29th) calendar year; and (iii) the Final Stub Year.

"**Costs**" has the meaning set forth in Section 13.3(f)(iii).

"**Cover Damages**" has the meaning set forth in Section 6.4.

"**CPRA**" has the meaning set forth in Section 14.19(e).

"**CRO**" has the meaning set forth in Section 14.24(h).

"**CT**" means current transformer.

"**Daily Delay Damages**" means a daily amount of damages equal to One Hundred Eighty Thousand Dollars ($180,000.00).

"**Day-Ahead Schedule**" has the meaning set forth in Section 7.2(e).

"**DBE**" has the meaning set forth in Section 14.24(c).

"**DCS**" has the meaning set forth in Appendix P.

"**Deemed Delivered Energy**" has the meaning set forth in Section 7.5(c).

"**Default**" has the meaning set forth in Section 13.1.

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

"**Delivered Energy**" means, for any period, the MWh of Energy delivered from the Facility to the Point of Delivery, as measured by the Project Meter and adjusted for the Transmission Line Loss Factor. For the avoidance of doubt, Delivered Energy shall be calculated as the product of (i) the MWh of Energy measured by the Project Meter for the applicable period, multiplied by (ii) the difference between (a) one (1) minus, (b) the Transmission Line Loss Factor (stated as a decimal equivalent).

"**Delivery Term**" has the meaning set forth in Section 2.3.

"**Development Security**" has the meaning set forth in Section 5.6(a).

"**Disposition**" has the meaning set forth in Section 14.21.

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

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

"**DNP**" has the meaning set forth in Section 7.3(d).

"**Downgrade Event**" means, with respect to a financial institution, or a provider of a letter of credit hereunder, (i) the failure of such financial institution to maintain the credit rating or organizational status of a Qualified Issuer, or (ii) the commencement by such a financial institution 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 (iii) the termination of the relationship with such financial institution or provider of such letter of credit by Buyer or a Participating Member, as applicable, required pursuant to any Requirements of Law applicable to Buyer or such Participating Member.

"**DVBE**" has the meaning set forth in Section 14.24(c).

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

"**EBO**" has the meaning set forth in Section 14.24(g).

"**EC Adder Payment**" has the meaning set forth in Appendix A.

"**EC Adder Payment Period**" has the meaning set forth in Appendix A.

"**ECC**" has the meaning set forth in Section 11.6(b).

"**Economic Sanctions**" has the meaning set forth in Section 14.24(m).

"**EDAM**" means CAISO's Extended Day-Ahead Market, or any successor market.

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

"**EIM**" means CAISO's western Energy Imbalance Market, or any successor market.

"**EIM Compliance Cost Cap**" has the meaning set forth in Section 8.7(d).

"**EIM Excess Compliance Cost**" has the meaning set forth in Section 8.7(d).

"**EIM Excess Expenditure Notice**" has the meaning set forth in Section 8.7(d).

"**Electric Metering Device(s)**" means meters, metering equipment, and data processing equipment conforming to the requirements set forth in Section 11.6 used to measure, record, or transmit data relating to the Energy output from the Facility as depicted in Appendix R-1. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

"**Emergency Stop**" has the meaning set forth in Appendix P.

"**Energy**" means electrical energy.

"**Energy Community Adder**" means the energy community bonus credit under Sections 45, 48, 45Y and 48E of the Code.

"**Energy Information Assessments**" means Annual Electric Power Industry Report (Form EIA-861) administered by U.S. Energy Information Administration.

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

"**Environmental Attributes**" means Renewable Energy Certificates, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (i) that are at any time recognized or deemed of value (or both) by either Party, applicable laws, or any voluntary or mandatory program of any Governmental Authority or other Person, and (ii) that are attributable to (a) generation capability or generation by the Facility of Facility Energy or Replacement Energy delivered by Seller to Buyer, and (b) the emissions or other environmental characteristics of such Facility Energy 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 California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to the Global Warming Solutions Act of 2006, 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 similar international, federal, state or local program or crediting "early action" with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as Renewable Energy Certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Facility Energy. Environmental Attributes exclude (A) any local, state or federal investment tax credits, production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility or Facility Energy, including any investment or production tax credit expected to be available to Seller with respect to the Facility, (B) any other depreciation deductions and benefits, and other tax benefits arising from ownership or operation 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 Documents**" has the meaning set forth in Section 3.1.

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

"**EPA**" means the United States Environmental Protection Agency.

"**EPC Contractor**" has the meaning set forth in the definition of NTP.

"**EPS Compliant**" means, when used with respect to the Facility or any other facility at any time, that the Facility or such other facility, as applicable, satisfies both the PUC Performance

Standard and the CEC Performance Standard in effect at the time; provided, if it is impossible for the Facility or such other facility, as applicable, to satisfy both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the Facility or such other 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 such other 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.

"**Excess Compliance Cost**" has the meaning set forth in Section 8.7(a).

"**Excess Energy**" means, as applicable, either Excess Energy 110%-120% and Excess Energy > 120% or both Excess Energy 110%-120% and Excess Energy >120%.

"**Excess Energy 110%-120%"** means, for any Contract Year, the portion of Delivered Energy as increased by the amount of any Deemed Delivered Energy that is in excess of one hundred ten percent (110%) of the Expected Annual Generation for such Contract Year and no more than one hundred twenty percent (120%) of the Expected Annual Generation for such Contract Year.

"**Excess Energy >120%**" means, for any Contract Year, the portion of Delivered Energy, as increased by the amount of any Deemed Delivered Energy that is in excess of one hundred twenty percent (120%) of the Expected Annual Generation for such Contract Year.

"**Excess Energy Price**" means, with respect to Excess Energy 110-120%, the price per MWh set forth for such Excess Energy in Appendix A and, with respect to Excess Energy >120%, the price per MWh set forth for such Excess Energy in Appendix A.

"**Excess Expenditure Notice**" has the meaning set forth in Section 8.7(a).

"**Expected Annual Generation**" has the meaning set forth in Appendix I.

"**Facility**" means the solar photovoltaic electric generating facility to be developed, constructed, owned and operated by Seller (as further described on Appendix B) that will be located on the Facility Site, including the real property that constitutes the Facility Site, the structures, facilities, equipment, fixtures, appurtenances, improvements and associated real and personal property as further described in the Real Property Agreements, the Seller-owned portion of the generation tie-line and related structures, facilities, equipment, fixtures, appurtenances, improvements and associated real and personal property described in the Interconnection Agreement that facilitates delivery of the energy from the solar photovoltaic electric generating facility to the Point of Delivery, and other physical and intangible property, and other rights and interests as further described in Appendix B and as depicted in Appendix R-1.

"**Facility Assets**" has the meaning set forth in Exhibit 1.1 of the Option Agreement.

"**Facility Cost**" means, measured as of the applicable measurement date, the aggregate amount of all costs and expenses incurred by Seller for the development, design, engineering, equipping, procuring, constructing, installing, starting up and testing the Facility, including (i) the cost of all labor, services, materials, supplies, equipment, tools, transportation, supervision, storage, training, demolition, site preparation, civil works, and remediation in connection therewith, (ii) the cost of acquiring the leasehold interest and any other property, easement or other interest in the Site, (iii) the cost of acquiring the Permits for the Facility and (iv) the cost of establishing a spare parts inventory for the Facility.

"**Facility Debt**" means, measured as of the applicable measurement date, any payment obligations of Seller in connection with borrowed money, including (i) principal of and premium on indebtedness, (ii) fees, charges, expenses and penalties related to indebtedness to the extent then due and payable, (iii) swap or interest rate hedging breakage costs to the extent then due and payable and (iv) any claims or interest due with respect to any of the foregoing. Facility Debt does not include any Tax Financing or the indebtedness of any Seller Affiliate for which Seller has no liability.

"**Facility Energy**" means Energy generated by the Facility and measured by the Project Meter.

"**Facility Lender**" means any lender(s) providing senior or subordinated construction, interim or long-term debt (including all back-leverage debt) or tax equity financing or tax credit transfer financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any Tax Financing or Sale Leaseback Financing or refinancing, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

"**Facility Site**" means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B (as may be modified in accordance with any termination, transfer or addition of any Real Property Agreements pursuant to Section 12.4(b) and Section 12.4(d)) as (i) owned or leased by Seller where the Facility is located or will be located, and (ii) any easements, rights of way or other contractual or real property rights held or to be held by Seller, for distribution or transmission lines, interconnection facilities, or roadways servicing such Facility Site or the Facility located (or to be located) thereon.

"**FERC**" means the Federal Energy Regulatory Commission.

"**Final Stub Year**" means the period beginning on the first day of January following the twenty-nineth (29th) full calendar year referenced in clause (ii) of the definition of "Contract Year" and ending at 24:00 hours on the date that, together with the number of days in the Initial Stub Year, would be equal to three hundred sixty five (365) days.

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

"**Force Majeure**" has the meaning set forth in Section 14.5(b).

"**Force Majeure Notice**" has the meaning set forth in Section 14.5(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.

"**Forced Outage Capacity Notification**" has the meaning set forth in Section 7.4(d).

"**Full Contract Price**" has the meaning set forth in Appendix A.

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

"**Gains**" has the meaning set forth in Section 13.3(f)(i).

"**Glendale**" means the City of Glendale in the County of Los Angeles in the State of California.

"**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, or any Person acting as a delegate or agent of any Governmental Authority. The term "Governmental Authority" shall not include Buyer.

"**Green Value**" consists of the market value of (i) avoided greenhouse gas emissions or credits associated with RPS Compliant Energy, and (ii) all other Environmental Attributes, without duplication, and avoided emissions-related attributes and benefits that would otherwise have been realized had Seller generated the Facility Energy, and shall be calculated as an amount equal to the time-weighted average of the prices of greenhouse gases and other Environmental Attributes (as published in commercial indices related to California energy markets) that would have been realized for each MWh of the Shortfall Energy or RPS Compliance Shortfall Energy, as applicable, provided, that if for any Contract Year there does not exist a liquid trading market that is mutually agreeable to the Parties to determine such Green Value, the Green Value will be equal to the lesser of the replacement cost as reasonably determined by Buyer, but taking into account sources identified by Seller for the attributes described in clauses (i) and (ii) above, expressed in $/MWh, or $25/MWh.

"**Guaranteed Commercial Operation Date**" or "**GCOD**" means December 31, 2028 as it may be extended pursuant to the terms of this Agreement.

"**Guaranteed Delivered Energy**" means the aggregate amount of Delivered Energy guaranteed by Seller during each Contract Year (including the Initial Stub Year and the Final Stub

Year) to Buyer, which shall be 80% of the Expected Annual Generation of the applicable Contract Year.

"**Guidebook**" means the most-recent Renewables Portfolio Standard Eligibility guidebook issued by the CEC, as amended from time to time, or its successor document.

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

"**ICCP**" has the meaning set forth in Section 11.6(b).

"**ICE**" has the meaning set forth in the definition of "Market Price Index".

"**IEC**" has the meaning set forth in Appendix P.

"**IEEE**" means Institute of Electrical and Electronics Engineers.

"**Indemnified Liabilities**" has the meaning set forth in Section 14.17(a).

"**Indemnitees**" has the meaning set forth in Section 14.17(a).

"**Independent Engineer**" means an engineer to be jointly selected by the Parties.

"**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, equityholder, 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, equityholder, partner, manager, customer, supplier or other like Person, or (iv) a member of the immediate family of any such member, stockholder, equityholder, director, officer, employee, manager, partner, customer, supplier or other like Person.

"**Initial Stub Year**" means the period beginning on the Commercial Operation Date and ending at 23:59:59 hours on December 31 in the year during which the Commercial Operation Date occurs.

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

"**Interconnection Agreement**" means that certain Generator Interconnection Agreement, dated as of December 20, 2022, between Seller (f/k/a Notch Peak Solar, LLC) and Intermountain Power Agency.

"**Interest Rate**" means the lesser of (i) two hundred (200) basis points above the per annum "Prime Rate" reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

"**International Trade Laws**" shall mean all laws, regulations, and orders relating to imports as administered by U.S. Customs and Border Protection, and any other applicable customs and imports laws; exports and trade sanctions pursuant to the International Traffic in Arms Regulations administered by the U.S. Department of State's Directorate of Defense Trade Controls, the Export Administration Regulations administered by the U.S. Department of Commerce's Bureau of Industry and Security, and the U.S. Department of the Treasury's Office of Foreign Assets Control, and any other applicable exports and trade sanctions laws (including any laws or executive orders issued in the State of California); antiboycott matters administered by the U.S. Department of Commerce's Office of Antiboycott Controls and the U.S. Department of the Treasury's Internal Revenue Service, and any other applicable anti-boycott laws; anti-bribery and anti-corruption matters governed by the Foreign Corrupt Practices Act as enforced by the U.S. Department of Justice and the U.S. Securities and Exchange Commission, the UK Bribery Act, and any other applicable anti-bribery and anti-corruption laws; anti-money laundering matters pursuant primarily, but not exclusively, to the Money Laundering Control Act and the Bank Secrecy Act, and any other applicable; and any other applicable laws, regulations, and orders related to these areas.

"**Investment-Grade Credit Rating**" means a credit rating for a Person's long-term debt that is at least "BBB-" by S&P or "Baa3" by Moody's, or the equivalent ratings by any other credit rating agency of national standing, and so long as such credit rating is not on negative watch.

"**IPA Switchyard**" has the meaning set forth in the Interconnection Agreement as of the Effective Date.

"**ISA**" means Instrument Society of America.

"**ITC**" means the elective investment tax credit provided in Section 46, and 48 or 48E of the Code or any successor to such section.

"**Joint Powers Agreement**" means the "Southern California Public Power Authority Joint Powers Agreement" entered into pursuant to the provisions of the Act among Buyer and Buyer's members, dated as of November 1, 1980.

"**Key Milestone**" means the Commercial Operation Date, as further described in Appendix B.

"**Knowledge**" means the actual knowledge, after due inquiry, of any officer or any other agent, employee or representative of Seller responsible for the management of the operation or maintenance of the Facility or any fact, circumstance or condition.

"**kW**" means kilowatt or kilowatts, as applicable.

"**LAAC**" has the meaning set forth in Section 14.24(b)(i).

"**LADWP**" means the City of Los Angeles acting by and through the Department of Water and Power, a California municipal corporation.

"**Legal Opinion**" means an executed original of a written legal opinion of Morgan Lewis Bockius LLP, counsel for Seller, or other outside counsel of Seller reasonably acceptable to Buyer, addressed to Buyer and in form and substance reasonably acceptable to Buyer, concerning, among others, the enforceability and due authorization of this Agreement, and the other Ancillary Documents that are agreements between the Parties, dated as of the date such opinion is delivered in accordance with Section 2.1.

"**Lessor"** has the meaning set forth in the definition of "Sale Leaseback Financing."

"**LGBTBE**" has the meaning set forth in Section 14.24(c).

"**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 an option, of any other Person in or with respect to any real or personal property.

"**Losses**" has the meaning set forth in Section 13.3(f)(ii).

"**LVRT**" has the meaning set forth in Appendix P.

"**Major Maintenance Blockout**" has the meaning set forth in Section 7.4(b).

"**Major Subcontractors**" has the meaning set forth in Section 11.5.

"**Market Price Index**" means the weighted average of the "on-peak" Energy (not including Environmental Attributes) prices (i) for purposes of calculating Shortfall Liquidated Damages, for each day within the year the shortfall energy occurred and (ii) for purposes of calculating the Replacement Price, for each day within any applicable period in which the Facility is not Compliant, each as published by the Intercontinental Exchange ("ICE") for transactions at Palo Verde ICE index plus $6.00 (Mona Premium) excluding Environmental Attributes. If there are no longer on-peak market prices for Energy (excluding Environmental Attributes) transactions at Palo Verde published by ICE, the Parties will mutually agree to a replacement market price index that most closely reflects Energy (excluding Environmental Attributes) transactions at the geographic location of the markets at the Point of Delivery or Palo Verde markets as of the Effective Date. If a market price index for Energy (not including Environmental Attributes) that more accurately tracks the prevailing market price of the Delivered Energy at the Point of Delivery is created, the Parties may mutually agree to adapt such index price as the Market Price Index at such time.

"**Material Adverse Effect**" means any effect(s) that, individually or in the aggregate, is material and adverse to (i) the assets, construction, operations, use or physical condition of the Facility (including any Shared Facilities, as defined in the Shared Facilities Agreement), taken as a whole, or (ii) the ability of Seller to perform its obligations under this Agreement or any Ancillary Document, taken as a whole.

"**MBE**" has the meaning set forth in Section 14.24(c).

"**Metering Policies**" means the then-current metering policies and guidelines adopted by LADWP, including the LADWP Bulk Electric System Meter Policy, the current version of which is attached as Appendix U, and any successor thereto.

"**Milestone**" has the meaning set forth in Section 3.3(a).

"**Milestone Date**" means the deadline associated with each Milestone as set forth in Appendix B, as each may be extended pursuant to the terms of this Agreement.

"**Monthly Payment**" means the amount to be paid to Seller by Buyer on a monthly basis as specified in Appendix A.

"**Moody's**" means Moody's Investment Services, Inc., and its successors in interest.

"**MW**" means megawatt or megawatts, as applicable.

"**MWh**" means megawatt-hour or megawatt-hours, as applicable.

"**NERC**" means the North American Electric Reliability Corporation.

"**NERC Reliability Standards**" means the reliability standards developed by NERC or by any regional authority having jurisdiction, that are applicable to the owner or operator of the Facility, or to the Facility itself, including Security Requirements.

"**New Resource Implementation**" means the process and requirements established by the Balancing Authority for the Attaining Balancing Authority Area substantially similar in kind and cost to those as set forth by CAISO for interconnection projects to successfully complete resource implementation to the CAISO grid.

"**Non-Compensable Curtailments**" has the meaning set forth in Section 7.5(a).

"**Non-Consolidation Opinion**" means a reasoned opinion of Morgan Lewis Bockius LLP, in form and substance reasonably acceptable to Buyer, as to the non-consolidation of Seller in a bankruptcy proceeding of any member of Seller, addressed and delivered to Buyer in accordance with Section 2.2(b).

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

"**Non-U.S. Issuer Bank**" means any issuer of a letter of credit that is organized under laws outside of the United States.

"**Normal Shutdown**" has the meaning set forth in Appendix P.

"**Normal Startup**" has the meaning set forth in Appendix P.

"**Notice of Proposed Third Party Sale**" has the meaning set forth in Section 14.21(b).

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

"**NTP**" means a full notice to proceed issued by Seller to its general contractor (the "***EPC Contractor***") for the commencement of installation and construction of the Facility pursuant to which such general contractor is obligated to commence the installation and construction of the Facility.

"**OBE**" has the meaning set forth in Section 14.24(d).

"**Off-Peak**" means all hours other than On-Peak hours.

"**On-Peak**" means 6:00 a.m. – 10:00 p.m., Monday through Saturday.

"**Operating Insurance**" means the Insurance required to be carried by Seller for the Facility after the achievement of Commercial Operation, as set forth in Appendix F.

"**Operation and Maintenance Plan**" has the meaning set forth in Section 4.6(a).

"**Option Agreement**" means that certain Option Agreement of even date herewith attached as Appendix L.

"**OSHA**" means Occupational Safety & Health Administration.

"**Outside COD**" has the meaning set forth in Section 3.3(e).

"**Pacific Prevailing Time**" means the time in Los Angeles, California when actual transactions are made.

"**Participating Member**" means each of Glendale and LADWP.

"**Participating Member Agreement**" means the agreement(s) between Buyer and each Participating Member that sets forth the terms and conditions under which each Participating Member agrees to purchase from Buyer the Capacity Rights, Facility Energy and Environmental Attributes from the Facility.

"**Party**" and "**Parties**" have the meanings set forth in the preamble to this Agreement.

"**Performance Security**" has the meaning set forth in Section 5.6(b).

"**Permit**" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be 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 and delivery to the Point of Delivery of 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 those described in Appendix K.

"**Permitted Encumbrances**" means (i) any Lien approved by Buyer in a writing separate from this Agreement which expressly identifies the Lien as a Permitted Encumbrance, (ii) Liens in favor of Facility Lenders, (iii) 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) a material risk of the sale, forfeiture, loss of the Facility or any part thereof, or (b) a restriction on the use of the Facility or any part thereof, provided that such proceedings end by the expiration of the Agreement Term, (iv) 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, bonded or is being contested in good faith by appropriate proceedings, so long as such proceedings will have ended by the expiration of the Agreement Term and do not involve a material risk of the sale, forfeiture, loss of the Facility or any part thereof, (v) the Real Property Agreements, or memoranda of such Real Property Agreements; or (vi) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations, so long as they have been identified by Seller to Buyer in writing prior to the achievement of Commercial Operation and do not materially interfere with or impair the operation of the Facility as contemplated by 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.

"**Placed in Service**" has the meaning set forth in Appendix A.

"**PMU**" has the meaning set forth in Appendix S.

"**Point of Delivery**" means the Point of Interconnection.

"**Point of Interconnection**" means the point within the IPA Switchyard defined as the Point of Interconnection in the Interconnection Agreement as of the Effective Date.

"**PPT**" has the meaning set forth in Section 7.2(e).

"**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 of the Agreement at that date.

"**Principals**" means any board chair, president, chief executive officer, chief operating officer and any other individual who serves in the functional equivalent of one or more of those positions; as well as any individual who holds an ownership interest of at least twenty percent (20%) in Seller or any Upstream Equity Owner that is itself owned directly or indirectly in whole or part by the Ultimate Upstream Equity Owner; and any employee of Seller who is authorized by Seller to represent Seller before any Participating Member.

"**Production Tax Credits**" means the production tax credits applicable to electricity produced from certain renewable resources pursuant to (i) 26 U.S.C. §45, (ii) 26 U.S.C §45Y, or (iii) any successor to such sections.

"**Project Meter**" means the Electric Metering Devices procured, installed, owned and maintained by Seller at the high-side of the delivery transformer located in the Facility collector substation, as depicted and labeled in the single-line diagram attached to this Agreement as Appendix R-1.

"**Project Purchase Option**" means the right, but not the obligation, of Buyer, in its sole discretion, to purchase the Facility Assets 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 14.21(a).

"**Proposed Sale Notice**" has the meaning set forth in Section 14.21(a).

"**Prudent Utility Practices**" means those practices, methods, and acts, that are applicable to the Facility and commonly used by a significant portion of the solar power generation industry, in prudent engineering and operations to design, construct and operate and maintain electric equipment (including solar powered facilities) lawfully and with safety, reliability, dependability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC and all applicable Requirements of Law.

"**PT**" means power transformer.

"**PTC**" means the Production Tax Credits.

"**PUC**" means the California Public Utilities Commission.

"**PUC Performance Standard**" means, at any time, the greenhouse gas emission performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, as established by the PUC or other Governmental Authority under the EPS Law.

"**Purchase Option Exercise Notice**" has the meaning set forth in Exhibit 1.1 of the Option Agreement.

"**Q/A**" has the meaning set forth in Appendix J.

"**Q/C**" has the meaning set forth in Appendix J.

"**Qualified Issuer**" means a domestic U.S. bank or a U.S. branch of a foreign bank (each such bank as approved by Buyer in writing, which approval shall not be unreasonably withheld, conditioned or delayed) that, in either case, has a then-current long-term credit rating (corporate or long-term senior unsecured debt) of (i) "A2" or higher by Moody's Investors Service, Inc. and "A" or higher by Standard & Poor's, if rated by both rating agencies; or (ii) "A2" or higher by

Moody's Investors Service, Inc. or "A" or higher by Standard & Poor's, if rated by only one rating agency and, in addition to (i) or (ii), as applicable, (iii) has not suffered a Downgrade Event.

"**Qualified Operator**" means (a) an Affiliate of Seller, or (b) a Person reasonably acceptable to Buyer that, in either case, has at least three (3) years of operating experience with utility scale photovoltaic solar-powered generation facilities that are in excess of fifty (50) MW in capacity.

"**Qualified Transferee**" means a Person that:

(a) (i) has a net worth at the time of the transfer that is equal to or greater than $150,000,000, or who has a parent or an Affiliate with a net worth at the time of the transfer equal to or greater than $150,000,000,

(ii) (A) retains or causes the Subsequent Owner to retain, a Qualified Operator or Qualified Operators to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility) and (B) has, if the time of determination is three (3) years or less following the Effective Date, two (2) years of experience owning, leasing, or managing electrical generation through renewable resources with at least two (2) projects of 25MW or higher, or if the time of determination is more than three (3) years following the Effective Date, has four (4) years of experience owning, leasing or managing electrical generation through renewable resources with at least two (2) projects of 50MW or higher,

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

(iv) is a Special Purpose Entity, and

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

(b) is reasonably acceptable to Buyer.

"**Quality**" has the meaning set forth in Appendix J.

"**Quality Assurance**" has the meaning set forth in Appendix J.

"**Quality Assurance Program**" or "**Q/A Program**" has the meaning set forth in Section 5.4.

"**Quality Control**" has the meaning set forth in Appendix J.

"**Rating Agency**" means S&P or Moody's.

"**Real Property**" means the real property for the Facility Site (as may be modified in accordance with Section 12.4(b) and Section 12.4(d)), including the Seller-owned portion of the generation tie-line for the Facility.

"**Real Property Agreements**" means the real property agreements listed in Appendix H (as may be modified in accordance with Section 12.4(b) and Section 12.4(d)).

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

"**Rejection Notice**" has the meaning set forth in Section 14.21(a).

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

"**Remedial Action Plan**" has the meaning set forth in Section 3.3(c).

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

"**Replacement Energy**" means Energy that is produced by a facility (or facilities) other than the Facility that, at the time delivered to Buyer, (a) is both RPS Compliant and, if applicable, EPS Compliant, and (b) qualifies under California Public Utilities Code Section 399.16(b)(1).

"**Replacement Price**" has the meaning set forth in Section 8.7(b).

"**Requirements**" means, collectively, Prudent Utility Practices, all applicable Requirements of Law, the Permits, Seller's Quality Assurance Program, and any other requirements set forth in this Agreement.

"**Requirements of Law**" means federal, state and local laws, statutes, regulations, rules, codes or ordinances, resolutions, standards, guidebooks (including the Guidebook), directives, executive or other orders, judgement, decrees, ruling or determinations enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, Environmental Laws and occupational safety and health requirements), formal actions taken by a Governmental Authority (including any formal action taken by the city council of any Participating Member) and the International Trade Laws.

"**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 described by the PUC, the CEC, an applicable Balancing Authority (including but not limited to the CAISO or the Attaining Balancing Authority) or any other regional entity, and that are associated with the electric generating capability of the Facility.

"**RH**" means range of humidity.

"**Right of First Offer**" or "**ROFO**" has the meaning set forth in Section 14.21.

"**Right of First Refusal**" or "**ROFR**" has the meaning set forth in Section 14.21.

"**RPS Compliance Period**" means each "Compliance Period" as defined in the RPS Law.

"**RPS Compliance Shortfall Energy**" means the difference between the aggregate amount of Delivered Energy delivered to Buyer during any RPS Compliance Period and the sum of the Guaranteed Delivered Energy for such RPS Compliance Period, less any Replacement Energy provided by Seller during such RPS Compliance Period.

"**RPS Compliance Shortfall Liquidated Damages**" has the meaning set forth in Section 9.3.

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

"**RPS Law**" means renewable energy programs and policies established and amended by California State Senate Bills 1078 (2002), X1-2 (2011), 350 (2015) and 100 (2018) and codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time, and all related policies, regulations and guidelines, including the Guidebook.

"**RPS Shortfall Penalty**" has the meaning set forth in Section 9.3.

"**RTU**" has the meaning set forth in Appendix P.

"**S&P**" means Standard & Poor's Corporation, and its successors in interest.

"**Sale Leaseback Financing**" means a sale leaseback whereby the Facility or Seller's interest in the Facility Site (which for purposes of this definition shall exclude any easements associated with the transmission line) is sold by Seller to one or more investors (each, a "***Lessor***") and leased back by Seller and Seller retains a right of quiet enjoyment over the Facility Site (or the Facility, as applicable) during the lease term as long as Seller pays Lessor thereof rent and meets its other obligations under the lease; provided that a Sale Leaseback Financing shall comply with the provisions of Section 12.5.

"**SBE**" has the meaning set forth in Section 14.24(c).

"**SCADA**" has the meaning set forth in Section 7.2(a).

"**Schedule**" or "**Scheduling**" means the actions of Seller and Buyer, Buyer's Agent, or their Authorized Representatives, and the Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered at the Point of Delivery on any given date during the Delivery Term.

"**Scheduled Outage**" means any outage with respect to the Facility other than a Forced Outage.

"**Scheduled Outage Projection**" has the meaning set forth in Section 7.4(c).

"**Scheduling Procedures**" has the meaning set forth in Section 7.2(a).

"**Security Requirements**" has the meaning set forth in Section 5.3(c).

"**Seller**" has the meaning set forth in the preamble to this Agreement.

"**Seller Caused Access Failure**" has the meaning set forth in Section 7.3(c).

"**Seller Parties**" means Seller and any Affiliates of Seller executing any Ancillary Documents now or hereafter in effect.

"**Seller's Check Meters**" has the meaning set forth in Section 7.3(b)(i)(A).

"**Seller's SCADA Integrated Components**" has the meaning set forth in Section 7.3(a).

"**SFPO**" has the meaning set forth in Section 14.24(i).

"**Shared Facilities Agreement**" means any agreement governing the use of certain shared facilities, the right to occupy or use shared real property, or the ownership or governance of the rights associated with either, in any case, entered into in accordance with Section 14.22.

"**Shortfall Energy**" has the meaning set forth in Section 9.1(a).

"**Shortfall Liquidated Damages**" means, individually, Annual Shortfall Liquidated Damages or RPS Compliance Shortfall Liquidated Damages, as the context requires, and collectively, Annual Shortfall Liquidated Damages and RPS Compliance Shortfall Liquidated Damages.

"**Shortfall Make Up Period**" has the meaning set forth in Section 9.1(a).

"**Site Control**" means that Seller shall: (i) own the Facility Site; (ii) be the grantee or licensee of one or more easements with respect to the Facility Site, which, in each case, permit Seller to perform its obligations under this Agreement and, as applicable, the other Ancillary Documents; (iii) be the lessee under one or more leases with respect to the Facility Site which permit Seller to perform its obligations under this Agreement and the Ancillary Documents; or (iv) have otherwise provided evidence satisfactory to Buyer of Seller's exclusive right to control the Facility Site so as to permit Seller to perform its obligations under this Agreement and the Ancillary Documents to which it is a party.

"**Solar Panel Mechanical Completion**" has the meaning set forth in Appendix N-1, Appendix N-2, and Appendix N-3.

"**Special Purpose Entity**" means a limited liability company that at all times:

(a) shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its properties or assets except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a Special Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction;

(b) was, is and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, financing, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer 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;

(f) has maintained and 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 and is not required to file tax returns under applicable law);

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

(h) has maintained and will maintain its 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 other than as required under the Interconnection Agreement, or as may be permitted under the Shared Facilities Agreement, or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity) 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 transaction with its members or Affiliates, except (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, (ii) in connection with the development or construction of the Facility, provided that (except with respect to agreements subject to clause (iii) below), any indebtedness or other obligations of Seller pursuant to any such transaction with its members or Affiliates shall be fully performed and discharged in their entirety on or prior to the occurrence of the Commercial Operation Date, (iii) any Shared Facilities Agreement, or (iv) as otherwise set forth and permitted in this Agreement;

(l) does not and will not have any obligation to indemnify, and has not indemnified and will not indemnify any Person other than (i) its officers, managers or members, as the case may be, and the Independent Manager in connection with activities related to the performance of this Agreement, (ii) entities requiring indemnification in the normal course of business in connection with the development, construction, ownership and operation of the Facility, or (iii) any Affiliate that is a party to a Shared Facilities Agreement, in each case as set forth therein;

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

(n) 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 except (i) in connection with the development or construction of the Facility; provided that any such debt obligations shall be fully performed and discharged on or prior to the occurrence of the Commercial Operation Date, or (ii) in accordance with the Interconnection Agreement and any Shared Facilities Agreement;

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

(r) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person and has not permitted and

will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP; provided, however, that any such consolidated financial statement shall contain 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;

(t) has observed and will observe all limited liability company formalities;

(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 (other than an Affiliate of Seller solely as provided in (k) and (n) of this definition with respect to debts incurred for the performance of an obligation of Seller under this Agreement) and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person (other than an Affiliate of Seller solely as provided in (k) and (n) of this definition with respect to debts incurred for the performance of an obligation of Seller under this Agreement) except as permitted pursuant to this Agreement, or in accordance with the Interconnection Agreement or any Shared Facilities Agreement;

(v) does not have and will not acquire obligations or securities of its members or any Affiliate, except as permitted under (k), (n), and (u) of this definition;

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

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

(y) except in connection with the development or construction, or financing of the development or construction of the Facility, or in accordance with any Shared Facilities Agreement, has not pledged and will not pledge its assets for the benefit of any other Person;

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

(aa) is and intends to remain solvent and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and has maintained, is maintaining and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; and

(bb) has and will have no indebtedness other than (i) any loan(s) made by the Facility Lender providing construction financing for the Facility and any loan in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities (other than any loan(s) made by the Facility Lender) incurred in the ordinary course of business relating to its ownership, leasing and operation of the Facility and its routine administration, the amounts of which are normal and reasonable under the circumstances and paid in a timely manner and, when due and owing at any given time but unpaid, (A) do not exceed, at any time, a maximum amount of one percent (1%) of any loan(s) made by the Facility Lender providing construction financing for the Facility and any loan in replacement or substitution thereof, and (B) are paid within sixty (60) days of the date incurred, (iv) any other liabilities incurred in the ordinary course of business relating to the development and construction of the Facility, provided that any such liabilities shall be fully discharged on or prior to achievement of the Commercial Operation Date or as set forth in any Shared Facilities Agreement, and (v) such other liabilities that are permitted pursuant to this Agreement.

"**SPG**" has the meaning set forth in Appendix S.

"**Startup and Test Energy**" means Delivered Energy, measured in MWh, generated prior to the Commercial Operation Date for which there are certified RECs.

"**Startup Notice**" has the meaning set forth in Section 3.3(b).

"**Startup Price**" has the meaning set forth in Appendix A.

"**State Executive Order**" has the meaning set forth in Section 14.24(m).

"**Subcontractors**" has the meaning set forth in Section 11.5.

"**System Emergency**" means (i) an emergency condition or abnormal condition on the Transmission System which in the sole judgment of Buyer's Transmission Provider prevents Buyer or Buyer's Transmission Provider acting in accordance with Prudent Utility Practices to receive Energy at the Point of Delivery, (ii) an "Emergency Condition" as defined in the Transmission Provider's OATT or the Interconnection Agreement, or (iii) any abnormal condition, reliability condition on a Transmission Provider's Transmission System as may be identified by such Transmission Provider, any balancing authority, or any reliability entity.

"**Tax**" or "**Taxes**" means each federal, state, county, local and other (i) 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 (ii) customs, duty or other fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

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

"**Tax Financing**" means, with respect to Seller or any Upstream Equity Owner, any transaction or series of transactions in which (i) (a) one or more tax equity investors (each, a "***Tax Equity Investor***") buys an interest in Seller or in any Upstream Equity Owner acting as a holding company for Seller, (b) such Tax Equity Investors are thereafter allocated a disproportionate amount of the income, loss and tax credits associated with Seller, which may be revised after a "flip date," after which such allocations are reduced or otherwise modified, (c) on one or more dates on or after such "flip date" the other party or parties to such transaction or series of transactions that was the recipient of the remainder of any income, loss and tax credit allocations (that is, the non-Tax Equity Investor to the transaction or series of transactions) may have an option to repurchase any Tax Equity Investors' interest in Seller or such Upstream Equity Intermediate Entity acting as a holding company for Seller, and (d) such non-Tax Equity Investor's interest in Seller or such Upstream Equity Intermediate Entity retains management control over the Facility, but must obtain the agreement of the Tax Equity Investors prior to taking major decisions (in accordance with the applicable tax equity financing documents) with respect to Seller or such Upstream Equity Owner acting as a holding company, (ii) there is a Sale Leaseback Financing, (iii) one or more tax credit buyers purchases the ITCs or PTCs associated with the Project or (iv) another structure pursuant to which a third-party is able to monetize the tax credits and/or other benefits associated with the Facility to be agreed with the prior written consent of Buyer, such consent not to be unreasonably withheld.

"**Termination Notice**" has the meaning set forth in the definition of Section 13.3(a).

"**Termination Payment**" means in the case of a Default, the amounts, calculated pursuant to Section 13.3 payable by the Defaulting Party, as applicable, to liquidate this Agreement.

"**Third Party Sale Replacement Price**" has the meaning set forth in Section 6.3.

"**Tier One**" has the meaning set forth in Section 5.1(d).

"**Transmission Line Loss Factor**" means a number, stated as a percentage, which will be used to calculate the line losses on the gen-tie transmission line between the Project Meter and the Point of Delivery and will be applied to the readings taken by the Electric Metering Device(s) installed at the Project Meter as set forth in Section 11.6(b). For the avoidance of doubt, after the Transmission Line Loss Factor is determined in accordance with Section 3.7(b), it shall remain constant until the expiration of the Delivery Term. The Transmission Line Loss Factor is intended to represent all transmission and transformation losses between the Project Meter and the Point of Delivery.

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

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

"**Transmission System**" means the facilities utilized to provide Transmission Services.

"**Ultimate Upstream Equity Owner**" means the entity set forth in Section 1 of Schedule 12.2(h).

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

"**Upstream Equity Owner**" means any upstream equity owner of Seller at or below the Ultimate Upstream Equity Owner.

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

"**VAC**" means volts alternating current.

"**VDC**" means volts direct current.

"**WBE**" has the meaning set forth in Section 14.24(c).

"**WECC**" means the Western Electricity Coordinating Council, and any successor entity thereto.

"**Western Interconnection**" means the wide area synchronous power grid overseen by the WECC.

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

"**WREGIS Certificates**" has the meaning set forth in Section 8.4.

"**WREGIS Operating Rules**" means the rules describing the operations of WREGIS, as published by WREGIS and as may be amended from time to time.

"**WREGIS Withhold Amount**" has the meaning set forth in Section 11.2.

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

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

(a) 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 but, in case of a Party, 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, instrument, tariff or Requirement means such agreement, document, 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;

(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) "herein", "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;

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

(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) reference to time shall always refer to Pacific Prevailing Time; and reference to any "day" or "month" shall mean a calendar day or calendar month, as applicable, unless otherwise indicated;

(k) the term "or" is not exclusive; and

(l) the terms "shall" and "will" shall have the same meaning and be of equal force and effect.

**Section 1.3 Interpretation with Interconnection Agreement**. The Parties acknowledge that the Interconnection Agreement is a separate and free-standing contract and that nothing in this Agreement, including the expiration or termination hereof, shall alter or modify the rights, duties and obligations of the parties under the Interconnection Agreement.

**Section 1.4 Order of Precedence**. In the event of any conflict or inconsistency between or among the terms and conditions of any of the body of this Agreement, the Appendices and Exhibits attached to the body of this Agreement and the Ancillary Documents, the following order of precedence, consistent with the controlling Requirements of Law, shall govern the interpretation of this Agreement: (i) the body of this Agreement, (ii) the Appendices and Exhibits attached to the

body of this Agreement, (iii) the Option Agreement and (iv) the Ancillary Documents other than the Option Agreement.

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

**Section 2.1 Effective Date**. This Agreement shall be effective as of the Effective Date. Concurrently with the execution of this Agreement, Seller shall execute and deliver to Buyer the Option Agreement. No later than five (5) Business Days after the Effective Date, Seller shall deliver (or caused to be delivered) to Buyer the Legal Opinion and the documents described in Section 12.2(b).

**Section 2.2 Approvals Date Obligations**.

(a) Within five (5) Business Days after the date on which all Approvals have been obtained, Buyer shall provide written notice to Seller of the occurrence thereof and the Approvals Date.

(b) No more than thirty (30) days after the Approvals Date, Seller shall deliver to Buyer a copy of the CEC pre-certification application for the Facility in the name of Seller that has been filed with the CEC. No later than five (5) Business Days after the Approvals Date, Seller shall deliver to Buyer the Non-Consolidation Opinion.

**Section 2.3 Agreement Term and Delivery Term**. The term of this Agreement shall commence on the Effective Date and shall end upon the final date of the Delivery Term (the "***Agreement Term***"). This Agreement shall have a delivery term commencing on the Commercial Operation Date and ending on the last day of the Final Stub Year, unless sooner terminated in accordance with the terms of this Agreement (the "***Delivery Term***").

**Section 2.4 Survivability**. The provisions of this Section 2.4, Section 5.6, Section 11.5, Article XIII, and Article XIV shall survive the termination of this Agreement. In addition, applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to the period prior to termination of this Agreement, including payment of any money due and owing to Seller or Buyer pursuant to this Agreement, including Section 3.3, Section 5.6, Section 6.1, Section 6.3, Section 6.4, Section 9.2 and Section 9.3.

**Section 2.5 Early Termination**. Without limiting Buyer's rights in this Agreement, including any other termination rights that may not be enumerated in this Section 2.5, Buyer may terminate this Agreement as follows:

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

(b) **Early Termination for Default**. Upon the occurrence and during the continuation of a Default subject to applicable cure periods, if any, the Non-Defaulting Party may, in its sole discretion, terminate this Agreement as set forth in Section 13.3.

(c) **Early Termination for Compliance Failure**. Buyer, in its sole discretion, may terminate this Agreement pursuant to Section 8.7.

(d) **Early Termination for Failure to Achieve Commercial Operation**. Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if Seller fails to achieve the Commercial Operation Date in accordance with Section 13.1(i).

(e) **Early Termination for Consecutive Shortfall Energy Years**. Buyer may, in its sole discretion, terminate this Agreement pursuant to Section 13.1(j).

(f) **Early Termination for Force Majeure**. This Agreement may be terminated pursuant to Section 14.5.

(g) **Early Termination for Failure to Obtain CEC Certification**. Buyer may, in its sole discretion, terminate this Agreement effective upon notice to Seller pursuant to Section 3.5 if the Facility is not CEC Certified by the date that is six (6) months following the Commercial Operation Date.

(h) **Early Termination for Business Policies**. Buyer, in its sole discretion may terminate this Agreement pursuant to Section 14.24.

(i) **Early Termination for Exercise of ROFO or ROFR**. If Buyer accepts the Right of First Offer or Right of First Refusal for any proposed sale of all or any portion of the Facility or the Facility Assets, this Agreement shall terminate effective upon the consummation of any such sale to Buyer pursuant to Section 14.21.

(j) **Early Termination for Exercise of Project Purchase Option**. In the event Buyer elects to exercise the Project Purchase Option, this Agreement shall terminate effective upon the Closing under the Option Agreement.

Any termination of this Agreement under this Section 2.5 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

**Section 2.6 Early Termination for Failure to Obtain Required Approvals.** If the Approvals Date has not occurred by the Approvals Deadline, then within ten (10) Business Days after the Approvals Deadline, either Buyer or Seller may terminate this Agreement and the Option Agreement by providing written notice to the other Party signed by a duly-authorized officer of Buyer or Seller, as applicable, which specifically provides that Buyer or Seller, is exercising its right to terminate this Agreement and the Option Agreement and specifically provides that such termination is being made pursuant to this Section 2.6 of the Agreement, with such termination to be effective immediately. Notwithstanding the immediately preceding sentence, each Party's right to terminate shall expire on the earlier to occur of (a) the Approvals Date and (b) ten (10) Business Days after the Approvals Deadline. Upon such termination, neither Party shall have any liability to the other Party for such termination, subject to any obligations specified in Section 2.4.

## ARTICLE III
## DEVELOPMENT OF THE FACILITY

**Section 3.1 Permitting**. Seller, at its expense shall timely take all steps necessary to obtain all Permits required to construct, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law, including the timely preparation of all environmental documents required for the review of the Facility under applicable federal and Utah law (the "***Environmental Documents***"), and any relevant Milestones.

**Section 3.2 Design, Development and Construction of the Facility**. The location, design, configuration and capacities of the Facility shall be consistent with the Requirements, including the characteristics and other requirements for the Facility set forth in Appendix B. Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. The Facility and the Facility Site shall be owned (or leased pursuant to a Sale Leaseback Financing, the Real Property Agreements, or any other lease arrangement meeting the Site Control requirements and otherwise reasonably acceptable to Buyer) by Seller during all periods of the Agreement Term from and after the Construction Commencement Milestone. Seller shall develop, finance and construct the Facility at its sole risk and expense and in compliance with the Requirements; provided that meeting these requirements shall not relieve Seller of its other obligations under this Agreement. Any failure by Seller to inspect the physical condition of the Facility Site, including any local or other conditions that may be material to Seller's performance of its obligation under this Agreement, 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 expense to Buyer. Subject to any restrictions set forth in this Agreement, Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Buyer; provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. Subject to Section 6.1(c), but notwithstanding any other provision of this Agreement, Seller may in its discretion construct and install the Facility with a capacity in excess of the Contract Capacity. Seller shall enter into or cause the EPC Contractor (or its electrical subcontractor) to enter into a project labor agreement for the electrical trades performing construction and installation work on the high-voltage electrical components of the Facility.

**Section 3.3 Milestone Schedule; Daily Delay Damages.**

(a) Attached as Appendix B is a schedule of the milestones for the development of the Facility through its Commercial Operation Date (each milestone, a "***Milestone***") and the Milestone Dates associated therewith, including the Guaranteed Commercial Operation Date. Seller shall achieve each Milestone by no later than the Milestone Date specified therefor. Seller anticipates achieving Commercial Operation by September 30, 2028, but Seller may achieve Commercial Operation prior to September 30, 2028 (but in any event no earlier than June 30, 2028 without the prior consent of Buyer, such consent to be in the sole discretion of Buyer) so long as Seller provides at least twelve (12) months advanced written notice thereof. From and after the Approvals Date until the date upon which Commercial Operation has been achieved, Seller shall provide Buyer with monthly reports with updates related to Facility development and progress, including timing and status for obtaining all requisite Permits set forth in Appendix K and achieving pre-Commercial Operation Date Milestones, as set forth in Appendix B.

(b) Beginning upon the earlier of (i) June 30, 2028, or (ii) the date that is six months prior to the date designated by Seller pursuant to Section 3.3(a) for Commercial Operation of the Facility, Seller shall have the right to sell and deliver, and Buyer shall purchase and accept from Seller, Startup and Test Energy at the rate for such Energy set forth in Appendix A on the terms specified in this clause (b). Seller shall provide Buyer not less than thirty (30) days' written notice of the date upon which it will commence delivery of Startup and Test Energy ("***Startup Notice***"). The Startup Notice shall include a schedule of Seller's best projection for delivery of Startup and Test Energy, and shall be subject to Buyer's approval in all respects, such approval not to be unreasonably withheld. Thereafter, Seller shall provide an updated schedule of Seller's best projection for delivery of Startup and Test Energy every thirty (30) days, and shall promptly notify Buyer of any expected change to such projected delivery. For the avoidance of doubt, (i) Buyer shall have the right, but shall have no obligation hereunder, to purchase Startup and Test Energy at any time before June 30, 2028, and (ii) Buyer shall purchase and accept Startup and Test Energy in amounts and at times reasonably necessary to allow Seller to achieve the Commercial Operation Date, as applicable, as soon as is reasonably possible following Buyer's receipt of the Startup Notice, it being acknowledged, however, that the Startup and Test Energy may be curtailed by Buyer to the extent commercially necessary or for any operational reason, in each case, in Buyer's sole discretion on a non-compensable basis.

(c) If Seller anticipates that it will not achieve a Milestone by the Milestone Date therefor, Seller shall promptly prepare and deliver to Buyer a written action plan detailing how Seller will cure such failure (such plan, a "***Remedial Action Plan***"). The proposed Remedial Action Plan must in all cases be acceptable to Buyer, such acceptance not to be unreasonably withheld, delayed or conditioned. The Remedial Action Plan shall specify in reasonable detail the anticipated period of delay, Seller's analysis of the causes of the missed Milestone Date, the actions that Seller plans to take to correct such underperformance, and the time needed to complete such corrective actions. Seller shall complete any and all corrective action pursuant to the provisions of the Remedial Action Plan. Seller may (i) supplement the Remedial Action Plan, as may be reasonably required, or (ii) provide Buyer with written notice of any deviations from the approved Remedial Action Plan; provided that in the case of (i) or (ii), any supplements to, or deviations from, the Remedial Action Plan must be acceptable to Buyer, such acceptance not to be unreasonably withheld, delayed or conditioned.

(d) In addition to the preparation of a Remedial Action Plan in accordance with Section 3.3(c), if Seller fails to achieve the Key Milestone by the Milestone Date therefor, Seller shall pay Buyer the Daily Delay Damages for each day between the Milestone Date for the Key Milestone and the date upon which the Key Milestone is achieved (or the Agreement is terminated by Buyer under Section 13.1(i)). Buyer may draw from the Development Security the amount of any such Daily Delay Damages. The Key Milestone shall be extended for a period of time as may reasonably be required to the extent Seller is actually delayed as a result of the event of Force Majeure, but in no event to exceed a period of two hundred forty (240) or more consecutive calendar days or an aggregate of three hundred sixty-five (365) consecutive or non-consecutive calendar days from the date of the occurrence of such event of Force Majeure in accordance with Section 14.5(c). If the Force Majeure event extends the Guaranteed Commercial Operation Date by two hundred forty (240) or more consecutive calendar days or by an aggregate of three hundred sixty-five (365) consecutive or non-consecutive calendar days, then Buyer may terminate this

Agreement, in its sole discretion, and Buyer shall return the Development Security to Seller less (i) any amounts that are due and owing to Buyer under this Agreement and (ii) any amounts previously drawn by Buyer in accordance with this Agreement.

(e) Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Commercial Operation Date occur later than one hundred and eighty (180) days after the Guaranteed Commercial Operation Date (the "***Outside COD***"), and the failure to achieve the Commercial Operation Date by the Outside COD shall be an immediate Default by Seller; provided that the Outside Date may be extended as set forth in Section 3.3(d) due to Force Majeure.

(f) The Parties agree that the damages that Buyer would incur due to Seller's failure to timely achieve the Key Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances and, therefore, the Daily Delay Damages are a fair and reasonable calculation of such damages and shall be in lieu of actual damages for Seller's failure to achieve the Key Milestone by the Milestone Date therefor.

(g) The payment of Daily Delay Damages shall be the exclusive remedy of Buyer associated with Seller's failure to timely achieve the Key Milestone but shall not limit Buyer's right to (i) recover actual damages pursuant to Section 3.3(d), (ii) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after Seller's delay in achieving the applicable Milestone by the Milestone Date therefor, (iii) recover any damages not directly attributable to such delay (not to exceed, prior to the Commercial Operation Date, the amount of the Development Security) or to pursue any indemnity claims in accordance with this Agreement, or (iv) terminate this Agreement pursuant to Section 13.1(i) for failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date.

**Section 3.4 Certification of the Commercial Operation Date**. Seller shall provide Buyer with no fewer than ninety (90) days prior written notice of the anticipated date of the Commercial Operation Date. Seller shall deliver a written completion certification to Buyer in the form of Appendix N with respect to the Commercial Operation Date. Once such certification has been delivered, Buyer shall have up to thirty (30) days from the receipt of such certification to either accept or reject, in writing, the certification; provided, Buyer may not unreasonably withhold, delay or condition acceptance of any such certification, and any rejection by Buyer must be reasonable and contain a written description with reasonable detail of Buyer's reasons therefor. If Buyer rejects any such certification, Seller shall promptly correct those defects or deficiencies as directed by Buyer and resubmit the certification, and Buyer shall have up to fifteen (15) additional days from the date of such resubmission to either accept or reject such resubmitted certification. Buyer shall in all cases respond in writing to any such certification within such thirty (30) day or fifteen (15) day period (as applicable) and shall be deemed to have accepted such certification effective on the earlier of Buyer's actual acceptance thereof or the thirty-first (31st) day or sixteenth (16th) day (as applicable) following Buyer's receipt thereof if Buyer fails to respond in writing within such timeframe. The Commercial Operation Date shall occur as of the date upon which the Seller certification is accepted (or deemed accepted) by Buyer. Any Daily Delay Damages otherwise payable under Section 3.3(d) shall be excused for each day following

the date of Seller's delivery of a certification of such Commercial Operation Date under this Section 3.4 until the date on which Buyer responds to such certification under this Section 3.4, unless Buyer reasonably rejects such certification, in which case Daily Delay Damages shall be due and payable for each day between the Guaranteed Commercial Operation Date and the date until a revised certification of the Commercial Operation Date has been delivered by Seller and accepted by Buyer (in which case, such Daily Delay Damages shall only be payable up to the date that such certification was delivered by Seller).

**Section 3.5 CEC Certification/NERC Registrations**. Promptly, but in no event more than ten (10) days following the Commercial Operation Date, Seller shall file with the CEC all materials and documents required to demonstrate that the Facility is entitled to be CEC Certified. Seller shall promptly provide Buyer with copies of all submittals to the CEC and other correspondence between Seller and the CEC. Failure by Seller to comply with the requirements set forth in this Section 3.5 shall constitute an event of default by Seller, subject to the cure periods set forth in Section 13.1(b). During any period when Delivered Energy is provided in which CEC Certification has not been obtained, Buyer may withhold the WREGIS Withhold Amount; provided, however, Buyer shall pay to Seller, for each MWh generated by the Facility after the Certification Eligibility Date and for which a WREGIS Certificate was credited to Buyer's WREGIS account, any WREGIS Withhold Amount previously withheld by Buyer. Seller shall, at its cost, register with NERC for all applicable Function Types in the NERC Compliance Registry in accordance with the currently effective NERC Rules of Procedure, including Seller's registration as both Generator Owner and Generator Operator.

**Section 3.6 Other Information**. Seller shall provide to Buyer such other information that is in the possession of Seller, its Subcontractors (to the extent that Seller has the right to disclose such information), or its Affiliates or is reasonably available to Seller regarding the permitting, engineering, construction or operations of Seller, its subcontractors or the Facility, and other data concerning Seller, its subcontractors or the Facility that Buyer may, from time to time, reasonably request in writing; provided that Seller shall have no obligation to disclose confidential information that it does not have any right to disclose.

**Section 3.7 Transmission Line Loss Factor**.

(a) **Calculation of Transmission Line Loss Factor**. Seller shall cause an Independent Engineer to calculate the Transmission Line Loss factor using, at a minimum: (a) the as-built conductor type, length, impedance, and physical configuration; (b) transformer operating characteristics; (c) expected operating voltage and power factor assumptions; and (d) a representative hourly project output for a typical year, used in appropriate simulations.

(b) **Estimate Approval Condition to Construction Commencement.** At least sixty (60) days prior to the anticipated achievement of the Construction Commencement Milestone, Seller shall deliver to Buyer an estimate, calculated by an Independent Engineer, of the Transmission Line Loss Factor for Buyer's approval, which shall not be unreasonably withheld, conditioned or delayed. Buyer's approval of such estimate is a condition to achievement of the Construction Commencement Milestone.

(c) **Final Approval Condition to COD.** No fewer than ninety (90) days prior to the anticipated date of the Commercial Operation Date, Seller shall deliver to Buyer the final Transmission Line Loss Factor, calculated by an Independent Engineer, for Buyer's approval, which shall not be unreasonably withheld, conditioned or delayed. Buyer's approval of the Transmission Line Loss Factor is a condition to achieving the Commercial Operation Date.

## ARTICLE IV
## OPERATION AND MAINTENANCE OF THE FACILITY

**Section 4.1 Compliance with Electrical Service Requirements**. Seller shall, at its sole expense, operate and maintain the Facility: (i) in accordance with the Requirements and the requirements of applicable manufacturer's and operator's specifications and, using commercially reasonable efforts to comply with any published recommendations of the manufacturers and suppliers of the solar panels, and other major components of the Facility; (ii) with due regard for the safety, security and reliability of the interconnection facilities and the Transmission System, and in accordance with the Buyer's system protection design requirements, attached hereto as Appendix P, and (iii) in a manner that is reasonably likely to (A) optimize the use of the Facility consistent with the overall requirements of this Agreement, and (B) result in a useful life for the entire Facility of not less than thirty-five (35) years, assuming appropriate repairs and replacements from time to time of Facility components.

**Section 4.2 General Operational Requirements**. In addition to the requirements set forth in Section 4.1 and elsewhere in this Agreement, Seller shall, at all times employ or cause to be employed qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Authorized Representative. Seller shall ensure remote monitoring of the Facility and that necessary personnel shall promptly respond to emergency consistent with industry practices during the Delivery Term. The Facility shall be operated during the Delivery Term by a Qualified Operator. For the avoidance of doubt, in no event will the operation of the Facility by a third party, nor shall Buyer's approval of any third party operator, relieve Seller of any of its obligations hereunder.

**Section 4.3 Reactive Power Dispatch**. The Facility shall maintain a reactive power dispatch within the power factor range of 0.95 lead/lag at the Point of Delivery, in accordance with Appendix P and the Interconnection Agreement.

**Section 4.4 Not Used.**

**Section 4.5 Operation and Maintenance Plan after Commercial Operation**. Following the Commercial Operation Date, Seller shall:

(a) provide on a monthly basis, information regarding (i) operations and maintenance status of the Facility provided to WECC or lenders pursuant to the Financing Agreement; and (ii) past generation performance that includes: a Facility performance summary with month/year to date, Facility performance on MWh, capacity factor, comparison of actual and expected, availability, average illumination and solar irradiance, operational summary including weather for the month, reasons for downtime, scheduled maintenance and repairs, curtailment

events, safety, and a summary of any environmental issues or concerns in the form set forth in Appendix W.

(b) provided on a monthly basis the following information in the form set forth in Appendix W: Seller's actions to: (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify all preventive maintenance requirements for the following calendar year, including the performance of maintenance in accordance with Section 7.4; (iii) schedule and assign routine maintenance during operations, planned outages, as well as maintenance that can be conducted in parallel (but in the event of a forced or unscheduled outage, and as a result of 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 Q/A and Q/C activities and inspections in accordance with Appendix J and, to the extent prepared in the ordinary course of business, provide reports thereof to Buyer; and (vi) hire Subcontractors, as applicable, to meet the Facility's maintenance, betterment, and improvement needs.

**Section 4.6 Operation and Maintenance Plan 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 Financing Agreement in place as of such date. 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 when present at the Facility;

(b) provide Buyer, on a monthly 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; 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;

(c) 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 readings; (ii) identify all preventive maintenance requirements for

a period of the following two (2) calendar years, including the performance of maintenance in accordance with Section 7.4; (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 Q/A and Q/C activities and inspections in accordance with Appendix J 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 4.7 Reporting and Information 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, provide Buyer with a draft budget for the Facility (the "***Budget***") for the twelve (12) month period beginning on July 1 of the applicable calendar year, which Buyer shall have the right to review and to provide comments for consideration by Seller.

**Section 4.8 Compliance with New Resource Implementation**. Seller shall, at its sole cost and expense (a) design and thereafter at all times maintain the Facility in compliance with the New Resource Implementation requirements (or the equivalent), and (b) include in the design, construction and operation of the Facility any equipment or software that may be required to enable the Facility to participate in the EIM (or its equivalent) and EDAM. Buyer shall register the Facility into the EIM and EDAM and Seller shall cooperate with Buyer in connection with such registration, including promptly providing necessary information, data and documentation for the registration.

## ARTICLE V
## COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD

**Section 5.1 In General**.

(a) **The Facility**. Seller shall perform, or cause to be performed, all engineering, design and construction in a good and workmanlike manner and in material compliance with the Requirements. Seller warrants that, as of the Commercial Operation Date: (i) the Facility shall be free from material defects caused by errors or omissions in design, engineering, and construction, and (ii) the Facility will comply in all material respects with the Requirements. Seller also warrants that throughout the Agreement Term it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in material compliance with the Requirements, Seller's Quality Assurance Program, and any other provisions of this Agreement. Without limiting the foregoing, Seller shall promptly repair or replace, consistent with Prudent Utility Practice, any component of the Facility that may be damaged or destroyed or otherwise not operating properly. Seller shall, subject to Seller's reasonable judgment and consistent with Prudent Utility Practices, exercise commercially reasonable efforts to undertake all published, recommended, or required updates or modifications from manufacturers or suppliers to the Facility, its equipment and materials, including to

procedures, programming and software in a timely manner. 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 applicable manufacturers' recommendations and Prudent Utility Practice.

(b) **Startup and Testing**. Prior to the Commercial Operation Date, and as a condition precedent to the achievement of the Commercial Operation Date, Buyer shall have the right to (and Seller's engineering, procurement and construction subcontracts shall provide for Buyer's right to) during normal working hours and subject to Seller's or its subcontractors' reasonable requirements and procedures in respect of confidentiality (subject to the provisions set forth in Section 14.19) and safety):

(i) review and monitor the subcontractors' performance and achievement; and

(ii) be present to witness such initial performance and acceptance tests and review the results thereof; and

(iii) upon notice to Seller, perform such detailed examinations, inspections, quality surveillance and tests as, in the judgment of Buyer, are appropriate and advisable to determine that the Facility equipment and all ancillary components of the Facility have been installed in accordance with this Agreement and the Facility construction contracts, all applicable standards, Prudent Utility Practices, applicable Requirements of Law, the Quality Assurance Program and the Milestones, provided that such examinations, inspections, quality surveillance and tests shall not interfere with the operations of the Facility or Seller's or its subcontractors' work and Buyer shall comply with Seller's applicable access and safety requirements.

(c) **Access and Cooperation**. Seller shall, and shall cause each of its subcontractors to:

(i) permit Buyer and its Authorized Representatives, advisors, engineers and consultants to observe, inspect and monitor, upon reasonable notice to Seller during normal working hours and subject to Seller's or its subcontractors' reasonable requirements and procedures in respect of confidentiality (subject to the provisions set forth in Section 14.19) and safety, all operations and activities, including the performance of the contractor(s) under the construction contract(s) pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing, and Commercial Operation and to make notes about and copy (and make such copies and notes available to Buyer) all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request;

(ii) make the personnel of, and consultants to, the subcontractors and Seller available to Buyer, Buyer's Agent, and Buyer's agents, Authorized 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;

(iii) otherwise cooperate in all reasonable respects with Buyer, Buyer's Agent, and Buyer's Authorized Representative, advisors, engineers and consultants in order to allow Buyer to exercise its rights under this Section 5.1; and

(iv) from and after the Commercial Operation Date, except in the event of a System Emergency, accommodate Buyer's requests to visit the Facility during Seller's regular business hours upon reasonable notice.

(d) **Equipment Suppliers.** Seller shall only engage with Tier One solar panel manufacturers for the solar panels to be incorporated into the Facility. A "***Tier One***" solar panel manufacturer means First Solar or a manufacturer whose photovoltaic-powered solar panels are (a) financeable by a Qualified Issuer, or (b) if not a Qualified Issuer, financeable by a Person with a net worth of at least Five Hundred Million Dollars ($500,000,000). Seller shall use reasonable efforts to ensure that any equipment and supply contracts for the solar panels, inverters and any other major equipment for the Facility shall be fully assignable to, and be enforceable by, Buyer (including all warranties associated therewith) following Buyer's exercise of the Project Purchase Option. Buyer shall have the right to review all applicable equipment supply contracts (which may be redacted to the extent that they contain confidential pricing information, proprietary or other commercially sensitive information (excluding any excerpts related to warranty information, term, termination and assignability)) for the Facility to ensure that Seller has complied with the provisions of this Section 5.1(d).

**Section 5.2 Effect of Review by Buyer**. Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility, and witness of testing hereunder, is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review or observation with Seller, nor shall any such review or observation, or the results thereof (whether or not the results are shared with Seller), nor any failure to conduct any such review relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer of the Facility, including any review of the design, construction, operation or maintenance of the Facility or observation of testing by Buyer, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

**Section 5.3 Compliance With Standards; PMU Requirements**.

(a) Seller shall cause the Facility and all parts thereof to be designed, constructed, tested, operated and maintained to meet all of the requirements of this Agreement, all applicable requirements of the latest revision of the ASTM, ASME, AWS, EPA, IEEE, IEC, ISA, National Electrical Code, National Electric Safety Code, OSHA, Uniform Building Code, Uniform Plumbing Code, Underwriters Laboratory Standards, and National Fire Protection Agency, as applicable, as well as the applicable local County Fire Department Standards of the applicable county, NERC Reliability Standards, and other codes and standards and operations and maintenance requirements applicable to the services, equipment, and work as generally shown in

this Agreement, as well as all applicable Requirements of Law not specifically mentioned in this Section 5.3; provided, that for the avoidance of doubt, Seller shall use commercially reasonable efforts, but shall not be obligated, to comply with any non-mandatory recommendations, or voluntary best practices, in any of the foregoing so long as Seller follows Prudent Utility Practices and all applicable Requirements of Law. Seller shall comply with all reporting requirements for the Facility required under applicable Requirements of Law, such as Energy Information Assessments (including providing such information to Buyer as required thereunder).

(b) Throughout the Delivery Term, the Parties shall comply with the PMU requirements as set forth in Appendix S.

(c) Throughout the Delivery Term, all of Seller's personnel and systems shall adhere to any physical and cyber-related security policies, standards, requirements and procedures applicable to the Facility under federal, state, or local laws, regulations or industry practices, including requirements that may be imposed by FERC, NERC, WECC, the Department of Energy, the EPA, or the Department of Homeland Security, as well as any applicable cyber-related security policies and procedures of Buyer's Agent to which parties engaged in energy sales transactions with Buyer's Agent are customarily subject and any applicable cyber-related security policy and procedures of the Participating Members, including NERC Critical Infrastructure Protection compliance requirements (collectively, "***Security Requirements***").

**Section 5.4 Quality Assurance Program**. As a condition of, and no later than the occurrence of, the Commercial Operation Date, Seller shall maintain and comply with a written quality assurance policy ("***Quality Assurance Program***" or "***Q/A Program***") attached hereto as Appendix J, 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 Preservation of the Facility**. Except as expressly permitted by this Agreement, Seller shall not sell or otherwise dispose of, or create, incur, assume, or permit to exist any Lien (other than the Permitted Encumbrances) on, any portion of the Facility or any other property or assets which are necessary for the operation, maintenance, and use of the Facility, without the prior written approval of Buyer.

**Section 5.6 Security Provided by Seller**.

(a) Seller shall, by no later than ten (10) Business Days following the Approvals Date, deliver to Buyer an Acceptable Form of Performance Assurance in the amount of Thirty Two Million Four Hundred Thousand Dollars ($32,400,000) which Acceptable Form of Performance Assurance shall guarantee Seller's obligations under this Agreement or the Option Agreement prior to the achievement of the Commercial Operation Date (the "***Development Security***"). Seller shall maintain the Development Security until Seller posts the Performance Security pursuant to Section 5.6(b), or until Buyer is required to return the Development Security under Section 5.6(c) below.

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall furnish to Buyer an Acceptable Form of Performance Assurance in the amount of Forty Eight Million Six Hundred Thousand Dollars ($48,600,000), which Acceptable Form of Performance

Assurance shall guarantee Seller's obligations under this Agreement or the Option Agreement from and after the Commercial Operation Date (the "***Performance Security***"). Seller may elect to apply the Development Security toward the Performance Security. Seller shall maintain such Performance Security until Buyer is required to return the Performance Security to Seller as set forth in Section 5.6(e) below.

(c) If (i) upon the Commercial Operation Date, no damages or other amounts are due and owing to Buyer under this Agreement and Seller does not elect to apply the Development Security toward the Performance Security, or (ii) this Agreement terminates prior to the occurrence of the Commercial Operation Date while the Development Security is outstanding and no damages or other amounts are due and owing to Buyer under this Agreement, then Buyer shall return to Seller the remaining amount of the Development Security (or any portions thereof if damages or other amounts are due and owing to Buyer under this Agreement or the Option Agreement), less any amounts previously drawn by Buyer in accordance with this Agreement, promptly following Seller's provision of the Performance Security or the effective date of such early termination.

(d) Buyer may draw on the Development Security or the Performance Security, as applicable, (i) at any time following the accrual of Daily Delay Damages, Shortfall Liquidated Damages or any other liquidated damages provided for hereunder in the amount of such Daily Delay Damages, Shortfall Liquidated Damages, or other liquidated damages, as applicable, (ii) upon Seller's failure to make a Termination Payment to Buyer in accordance with Section 13.3, in the amount of the unpaid Termination Payment, or (iii) upon Seller's failure to make any other payment due to Buyer hereunder or under the Option Agreement in the amount of the unpaid payment; provided, that, in the case of a draw made under clause (iii), any such amount shall have been invoiced to Seller, shall be past due, and shall not be the subject of a good faith dispute between the Parties in accordance with Section 11.3. Subject to the foregoing, Buyer may draw all or any part of such amounts due to Buyer from any form of security provided under this Section 5.8, 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. Promptly, and in no event more than five (5) Business Days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn on the Performance Security such that the amount of the Performance Security is restored to the full amount set forth in Section 5.6(b). Seller shall not be required to replenish the Development Security if drawn upon by Buyer.

(e) Buyer shall return the unused portion of Performance Security, if any, to Seller promptly upon the later of: (i) the expiration or termination of the Agreement Term, including the exercise by Buyer of the Project Purchase Option, Right of First Offer or Right of First Refusal, and (ii) all of the obligations of Seller arising under this Agreement and the Option Agreement being paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(f) Seller shall provide, or cause to be provided, a replacement Acceptable Form of Performance Assurance in the required amount set forth in this Section 5.6 within the

earlier of three (3) Business Days and five (5) calendar days after the occurrence of (A) with respect to a letter of credit, Buyer notifies Seller that it reasonably believes that the Qualified Issuer of such letter of credit, in accordance with the bail-in write down provisions under Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014, may be or become unable to perform its obligations under such letter of credit, (B) a Downgrade Event (provided that Seller shall have thirty (30) days if the Downgrade Event is pursuant to clause (iii) of that definition), (C) with respect to a letter of credit, the date that Seller becomes aware of, or Buyer notifies Seller of, the occurrence of either of the following events: (x) the failure of the issuer of such letter of credit to renew such letter of credit twenty (20) Business Days prior to the expiration of such letter of credit, or (y) the failure of the issuer of such letter of credit to honor Buyer's properly documented request to draw on such letter of credit in accordance with its terms, or (D) the issuer of the letter of credit becomes Bankrupt.

(g) In the event that a replacement Acceptable Form of Performance Assurance in the required amount is not delivered in accordance with Section 5.6(f), Buyer shall have the right to draw immediately upon the entire amount of the existing Development Security or Performance Security, as applicable, and to retain such amount as Development Security or Performance Security, as applicable, in order to secure Seller's obligations under this Agreement, at Seller's cost and expense, in an account controlled by Buyer until Seller provides replacement Acceptable Form of Performance Assurance.

(h) Seller shall, from time to time as requested by Buyer, 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 and enforceable under all applicable Requirements of Law the Development Security or the Performance Security and the rights of Buyer with respect to such Development Security or Performance Security.

(i) Notwithstanding the other provisions of this Agreement, each of the Development Security and the Performance Security constitute security for, but are not a limitation of, Seller's obligations under this Agreement.

(j) Seller may elect, in its sole discretion from time to time, to replace any outstanding Development Security or Performance Security, as applicable, with a replacement Acceptable Form of Performance Assurance in the required amount set forth in this Section 5.6 and Buyer shall reasonably cooperate with Seller to cause the outstanding Development Security or Performance Security, as applicable, to be returned promptly following the receipt and confirmation of such replacement Acceptable Form of Performance Assurance.

**Section 5.7 Decommissioning and Other Costs**. Unless Buyer elects to exercise the Project Purchase Option, the Right of First Offer or the Right of First Refusal, Buyer shall not be responsible for any costs or expenses in connection with the decommissioning or demolition of the Facility, or (subject to the allocation of liabilities as set forth in the Option Agreement, or the purchase agreement for the Right of First Offer or Right of First Refusal) any environmental or

other liability associated with the decommissioning or demolition without regard to the timing or cause of the decommissioning or demolition.

**Section 5.8 Quarterly Certification**. On a quarterly basis from and after the Commercial Operation Date, Seller shall, within fourteen (14) days following the end of each calendar quarter, provide Buyer with a quarterly certification signed by an authorized representative of Seller (a) certifying that there exists no Default or any event that, after notice or with the passage of time or both, would constitute a Default, or that a Default exists or may exist after notice or with the passage of time or both; (b) certifying that the representations and warranties set forth in this Agreement remain true and correct as of the date of such certification; and (c) attesting to the Facility Debt after the Commercial Operation Date as being equal to seventy percent (70%) of the Facility Cost; provided, that if the proceeds of the sale of PTCs are being financed by the Facility Lenders, during such PTC financing period, ninety percent (90%) of the Facility Cost, in each case, 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. If a Default or any event that, after notice or with the passage of time or both, would constitute a Default, exists as of such date, Seller shall list, in detail, the nature of the event, the period during which it has existed and the actions that Seller has taken, or proposes to take with respect to such event.

**Section 5.9 Taxes**. Seller shall pay or cause to be paid all Taxes on or with respect to the Energy, Capacity Rights and any Environmental Attributes or any other transactions arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Energy and any Environmental Attributes or any other transactions from (but excluding) the Point of Delivery. If Seller is required by a Requirement of Law to remit or pay Taxes that are Buyer's responsibility 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 is reduced.

**Section 5.10 Environmental Credits**. If at any time Seller becomes obligated to obtain pollution or environmental credits or offsets in order to own, operate or maintain the Facility in compliance with the applicable Requirements of Law, Seller shall obtain such credits or offsets (a) which credits or offsets shall be in Seller's own name, and (b) obtained at Seller's sole cost and

expense. In no event shall Seller use any Environmental Attributes to satisfy the foregoing obligation.

## ARTICLE VI
## PURCHASE AND SALE OF POWER

**Section 6.1 Purchases by Buyer**. Seller shall deliver to Buyer, and Buyer, or its designee, shall receive from Seller under this Agreement, the Delivered Energy at the Point of Delivery.

(a) Following the Commercial Operation Date, Seller shall make available, schedule and deliver, and Buyer shall accept and purchase, the Delivered Energy for each Contract Year during the Delivery Term at the rate set forth in Appendix A.

(b) For Excess Energy, Buyer shall pay Seller the Excess Energy Price in accordance with Appendix A.

(c) Notwithstanding any other provision hereof, in no event shall Seller deliver at the Point of Delivery a quantity of Delivered Energy (in MWhs ac) in any hour that exceeds (i) the Contract Capacity (expressed in MWs ac) multiplied by (ii) one hour.

**Section 6.2 Point of Delivery**. Seller shall deliver all Delivered Energy (and Replacement Energy, if any) to Buyer at the Point of Delivery (or, with respect to Replacement Energy, such other location as reasonably requested by Buyer or otherwise mutually agreed upon in writing by the Parties), and Buyer, or its designee, shall receive all such Delivered Energy and Replacement Energy from Seller at the Point of Delivery (or, with respect to Replacement Energy only, such other location as reasonably requested by Buyer or otherwise mutually agreed upon in writing by the Parties), each as measured in accordance with Section 11.6(a).

**Section 6.3 Seller's Failure**. 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. During the Delivery Term and subject to the terms and conditions of this Agreement, all of the Delivered Energy shall be dedicated to Buyer; provided that Seller may sell to any third-party purchaser (a) Delivered Energy sold as provided under Section 7.5(e), (b) Delivered Energy that is curtailed due to a Force Majeure event that prevents Buyer from receiving such Delivered Energy at the Point of Delivery or (c) Delivered Energy that is not accepted by Buyer at the Point of Delivery. Unless excused as set forth herein, if Seller sells to a third party all or any part of the Delivered Energy, Environmental Attributes or Capacity Rights required to be delivered by Seller under this Article VI, Article VIII or Article X, then Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such energy delivered to a third-party equal to the positive difference, if any, obtained by subtracting (i) the price per MWh that would have been payable by Buyer for the Delivered Energy, from (ii) the greater of (A) the value actually received by Seller for the Energy and associated Environmental Attributes in connection with the third-party transaction, or (B) the price actually paid by Buyer to obtain Replacement Energy the "***Third Party Sale Replacement Price***").

Buyer shall provide Seller prompt written notice of the Third Party Sale Replacement Price, together with back-up documentation.

**Section 6.4 Buyer's Failure**. Unless excused by Seller's failure to perform or Force Majeure, and except during a System Emergency or any period during any curtailment under Section 7.5, if Buyer fails to receive at the Point of Delivery all or any part of the Delivered Energy or Replacement Energy required to be received by Buyer under this Article VI or Article IX, Buyer shall, on the date payment would otherwise be due to Seller, pay Seller Cover Damages, and such Cover Damages shall be Seller's sole and exclusive remedy; provided, that Seller shall use commercially reasonable efforts to resell any such Delivered Energy that Buyer failed to receive, it being agreed that there may be no commercially reasonably manner in which Seller can effect any such sales, and provided that Seller shall not be required to sell Delivered Energy to third parties to the extent such sale would require Seller to incur costs of Transmission Services beyond the Point of Delivery to effectuate such sales in excess of the revenue to be received for such sales. Upon Buyer's request, Seller shall provide documentation evidencing Seller's commercially reasonable efforts to resell Delivered Energy in accordance with the preceding sentence, including the financial terms of any such sale or contemplated sale and the costs of Transmission Services related thereto. "***Cover Damages***" means the positive difference, if any, obtained by subtracting (i) the amount received by Seller, acting in a commercially reasonable manner, for the resale of any Delivered Energy less the costs of Transmission Services beyond the Point of Delivery incurred by Seller to effect such sales (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars ($0)), from (ii) the amount that would have been payable by Buyer for such Delivered Energy not received by Buyer; provided that Cover Damages per MWh shall not exceed the Full Contract Price per MWh specified on Appendix A and in no event will Seller be required to make a payment to Buyer in respect of Cover Damages. Seller shall provide Buyer with prompt written notice of the Cover Damages together with back-up documentation.

**Section 6.5 Guaranteed Delivered Energy**. Seller shall deliver the Guaranteed Delivered Energy to Buyer at the Point of Delivery measured and calculated in accordance with Section 11.6(a), provided that the amount of Guaranteed Delivered Energy shall be reduced by the amount of Delivered Energy reasonably determined by the Parties that Seller is unable to generate, Schedule, or deliver to the Point of Delivery due to (i) a System Emergency, (ii) an event of Force Majeure, (iii) Buyer's failure to Schedule the Delivered Energy from the Point of Delivery, (iv) periods during which generation or transmission is curtailed or interrupted for whatever reason on Buyer's side of the Point of Delivery, including System Emergencies, events of Force Majeure, reliability, congestion or over-generation or (v) Buyer's request, in Buyer's sole discretion, to curtail the Delivered Energy for any economic reason; provided, further, that such reductions shall be calculated by the Parties reasonably estimating the amount of Delivered Energy that would have

been delivered to Buyer at the Point of Delivery had any of the circumstances described in (i)-(v) not occurred.

## 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 to maximize the output of the Facility. Seller shall arrange, and shall bear all risks associated with, delivery of all Delivered Energy to the Point of Delivery, including that Seller shall arrange and pay for the interconnection of the Facility to the grid and any Transmission Services required to deliver Delivered Energy to the Point of Delivery, including interconnection costs, charges related to control area services, inadvertent energy flows, transmission losses, and the transmission of Delivered Energy up to the Point of Delivery. In the event Seller procures transmission to sell Energy to a third party, Seller shall be responsible for any costs or charges associated therewith.

(b) Buyer shall be obligated to pay for all Delivered Energy as invoiced under Section 11.1(e), and Buyer shall arrange for, and shall bear all risks associated with, acceptance and transmission of Delivered Energy from the Point of Delivery, including that Buyer shall arrange and be responsible for Transmission Services from the Point of Delivery, and shall Schedule or arrange for Scheduling and transmission services with its Transmission Providers.

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

(a) The Parties agree to the following scheduling procedures: (i) Seller shall notify Buyer and Buyer's Agent on a forward (monthly, weekly and day-ahead) basis, as provided in this Section 7.2 and, as needed, in real time, of any reduction in availability of the Facility that is ten percent (10%) or more of Contract Capacity; (ii) Seller shall make available, to Buyer and Buyer's Agent, an application programming interface through which Buyer and Buyer's Agent can access the forecasted output for the Facility in increments not to exceed one (1) minute averages via an application programming interface, subject to reasonable approval by Buyer; (iii) Seller shall make available to Buyer and Buyer's Agent real-time data that shall be automatically telemetered to Buyer's or Buyer's Agent's supervisory control and data acquisition ("***SCADA***") system in accordance with Section 7.3(a); and (iv) Buyer, Buyer's Agent, each Participating Member and the Transmission Provider shall have the right, in accordance with Section 7.5, to contact Seller and require that the Facility be curtailed or to directly curtail the Facility (collectively, the "***Scheduling Procedures***"), which may be modified, from time to time, by written agreement of the Authorized Representatives of both Parties, including with respect to Buyer, Buyer's Agent, in order to comply with all applicable requirements, including those of the Transmission Provider, WECC or any "Balancing Authority" (as defined by NERC) involved in the Scheduling of Energy under this Agreement. The Authorized Representatives shall promptly cooperate with respect to any reasonably necessary and appropriate modifications to Scheduling Procedures.

(b) Seller or Seller's Authorized Representative shall be responsible for providing a forecast of deliveries of Delivered Energy during the Delivery Term consistent with the Scheduling Procedures, as may be updated from time to time in accordance with this Section 7.2(b). All generation Scheduling and Transmission Services shall be performed in accordance with the applicable NERC and WECC operating policies, criteria, and any other applicable guidelines, including any applicable NERC Reliability Standards. Seller shall fulfill any contractual, metering and interconnection requirements so as to be able to deliver Delivered Energy to the Point of Delivery.

(c) No later than forty-five (45) days before the beginning of each Contract Year, Seller or Seller's Authorized Representative shall provide, or cause to be provided, a non-binding forecast of each month's average-day deliveries of Delivered Energy, by hour, for the following eighteen (18) months.

(d) Ten (10) Business Days before the beginning of each month, Seller or Seller's Authorized Representative shall provide, or cause to be provided, a non-binding forecast of each day's average-day deliveries of Delivered Energy, by hour, for the following month.

(e) By 4:30 AM Pacific Prevailing Time ("***PPT***") on the WECC pre-scheduling day immediately preceding the date of delivery of Delivered Energy during the Agreement Term, Seller or Seller's Authorized Representative shall provide, or cause the Facility's scheduling coordinator to provide, Buyer or Buyer's Agent with a copy of a non-binding hourly (or as then-appropriate) forecast of deliveries of Delivered Energy for each hour of the next date of delivery of such Delivered Energy (the "***Day-Ahead Schedule***"). The Day-Ahead Schedule shall include all forecasted Delivered Energy. If the WECC pre-scheduling day pertains to multiple dates of delivery, then this requirement shall apply to each of those dates.

(f) During the Delivery Term, if Seller, Seller's Authorized Representative, or the Facility's scheduling coordinator becomes aware of changes to its Day-Ahead Schedule due to current conditions (other than commercial considerations), including unscheduled outages, weather or environmental conditions, a Forced Outage or a scheduling change imposed by Buyer or a Transmission Provider that results in a change to the Facility's deliveries (whether in part or in whole), Seller or Seller's Authorized Representative, as applicable, shall cause the Facility's scheduling coordinator to: (i) promptly notify Buyer of any and all changes to the Day-Ahead Schedule via telephone of any reduction in availability of the Facility that is ten percent (10%) or more of Contract Capacity, and (ii) provide a revised schedule as soon as possible in electronic format, via an internet website accessible to Buyer, Buyer's Authorized Representative, Buyer's Agent, Buyer's real time operators, and any other designated Scheduling representative of Buyer, or via email in the form of an excel spreadsheet (or any combination thereof).

(g) Seller shall provide to Buyer, or Buyer's Agent, or cause to be provided, such additional forecasts or other information as may be reasonably requested by Buyer or Buyer's Agent.

**Section 7.3 Real-Time Data Requirements.**

(a) No later than the first date on which Startup and Test Energy is received by Buyer from the Facility, Seller shall have installed (or caused to have installed) and shall provide primary and backup items for each component of the SCADA related equipment listed below (items (i) through (v) below, collectively, "***Seller's SCADA Integrated Components***"). Seller shall coordinate the installation and maintenance of such Seller's SCADA Integrated Components under the Interconnection Agreement. Seller shall install, or have installed, all of the following Seller's SCADA Integrated Components in a secure NERC interconnection facility (as applicable):

(i) the Project Meter;

(ii) Plant DCS Controller for the Facility;

(iii) RTU, if separate from DCS Controller;

(iv) Internal networking to accommodate transfer to Buyer's RTU designated in (d) below; and

(v) Telecommunications equipment and lines from the Facility to the Point of Delivery.

(b) Throughout the Delivery Term, Seller shall provide Buyer with the following data on a real-time basis:

(i) Read-only access to Energy information collected by the SCADA system for the Facility, including with respect to the following:

(A) Read-only access to all primary and secondary Electric Metering Devices installed, owned and operated by Seller at the Facility (the "***Seller's Check Meters***");

(B) Read-only access to meteorological and pyranometer measurements, the parameters of which are provided in Appendix G; and

(C) MW capacity of the Facility based upon inverter and panel availability, and any other Facility availability information.

(c) If a Participating Member is unable to access its SCADA system (i) due to a failure of Seller's or its Subcontractors' equipment or systems, or operation or maintenance thereof (each such inability, a "***Seller Caused Access Failure***") or (ii) for reasons other than a failure of such Participating Member's equipment or systems, or operation or maintenance thereof, including a Seller Caused Access Failure (each such inability, an "***Access Failure***"), in each case, for a continuous 15-minute period, Buyer shall provide prompt written notice to Seller, and upon written request from Buyer:

(i) Seller shall provide to Buyer energy output information on a continuous basis and pyranometer and meteorological measurements, each in four (4)-second

intervals in the form of a one (1)-hour flat file to Buyer through a secure file transport protocol system with an e-mail back-up for each flat file submittal. Seller shall store such information for up to three (3) months after delivery thereof to Buyer;

(ii) Following receipt by Seller of notice of a Seller Caused Access Failure under Section 7.3(c), Seller shall pay Buyer $1,000 per day as liquidated damages, and not as a penalty, for each day following the first twenty-four (24) hours after receipt of written notice from Buyer of such Seller Caused Access Failure (which notice may be provided via email) until the Seller Caused Access Failure is resolved; and

(iii) Within 48 hours following receipt by Seller of notice of an Access Failure under Section 7.3(c), Seller shall undertake, and coordinate with Buyer, to re-establish real-time data access to the Facility's SCADA system.

The Parties acknowledge and agree that the damages that Buyer would incur due to the failure to timely resolve a Seller Caused Access Failure, as described in clause (ii) above, would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances and, therefore, the payment of the liquidated damages described in clause (ii) is a fair and reasonable remedy for such damages. The provision of such liquidated damages shall be in lieu of actual damages for the occurrence of any Seller Caused Access Failure hereunder, but shall not limit Buyer's rights to (i) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after any such Seller Caused Access Failure, or (ii) recover any damages not directly attributable to any such Seller Caused Access Failure.

(d) All data points shall be provided through the Facility's DCS that is capable of interfacing with both a primary RTU for the LADWP automatic generation control and a secondary RTU for LADWP's back-up automatic generation control. Main automatic general control and back-up automatic generation control shall be connected to independent transports to prevent single point of failure. Communication protocols shall be Distributed Network Protocol ("***DNP***") 3.0. The automatic generation control RTU shall have interface capability for a Participating Member's historian (e.g., PI historian). Seller shall compile and deliver to Buyer a monthly report in the form of Appendix W, confirming the information reported in real-time under Section 7.3(b)(i).

(e) Seller shall provide data required under this Section 7.3 in accordance with the following protocols: (i) DNP 3.0 TCP/IP for primary and secondary communications between the Facility and Buyer, (ii) DNP 3.0 Serial for backup communication between the Facility and Buyer, (iii) DNP 3.0 for communication between the Facility's DCS and intelligent electronic devices (e.g. SEL relays, SEL meters, and Areva relays), and (iv) any specific OSI used by Buyer or Buyer's Agent to execute DNP 3.0 configurations.

(f) A draft SCADA points list shall be provided to Buyer's Agent for review and SCADA data maps of any equipment polled by the Facility plant controller, and the Facility's distributed control system shall be provided to Buyer no later than one hundred twenty (120) days following the Construction Commencement Milestone. The Facility plant controller and

distributed controlled system shall have automatic and remote shutdown via SCADA in case of catastrophic system failure.

(g) At any time during the Delivery Term, Buyer may elect to install check meters in addition to the Electric Metering Devices, at its cost and expense and in accordance with Prudent Utility Practices (the "***Buyer Check Meters***"). Buyer shall, at its own expense, inspect and test its Buyer Check Meters upon installation and annually thereafter in accordance with Prudent Utility Practices. Buyer shall provide Seller with reasonable advance notice of, and permit a representative of Seller to witness and verify, such inspections and tests; provided, however, that Seller shall not unreasonably interfere with or disrupt Buyer's testing activities for the Buyer Check Meters.

**Section 7.4 Maintenance and Scheduled Outages**.

(a) Seller will cooperate in good faith to amend this Section 7.4 per Buyer's maintenance scheduling requests consistent with Prudent Utility Practices.

(b) Buyer and Seller shall cooperate to minimize Scheduled Outages of the Facility during certain periods of each Contract Year (not to exceed twelve (12) weeks per Contract Year), but in accordance with Prudent Utility Practices (such periods of time, the "***Major Maintenance Blockout***"). No later than one hundred twenty (120) days prior to the scheduled 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 minimize its Scheduled Outages during the Major Maintenance Blockout in a manner that is agreeable to both Parties and is consistent with Prudent Utility Practices.

(c) No later than sixty (60) days prior to the scheduled Commercial Operation Date and the commencement of each Contract Year thereafter, Seller shall provide Buyer or Buyer's Agent with its non-binding written projection of all Scheduled Outages for the succeeding three (3) calendar years (the "***Scheduled Outage Projection***") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout, which Scheduled Outage Projection shall at a minimum include all Scheduled Outages relating to (i) any Scheduled Outage related to compliance with any NERC Reliability Standards that pertain to Scheduled Outages for bulk electric system elements applicable to the Facility, or any portion thereof, and (ii) any Scheduled Outage in excess of 20 MW of Contract Capacity during daylight hours. In addition, 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 capacity of the Facility, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer's Agent of any change in the Scheduled Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the occurrence of the Scheduled Outage activity. Seller will use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. Without limiting the generality of the foregoing, Buyer shall have

the right to cancel or delay any Scheduled Outage due to peak load conditions by providing notice to Seller at least three weeks in advance thereof; provided, that Seller shall not be obligated to agree to such cancellation or delay if such cancellation or delay would impact Seller's warranty of the equipment, cause the Facility to fail to comply with any Requirements of Law or Prudent Utility Practice, or cause unreasonable financial impact to the Facility. In the event of a System Emergency, at Buyer's request Seller shall make all reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(d) In the event of a Forced Outage affecting at least ten percent (10%) of the installed capacity of the Facility, Seller shall notify Buyer or Buyer's Agent within not more than one (1) hour after the commencement of the Forced Outage and, within seven (7) days thereafter, provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW capacity of the Facility, if any, during the Forced Outage (such notice, the "***Forced Outage Capacity Notification***"). 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. Seller shall notify Buyer no later than two (2) hours (or such shorter period as may be mutually agreed) prior to commencing recommissioning of the Facility, as applicable, following the end of any such Forced Outage.

(e) With respect to forecasted Scheduled Outages:

(i) Seller shall limit forecasted Scheduled Outages of the Facility that are necessary to comply with NERC Reliability Standards to less than 30 days within any Contract Year; and

(ii) Seller shall limit forecasted Scheduled Outages of the Facility during daylight hours to less than 30 days within any Contract Year, except in unanticipated circumstances (e.g., Force Majeure causing casualty loss) with Buyer's consent, such consent not to be unreasonably withheld.

**Section 7.5 Curtailments; Deemed Delivered Energy.**

(a) Buyer may require Seller to reduce deliveries of all or any portion of the Delivered Energy, and Seller shall comply with any such requirement, at any time and for the duration specified by the Buyer's Agent in a notice to Seller, including for curtailments required due to: (i) a System Emergency (other than due to a Force Majeure event as described in (ii)); (ii) an event of Force Majeure on Buyer's side of the Point of Delivery; or (iii) a Seller Caused Access Failure or other communication failure to the extent caused by a failure of Seller or its Subcontractors (curtailments under the foregoing subsections (i)-(iii), "***Non-Compensable Curtailments***"); (iv) system improvements or scheduled and unscheduled repairs or maintenance on Buyer's side after the Point of Delivery (other than due a Force Majeure event as described in (ii) above); (v) Buyer's failure to Schedule the Delivered Energy from the Point of Delivery not due to a Seller-caused event or System Emergency, including as a result of economic offers and self-schedules of the Delivered Energy into any market; (vi) Buyer's request, in Buyer's sole discretion, to curtail the Delivered Energy for any economic reason; or (vii) an Access Failure or

other communication failure that is neither a Seller Caused Access Failure nor other communication failure caused by a failure of Seller or its Subcontractors (curtailments under the foregoing subsections (iv)-(vii), "***Compensable Curtailments***"); provided, that Seller may continue to generate Energy from the Facility to the extent Seller resells such Energy to third parties in accordance with Section 7.5(e).

(b) During the Agreement Term, the Parties shall reasonably estimate the amount of curtailed Delivered Energy that would have been realized had any of the curtailments set forth in Section 7.5(a) not occurred in accordance with Section 7.5(a) ("***Deemed Delivered Energy***").

(c) Buyer shall not pay Seller for any Non-Compensable Curtailments. Buyer shall pay Seller for Deemed Delivered Energy during Compensable Curtailments.

(d) The Contract Price that Buyer shall pay Seller for Deemed Delivered Energy associated with Compensable Curtailment is as follows: (i) Deemed Delivered Energy that is not Excess Energy at the Full Contract Price, and (ii) Deemed Delivered Energy that is Excess Energy at the applicable Excess Energy Price, *plus* (iii) if Seller claims Production Tax Credits with respect to the Facility, the amount equal to (A) the PTC rate applicable to the Project determined pursuant to Section 45 or 45Y of the Code, as applicable, as in effect during the applicable curtailment, converted to a dollar per MWh basis; provided, that if the Contract Price is set at the amount set forth in Appendix A, Section 2.c., and the Facility qualifies for any energy community bonus adder for the federal tax credits, then (A) Buyer need not pay the portion of the PTC curtailment compensation attributable to the Energy Community Adder unless and until the EC Adder Payment with respect to the EC Adder Payment Period in which the Compensable Curtailment occurs has been paid to Buyer and (B) the amounts paid by Buyer for the PTC curtailment compensation attributable to the Energy Community Adder shall be net of 50% of the Energy Community Adder associated with the Compensable Curtailment, divided by one minus the sum of the then highest marginal combined federal and state corporate income tax rate, expressed as a decimal (taking into account the deductibility of state taxes for federal income tax purposes). For the avoidance of doubt, any curtailment occurring prior to the occurrence of the Commercial Operation Date shall be deemed a Non-Compensable Curtailment. Seller shall use reasonable commercial efforts to sell the curtailed Delivered Energy arising during any Compensable Curtailments, including the Environmental Attributes associated therewith, to third parties, it being agreed there may be no commercially reasonable manner in which Seller can effect any such sales, and provided that Seller shall not be required to sell Delivered Energy to third parties to the extent such sale would require Seller to incur any costs of Transmission Services beyond the Point of Delivery that are necessary to effectuate such sales. Any proceeds from the sale of any curtailed Delivered Energy to a third-party purchaser shall be the property of Seller, and Buyer shall pay Seller the positive difference between the applicable price for such Delivered Energy set forth in Appendix A and the positive third-party sales price for such Delivered Energy, including the sale of any Deemed Delivered Energy. In no event shall Seller be required to remit the proceeds of such sales to Buyer.

(e) Consistent with the requirements of Section 7.3, Seller shall provide the capability to implement curtailments and adjust curtailment amounts in real-time by means of

setpoints received from the SCADA system. Seller shall install sufficient measuring equipment at the Facility to collect data necessary to reasonably determine the amount of curtailed Delivered Energy, including any Deemed Delivered Energy. Seller shall install pyranometers and related measurement equipment around the Facility or in conjunction with the solar panels comprising the Facility to provide the capability of measuring and recording representative solar data in accordance with Appendix G, which data, in conjunction with actual solar panel availability and capability, shall be used to calculate the curtailed Delivered Energy, including any Deemed Delivered Energy.

**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 Delivered Energy and Replacement Energy prior to and at the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Delivered Energy and Replacement Energy from the Point of Delivery. Seller warrants that it will deliver all Energy, Capacity Rights, and 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 Delivered Energy, Replacement Energy, Capacity Rights and Environmental Attributes shall pass from Seller to Buyer at the Point of Delivery; provided, however, that title and risk of loss as to any Replacement Energy the Parties agree shall be delivered to a point or points of interconnection other than the Point of Delivery, and all of the associated Environmental Attributes therewith, shall pass from Seller to Buyer upon delivery of such Replacement Energy to such point or points.

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

**Section 8.1 Transfer of Environmental Attributes**. In addition to the agreement between Buyer and Seller to purchase and sell Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, free and clear of all Liens, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term, for all Facility Energy and 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 such Environmental Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of (other than Liens on the proceeds of the Environmental Attributes in favor of Facility Lender) and will not in the future assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. The consideration for the transfer of Environmental Attributes is contained with the relevant prices for Delivered Energy, as set forth in Appendix A. Seller shall be responsible for: (a) matching, in accordance with all current WREGIS Operating Rules, all available and applicable NERC e-tags pertaining to the corresponding Renewable Energy Certificate before such Renewable Energy Certificate is transferred to Buyer in WREGIS per the terms of this Agreement; (b) matching all available and applicable NERC e-tags to the meter data on an hourly basis; (c) providing the data to Buyer at the time of Renewable Energy Certificate transfer in the same format as the CEC-RPS-

Hourly Form, or any successor, as specified in the Guidebook; and (d) meeting any Qualified Reporting Entity (as defined by WREGIS) responsibility.

**Section 8.2 Reporting of Ownership of Environmental Attributes**. During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.

**Section 8.3 Environmental Attributes**. Upon Buyer's request, Seller shall take all actions and execute all documents or instruments necessary under the Guidebook and all Requirements of Law, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term.

**Section 8.4 Use of Accounting System to Transfer Environmental Attributes**. In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS or any successor system to evidence the transfer of any Environmental Attributes considered Renewable Energy Credits under applicable law or any voluntary program ("***WREGIS Certificates***") associated with Facility Energy or Replacement Energy in accordance with WREGIS reporting protocols and shall register the Facility with WREGIS. After the Facility is registered with WREGIS, at Buyer's option, Seller shall, to the extent permissible under WREGIS rules, transfer WREGIS Certificates using the One-time Inter-Accounts Transfer method, as described in WREGIS Operating Rules, from Seller's WREGIS account to up to three WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer or Buyer's Authorized Representative, or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring of WREGIS Certificates. Forward Certificate Transfers shall occur monthly based on the certificate creation time-line established by the WREGIS Operating Rules then in effect. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer, Buyer's Authorized Representative, or its designees for purposes of any Renewable Energy Certificates attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, or Buyer chooses not to use WREGIS for any reason, then without limiting Buyer's rights under Section 11.2, Seller shall document the production and transfer of Renewable Energy Certificates under this Agreement by delivering to Buyer an attestation in the form set forth in Appendix D for the Renewable Energy Certificates produced by the Facility, or Replacement Energy, measured in whole MWh, or by such other method as Buyer may designate. If any of the foregoing is or becomes inconsistent with the WREGIS rules, the Parties shall reasonably cooperate to amend the

foregoing procedures in a manner reasonably requested by Buyer consistent with the then-effective WREGIS rules.

**Section 8.5 Further Assurances**. If WREGIS (or any successor thereto) is no longer available to provide the services described in Section 8.4, Seller shall, until such time as a substitute provider reasonably acceptable to both Parties is available to provide such services, 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 request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer's Authorized Representatives as Buyer may reasonably request. 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 will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

**Section 8.6 RPS, CEC and EPS Compliance**. Seller warrants that, upon achievement of Commercial Operation, the Facility will be, and shall throughout the Agreement Term remain, (a) RPS Compliant, (b) CEC Compliant, and (c) if applicable, EPS Compliant ("***Compliant***"). Subject to Section 8.7, Seller shall assume all risks, costs or expenses associated with, arising from, or resulting from, its obligation to keep the Facility Compliant, including any costs or expenses incurred by Seller and paid directly to any third parties in connection with or related to greenhouse gas emissions reporting, WREGIS, or maintenance of a CEC certification and verification. From time to time and at any time requested by Buyer, Seller will furnish to Governmental Authorities, Buyer or any other Person designated by Buyer, all certificates and other documentation reasonably requested by Buyer in order to assist Buyer in qualifying the Facility as Compliant. As used in this Section 8.6 and in Section 8.7, the phrase "if applicable, EPS Compliant" (or similar phrases), means that EPS Laws (i) are applicable to the Facility or to this Agreement, and (ii) require that the Facility be EPS Compliant.

**Section 8.7 Change in Law.**

(a) If a Change in Law occurs after the Commercial Operation Date that causes the Facility to cease to be Compliant, then Seller shall (i) first, take all commercially reasonable actions to bring the Facility back into Compliance to satisfy Seller's warranty and obligations under Section 8.6, including incurring costs in an aggregate amount up to Eight Million One Hundred Thousand Dollars ($8,100,000) in the aggregate throughout the Term (the "***Compliance Expenditure Cap***"), and (b) thereafter, take such actions as may be necessary to cause the Facility to remain Compliant. For the avoidance of doubt, any costs or expenditures for EIM or EDAM compliance incurred by Seller under Section 8.7(d) shall not be counted towards the Compliance Expenditure Cap. If after a commercially reasonable period of time after such Change in Law, Seller reasonably determines that such efforts are reasonably likely to require Seller to incur costs in excess of the Compliance Expenditure Cap, Seller shall provide Buyer with notice containing a detailed description of prior compliance actions, the basis for Seller's expectation that required

compliance actions will exceed the Compliance Expenditure Cap, Seller's projected overage (the "***Excess Compliance Cost***") and Seller's projected timeline for successful completion of such compliance actions (an "***Excess Expenditure Notice***").

(b) During any period in which the Facility is not Compliant, the Full Contract Price shall be adjusted to an amount equal to the Market Price Index (the "***Replacement Price***"). In no event will the Replacement Price be greater than the Full Contract Price. The Replacement Price shall remain in place for the remainder of the Agreement Term until the Facility is brought back into Compliance.

(c) If at any time after the earliest of (A) one hundred eighty (180) days of paying the Replacement Price under Section 8.7(b) due to a Change in Law after the Commercial Operation Date that causes the Facility to cease to be Compliant, (B) Seller's delivery of an Excess Expenditure Notice, Buyer determines, in its reasonable discretion, that notwithstanding Seller's commercially reasonable efforts, Seller will be unable to bring the Facility into Compliance, and neither Buyer nor Seller is willing to pay the Excess Compliance Cost, and (C) the RPS Law and EPS Law cease to be effective and are not replaced with a substantially similar program or succeeded by a regulatory regime for which the Facility qualifies and that provides Buyer with comparable benefits, then, so long as the Facility remains a non-carbon emitting resource, Seller shall be deemed to be RPS Compliant and EPS Compliant, and Buyer shall pay ninety percent (90%) of the Contract Price for the Delivered Energy; provided, that if the circumstance in the foregoing clause (A) or clause (B) arises solely as a result of Seller's failure to comply with its obligations under this Agreement, then Buyer may elect by notice to Seller, at its sole discretion to terminate this Agreement, without liability to either Party, except for such liabilities that accrued prior to the date of termination or that otherwise survive termination in accordance with the terms of this Agreement, and Buyer shall return the Development Security or the Performance Security, as applicable, to Seller less any amounts previously drawn by Buyer in accordance with this Agreement; provided, further, that if at any time prior to the termination of this Agreement, Buyer elects, at its sole discretion, to pay the Excess Compliance Cost, Seller shall bring the Facility back into Compliance. Once the Facility is in Compliance and during the period during which it is Compliant, Buyer shall pay Seller the Contract Price.

(d) Subject to this Section 8.7(d), Seller shall assume any risk that the Facility falls out of EIM compliance, or EDAM compliance, as applicable, and shall bring the Facility back into EIM compliance, or EDAM compliance, as applicable, should the Facility fall out of compliance with the EIM requirements, or EDAM requirements, at any time after Commercial Operation Date and throughout the Term. If, after the Commercial Operation Date, the Facility is no longer compliant with any EIM or EDAM requirements, as applicable, as a result of Change in Law (including a change required by the Transmission Provider or Balancing Authority OATT), Seller shall (i) first take all commercially reasonable actions to bring the Facility back to satisfy Seller obligations under Section 4.8 or otherwise in connection with participation in the EIM and EDAM, including incurring costs in an aggregate amount up to Two Million Dollars ($2,000,000) in the aggregate throughout the Delivery Term (the "***EIM Compliance Cost Cap***"), and (ii) thereafter, take such actions as may be necessary to cause the Facility to remain EIM compliant and EDAM compliant. For the avoidance of doubt, any costs or expenditures for RPS Compliance or EPS Compliance shall not be counted towards the EIM Compliance Cost Cap. If after a

commercially reasonable period of time after such Change in Law, Seller reasonably determines that such efforts are reasonably likely to require Seller to incur costs in excess of the EIM Compliance Cost Cap, Seller shall provide Buyer with notice containing a detailed description of prior compliance actions, the basis for Seller's expectation that required compliance actions will exceed the EIM Compliance Cost Cap, Seller's projected overage (the "***EIM Excess Compliance Cost***") and Seller's projected timeline for successful completion of such compliance actions (an "***EIM Excess Expenditure Notice***"). If following Seller's delivery of an EIM Excess Expenditure Notice, neither Buyer nor Seller is willing to pay the EIM Excess Compliance Cost, then Seller shall be excused from its obligations with respect to participation in the EIM or EDAM, as applicable.

**Section 8.8 Change in Market Structure**. If a regionalization or other major change to the market structure of the Western Interconnection occurs during the Agreement Term (other than a Change in Law addressed in Section 8.7 above), then the Parties agree to negotiate such modifications to this Agreement as may be necessary or appropriate to enable the Parties to continue to perform their respective obligations under this Agreement, while preserving, to the maximum extent possible, the existing benefits, burdens, and obligations set forth herein. Such negotiations shall commence promptly following the delivery by one Party to the other Party of a notice requesting such negotiations.

## ARTICLE IX
## MAKEUP OF SHORTFALL ENERGY

**Section 9.1 Makeup of Shortfall**.

(a) If in any Contract Year (which, with respect to (i) the Initial Stub Year together with the first calendar year following the Initial Stub Year, and (ii) the twenty-ninth ($29^{th}$) calendar year together with the Final Stub Year, shall be treated for purposes of this Article IX as a single Contract Year), the amount of Delivered Energy to Buyer is less than the Guaranteed Delivered Energy, as adjusted pursuant to Section 6.5, for such Contract Year (such difference in amount for such Contract Year, the "***Shortfall Energy***"), then, subject to Section 9.1(b) and Section 9.2, Seller shall remedy such shortfall by delivering Delivered Energy in excess of the Guaranteed Delivered Energy to the Point of Delivery or by delivering Replacement Energy and its Environmental Attributes at the Point of Delivery (or such other point as mutually agreed to in writing by the Parties), to Buyer in an amount equal to the Shortfall Energy during the Contract Year immediately following the Contract Year in which the Shortfall Energy accrues (the "***Shortfall Make Up Period***"). The Shortfall Make Up Period for Shortfall Energy shall be extended on a day-for-day basis to allow Seller to make-up Shortfall Energy that resulted from the occurrence of an event of Force Majeure, but, in no event longer than two (2) Contract Years following the end of the Shortfall Make Up Period. Seller shall notify Buyer if it determines at any time during a Contract Year that it will be unable to achieve the Guaranteed Delivered Energy during such Contract Year, and prior to making any delivery of Replacement Energy, Seller shall provide Buyer in writing details of the Replacement Energy, including the producing facility and its compliance status.

(b) Notwithstanding the foregoing, if Seller determines that the aggregate amount of Delivered Energy over any RPS Compliance Period will be less than the sum of the Guaranteed Delivered Energy for such RPS Compliance Period, then Seller shall work with Buyer to provide, with Buyer's approval, qualifying Replacement Energy and its Environmental Attributes in the amount of such expected shortfall during such RPS Compliance Period. If at the end of any RPS Compliance Period during the Delivery Term there is any RPS Compliance Shortfall Energy for such RPS Compliance Period, Seller shall pay to Buyer damages in accordance with Section 9.3 with respect to such RPS Compliance Shortfall Energy.

**Section 9.2 Replacement Energy**. Any Replacement Energy (and its Environmental Attributes) provided by Seller under this Article 9 shall provide the same Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the RPS Compliance Period for which the Replacement Energy is being provided. If Seller cures Shortfall Energy or RPS Compliance Shortfall Energy with Replacement Energy, such deliveries of Replacement Energy shall be limited to an amount that shall not, at any time, exceed a total amount of MW in excess of the Contract Capacity, including any hourly generation from the Facility, except as may be expressly agreed upon by Buyer in its sole discretion. If any Replacement Energy is provided by Seller, Buyer shall pay Seller the applicable Contract Price for such Replacement Energy (taking into account the amount of Delivered Energy delivered to Buyer in the Contract Year for which such Replacement Energy is provided). Any Replacement Energy provided by Seller or purchased by Buyer shall be subtracted from the Shortfall Energy or RPS Compliance Shortfall Energy, as applicable, for purposes of determining the Annual Shortfall Liquidated Damages or the RPS Compliance Shortfall Liquidated Damages, as applicable, as set forth in Section 9.3. If Seller fails to deliver Replacement Energy as described above, then Buyer may purchase Replacement Energy and its Environmental Attributes, promptly notify Seller of the costs thereof, and Seller shall reimburse Buyer for its actual costs of such Replacement Energy and its Environmental Attributes net of the applicable Contract Price; provided, that such costs shall not exceed the Annual Shortfall Liquidated Damages or the RPS Compliance Shortfall Liquidated Damages, as applicable, as set forth in Section 9.3, with respect to such Shortfall Energy or RPS Compliance Shortfall Energy, as applicable. If Seller fails to deliver Replacement Energy as described above, and Buyer thereafter elects not to purchase Replacement Energy and its Environmental Attributes, Seller shall be responsible for Shortfall Liquidated Damages as set forth in Section 9.3. If Buyer elects to purchase Replacement Energy and its Environmental Attributes, and, despite using commercially reasonable efforts, cannot purchase Replacement Energy and its Environmental Attributes, such Energy shall not be considered Deemed Delivered Energy for purposes of determining the Guaranteed Delivered Energy, and Seller shall be responsible for Shortfall Liquidated Damages as set forth in Section 9.3.

**Section 9.3 Shortfall Liquidated Damages and RPS Shortfall Penalty**.

(a) Annual Shortfall Liquidated Damages. Subject to Section 9.3(d), for any Shortfall Energy that has not been cured with Delivered Energy or Replacement Energy in accordance with Section 9.1 and Section 9.2, Seller shall pay Buyer, as liquidated damages, an amount for each MWh of Shortfall Energy equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during the Contract Year of such Shortfall Energy, weighted by hourly Delivered Energy, and (B) Green Value associated therewith, and (ii)

the Full Contract Price (the "***Annual Shortfall Liquidated Damages***") within sixty (60) days following the Shortfall Make Up Period.

(b) RPS Compliance Shortfall Liquidated Damages. Notwithstanding the foregoing and subject to Section 9.3(d), if at the end of any RPS Compliance Period there is any RPS Compliance Shortfall Energy, then Seller shall pay Buyer, as liquidated damages, an amount for each MWh of RPS Compliance Shortfall Energy equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during the ninety (90) day period prior to the end of such RPS Compliance Period, weighted by hourly Delivered Energy, and (B) Green Value associated therewith, and (ii) the Full Contract Price (the "***RPS Compliance Shortfall Liquidated Damages***"). Seller shall pay Buyer such RPS Compliance Shortfall Liquidated Damages within ninety (90) days after the end of such RPS Compliance Period.

(c) RPS Shortfall Penalty. In addition, Seller shall reimburse Buyer for any and all amounts of reasonably documented penalties or fines incurred or paid by any Participating Member as a result of such Participating Member's noncompliance with EPS Law or RPS Law to the extent such non-compliance was caused by Seller's failure to make up the full amount of any RPS Compliance Shortfall Energy before the end of the applicable RPS Compliance Period (the "***RPS Shortfall Penalty***"); provided, that the Buyer shall use commercially reasonable efforts to mitigate any such penalties or fines. The determination of the extent to which such non-compliance was caused by such Seller's failure shall take into account energy shortfalls in the applicable RPS Compliance Period by other generating facilities owned or under contract (directly or indirectly through Buyer) by such Participating Member.

(d) Notwithstanding anything herein to the contrary, (i) to the extent that Seller is responsible for RPS Compliance Shortfall Liquidated Damages with respect to any RPS Compliance Shortfall Energy and there is Shortfall Energy with respect to the last Contract Year in such RPS Compliance Period, then for purposes of the Annual Shortfall Liquidated Damages for such Contract Year, the Shortfall Energy for such Contract Year shall be reduced by the RPS Compliance Shortfall Energy for which RPS Compliance Shortfall Liquidated Damages have been paid, and (ii) to the extent that any Annual Shortfall Liquidated Damages have been paid with respect to any Contract Years in an RPS Compliance Period, then to the extent that any RPS Compliance Shortfall Energy exists in such RPS Compliance Period, then for purposes of the RPS Compliance Shortfall Liquidated Damages for such RPS Compliance Period, the RPS Compliance Shortfall Energy shall be reduced by the Shortfall Energy for which Annual Shortfall Liquidated Damages have been paid for Contract Years in such RPS Compliance Period; provided, that, for the avoidance of doubt, such reductions shall not result in any refund of Annual Shortfall Liquidated Damages or RPS Compliance Shortfall Liquidated Damages by Buyer. Examples of the calculation of the Annual Shortfall Liquidated Damages and RPS Compliance Shortfall Liquidated Damages are set forth in Appendix X attached hereto.

(e) The Parties acknowledge and agree that the damages that Buyer would incur due to the failure to deliver the Shortfall Energy or RPS Compliance Shortfall Energy would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances and, therefore, the payment of Shortfall Liquidated Damages and any RPS Shortfall Penalty is a fair and reasonable remedy for such damages. The provision of

Shortfall Liquidated Damages and any RPS Shortfall Penalty shall be in lieu of actual damages for the occurrence of any Shortfall Energy or RPS Compliance Shortfall Energy hereunder that is not cured with Delivered Energy or Replacement Energy. The payment of Shortfall Liquidated Damages and any RPS Shortfall Penalty shall not limit Buyer's rights to (i) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after the failure to meet the Guaranteed Delivered Energy, including a Default under Section 13.1(j), or (ii) recover any damages not directly attributable to such failure.

**Section 9.4 Application of Replacement Energy**. In the event of shortfalls in multiple Contract Years, any Replacement Energy delivered by Seller shall be applied in priority to the earliest outstanding shortfall hereunder until all shortfalls are satisfied.

## ARTICLE X
## CAPACITY RIGHTS

**Section 10.1 Purchase and Sale of Capacity Rights**. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement between Buyer and Seller to purchase and sell Delivered Energy on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights. Buyer and Seller acknowledge and agree that the consideration for the transfer of Capacity Rights is contained within the relevant prices for Delivered Energy. Without limiting any of Buyer's obligations hereunder, and excluding the Project Purchase Option, in no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise.

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

**Section 10.3 Further Assurances**. Seller shall execute and deliver such necessary documents and instruments and take such other action as Buyer 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

**Section 11.1 Billing and Payment**. Billing, payment and settlements for the products under this Agreement, and for any other amounts or offsets due and payable by Buyer or Seller hereunder, shall be in accordance with this Article XI.

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

(b) Invoices shall be in a form agreed between the Parties, and each invoice shall set forth the following data and information as applicable with respect to the relevant month:

(i) The amount of Startup and Test Energy for such month, if any.

(ii) The amount of Delivered Energy (excluding Startup and Test Energy), if any.

(iii) An accounting of the amount of the Guaranteed Delivered Energy delivered as of such date for the applicable Contract Year, an accounting of new or made-up Shortfall Energy, RPS Compliance Shortfall Energy or Replacement Energy, if applicable, and a confirmation as to whether Seller met or exceeded the Guaranteed Delivered Energy, if applicable.

(iv) The amount of Excess Energy, if any.

(v) The amount of reimbursement to Buyer for the purchase of Replacement Energy, if any.

(vi) The amount of hours of and Deemed Delivered Energy associated with Compensable Curtailments incurred during such period in accordance with Section 7.5, including the cumulative total of hours of and the amount of Deemed Delivered Energy associated with Compensable Curtailments incurred during the current Contract Year and the prior Contract Year, including the current billing period, and consistent with the Scheduling Procedures.

(vii) Seller's reasonable calculation of, and reasonable supporting documentation for, the amounts owed by Buyer for Deemed Delivered Energy associated with Compensable Curtailments in accordance with Section 7.5(c), (d), (e) and (f).

(viii) The amount of money received by Seller, if any, associated with the sale of any curtailed Delivered Energy under Section 7.5(e).

(ix) Any other payments due to Buyer or to Seller under this Agreement, including amounts due to Buyer in connection with third party sales of curtailed Energy under Section 6.3 or Section 7.5(e).

(x) An accounting of the number of WREGIS Certificates delivered during the current billing period including the cumulative total during the current Contract Year, and any WREGIS Withholding Amount withheld during such the applicable month or released to Seller for which payment is due in accordance with Section 11.2.

(xi) The amount of the EC Adder Payment, if any.

(xii) Any other data from time to time reasonably designated by either Party as may be relevant to the calculation of monthly invoices.

(c) Monthly invoices, to the extent applicable, shall be based on meter readings as described in Section 11.6.

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

(e) Using the data set forth in each monthly invoice as required under Section 11.1(b) and the applicable rates set forth in Appendix A or elsewhere herein, each invoice shall set forth in reasonable detail all calculations necessary to show the amount payable thereunder. Subject to the provisions of Section 11.2, Buyer shall pay the amounts set forth in each monthly invoice by wire transfer to the accounts designated on the invoice rendered by Seller on or before the forty-fifth ($45^{th}$) day after receipt by Buyer of the applicable invoice. Bills or portions of bills which are not paid by the due date shall thereafter accrue interest at the Interest Rate, from and including the date payment was due until the date such payment is made. Seller shall pay to Buyer any amount owed to Buyer as set forth in Section 11.1(b)(v) and Section 11.1(b)(ix) with respect to any month at the time Seller submits its next monthly invoice to Buyer, but in no event more than forty-five (45) days after the date of the invoice showing any amount is owed to Buyer.

(f) Attestations of Environmental Attribute transfers to Buyer pursuant to Section 8.1 shall accompany monthly invoices.

(g) At least sixty (60) days prior to the expected date of the startup and testing of the Facility, Seller shall provide to Buyer for its review and approval a final form of monthly invoice to be used hereunder (based on the preliminary draft form therefor attached hereto as Appendix T) and the Parties shall reasonably cooperate to finalize such form (including all changes as may be reasonably necessary or appropriate) prior to the date on which the first invoice is expected to be issued hereunder.

**Section 11.2 WREGIS Withholding**. Buyer shall have the right to withhold from any payment to Seller, for each MWh delivered under Section 6.1, an amount equal to (a) the Startup Price for Startup and Test Energy, and (b) Twenty Dollars ($20) per MWh for other Delivered Energy (such amount, the "***WREGIS Withhold Amount***") until such time as the WREGIS Certificate associated with such MWh has been credited to Buyer's WREGIS account as set forth in Section 8.4, and Buyer shall pay the WREGIS Withhold Amount previously withheld by Buyer

for each MWh for which a WREGIS Certificate was credited to Buyer's WREGIS account in such month pursuant to Section 11.1(b)(xi).

**Section 11.3 Disputed Invoices**. In the event any portion of any bill is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party in writing of the basis for the dispute. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any dispute, the required amount of payment or refund shall be paid within ten (10) Business Days after such determination, with interest accrued at the Interest Rate from and including the due date until the date such payment or refund is paid.

**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 the other Party or any other Person (any such notice being hereby expressly waived) to set off against any amount due such Party from the other Party under this Agreement, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by such other Party under this Agreement if and to the extent paid in the first instance by such Party.

**Section 11.5 Records and Audits**. Seller shall cause its direct subcontractors and suppliers providing services or supplies under this Agreement (such subcontractors or suppliers, "***Subcontractors***") to maintain, and Seller shall itself maintain, all records pertaining to the management of this Agreement, related subcontracts, and performance of services pursuant to this Agreement (including all billings, costs, metering, and Environmental Attributes), in their original form, including reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to verify all costs claimed to have been incurred and services performed pursuant to this Agreement. Buyer and the Authorized Auditors shall have the right to discuss any 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 may be reasonably requested, and 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, or, if the payment is made in the last year of the Delivery Term, no less than the four (4) years following the expiration or termination date of this Agreement. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at Seller's offices located at all reasonable times and without charge. The Authorized Auditors shall have the right to reproduce, photocopy, download, transcribe, and the like, any such records. Any information provided by 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. In addition, Seller shall be subject at any time with thirty (30) days prior written notice to audits or examinations by Authorized Auditors to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and

documentation, and shall cause all of its Subcontractors for agreements entered into after the Effective Date and having a value in excess of One Million ($1,000,000) (such subcontractors, "***Major Subcontractors***") to comply with the foregoing requirements. All such records subject to audit or examination shall be retained by the Major Subcontractor for a period of not less than four (4) years following the final payment by Seller to such Major Subcontractor. Examinations and audits will be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to FAR, Part 30 and 31, *et seq.* accounting procedures, or a portion thereof, examinations and audits will utilize such information. To the extent that the 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 will be provided fourteen (14) days to review the Authorized Auditor's examination results or audit and respond to Buyer's prior to the examination's or audit's finalization and public release. If the 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 thirty (30) days of notice to Seller of the identified overpayment. In addition, Seller and its Major Subcontractors shall also include the following language in each Subcontractor contract: "The Southern California Public Power Authority is a third-party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of the Southern California Public Power Authority. The designation of the Southern California Public Power Authority as a third-party beneficiary of the audit provision shall not confer any rights or privileges on Seller, subcontractor or any other person/entity." Notwithstanding the foregoing, if the 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. Such examination or audit expenses and costs shall be paid by Seller to Buyer within thirty (30) days of notice to Seller of such costs and expenses.

**Section 11.6 Electric Metering Devices**

(a) The Delivered Energy made available to Buyer or Buyer's Agent by Seller under this Agreement shall be measured using the Electric Metering Devices, including the Project Meter, which shall be procured, installed, owned and maintained by Seller, as depicted and labeled in the single-line diagram attached to this Agreement as Appendix R-1, which shall be updated as a condition precedent to the achievement of the Construction Commencement Milestone. All such Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.6(a).

(b) The Electric Metering Devices shall be capable of: (i) measuring back-feed kilowatts and generation kilowatts at revenue quality to provide telemetering to the LADWP Energy Control Center ("***ECC***"), (ii) adjusting the measured values of Delivered Energy for loss compensation from the Project Meter to the Point of Delivery using the Transmission Line Loss Factor at the Point of Delivery for billing purposes, (iii) accurately metering back-feed load when generation output goes to zero, (iv) conforming to the DNP 3.0 protocol and meeting N-1 redundancy (which dictates that if any one meter fails, the Electric Metering Devices will allow the missing telemetry data to be alternately sourced or calculated), and (v) a live data metering

connection accessible using the Inter-Control Center Communications Protocol ("***ICCP***") (as defined by the International Electrotechnical Commission) to enable the exchange of real-time and historical power system monitoring and control data, including measured values and accounting data. Examples of N-1 redundancy compliant architecture include placing backup meters at the same point of metering or installing one meter at each branch (i.e. gross, aux, and net) so the missing telemetry data may be calculated as a difference. Notwithstanding the foregoing capabilities and requirements, the Electric Metering Devices shall function at all times in compliance with the Guidebook, and the RPS Law and Metering Policies.

(c) Seller, at no expense to Buyer, shall inspect and test all such Electric Metering Devices owned, installed, and maintained by Seller upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer or Buyer's Agent to witness and verify, such inspections and tests. Upon request by Buyer or Buyer's Agent, Seller shall perform additional inspections or tests of any such Electric Metering Devices and shall permit a qualified representative of Buyer or Buyer's Agent to inspect or witness the testing of any such Electric Metering Devices. The actual expense of any such requested additional inspection or testing shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyer and Buyer's Agent. Any representative of Buyer witnessing or verifying a test under this Section 11.6(c) shall (i) not interfere with Seller's performance of such test, and (ii) comply with any written site-specific rules or regulations.

(d) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than the threshold set forth in the then-current LADWP Bulk Electric System Meter Policy, an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Buyer's Agent from the best available data, which may include data from any Buyer Check Meters, subject to review and approval by Seller (such approval not to be unreasonably withheld). If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6(d) to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

(e) Commencing on the first date on which Startup and Test Energy is produced by the Facility, and continuing throughout the Delivery Term, Seller shall provide to Buyer read-only access to all Electric Metering Devices installed, owned and operated by Seller that are used to measure Delivered Energy.

## ARTICLE XII
## REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

**Section 12.1 Representations and Warranties by Buyer**. Buyer represents and warrants to Seller that:

(a) Buyer is a validly existing California joint powers authority under the laws of the State of California and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and each Ancillary Document to which it is a party and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all such Ancillary Documents.

(b) The execution, delivery and performance by Buyer of this Agreement and each Ancillary Document to which it is a party have been duly authorized by all necessary action, and do not require any consent or approval of Buyer's Board of Directors or members other than that which has been obtained; provided that further authorizations will be required for Buyer to exercise the Project Purchase Option, the Right of First Offer or the Right of First Refusal.

(c) The execution and delivery of this Agreement and each Ancillary Document to which it is a party, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and each Ancillary Document to which it is a party do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any legal requirements, or its joint powers agreement or bylaws, or any deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Buyer 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, which conflicts or breaches, individually, or in the aggregate, would reasonably be expected to result in a material adverse effect.

(d) This Agreement and each Ancillary Document to which it is a party 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.

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

**Section 12.2 Representations and Warranties by Seller**. Seller represents and warrants to Buyer that:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State of California and the State of Utah and has the legal power and authority to own its properties, and

to carry on its business as now being conducted. Each of the Seller Parties has the legal power and authority to enter into this Agreement and each Ancillary Document to which it is a party and, subject to the receipt of additional regulatory approvals, 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 each Ancillary Document to which it is a party.

(b) The execution, delivery and performance by each Seller Party of this Agreement and each Ancillary Document to which it is a party have been duly authorized by all necessary limited liability company action, and do not and will not require any consent or approval of such Seller Party's managing member or equity holders other than that which has been obtained. No later than five (5) Business Days after the Effective Date, Seller shall deliver to Buyer (i) copies of all resolutions and other documents evidencing such 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 such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party.

(c) The execution and delivery of this Agreement and each Ancillary Document to which any Seller Party is a party, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and each Ancillary Document to which it is a party, do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which any Seller Party is a party or by which it or any of its property is bound, 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 such Seller Party (except as contemplated hereby).

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

(e) There is, as of the Effective Date, no pending, or to the knowledge of Seller, threatened action or proceeding affecting any Seller Party before any Governmental Authority that purports to affect the legality, validity or enforceability of this Agreement or any Ancillary Document to which it is a party.

(f) None of the Seller Parties is in violation of any Requirement of Law which violations, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect on the business, assets, operations, or condition (financial or otherwise) of any Seller Party, or the ability of any Seller Party to perform any of its obligations under this Agreement or any Ancillary Document to which it is a party.

(g) All investors have been informed by Seller of the existence of this Agreement and all Ancillary Documents on or before the date of such investment in Seller.

(h) As of the Effective Date, the organizational structure and ownership of Seller and each Upstream Equity Owner, including a list of each of the Principals of Ultimate Upstream Equity Owner and of each Upstream Equity Owner that is itself owned directly or indirectly in whole or part by the Ultimate Upstream Equity Owner, is as set forth in Schedule 12.2(h). Schedule 12.2(h) may be updated from time to time by agreement of Buyer and Seller to account for a Change in Control that has been consented to by Buyer in accordance with this Agreement.

(i) No Seller Party has entered into this Agreement or any Ancillary Document with the actual intent to hinder, delay or defraud any creditor and each Seller Party received reasonably equivalent value in exchange for its obligations under this Agreement and the Ancillary Documents. No petition in bankruptcy has been filed against any Seller Party, and no Seller Party, nor any of its respective constituent Persons, has ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(j) On and after the date of delivery of the Non-Consolidation Opinion, all of the assumptions made in the Non-Consolidation Opinion, including any exhibits attached thereto, are true and correct in all material respects and Seller has complied with all of the assumptions made with respect to Seller in the Non-Consolidation Opinion.

(k) All Tax returns and reports of each Seller Party required to be filed by it have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon each Seller Party 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 Seller that is not being actively contested by it in good faith and by appropriate proceeding.

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

(m) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of the Delivered Energy, Environmental Attributes or Capacity Rights except to Buyer in accordance with this Agreement.

(n) Seller has Site Control. Seller's agents and representatives have visited, inspected and become familiar with the Real Property 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, and topographical, solar radiation, and air and water quality conditions. 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, handling and storage of materials and equipment, and availability and quality of labor and utilities). Seller has determined that the Real Property constitutes an acceptable and suitable site for the construction and operation of the Facility and the associated transmission line in accordance herewith.

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

(p) Seller has obtained all Permits (including final notice of determination or an applicable exemption under (i) the California Environmental Quality Act, (ii) the National Environmental Policy Act and/or (iii) other comparable environmental law of the state and county (if applicable) where the Facility is located).

**Section 12.3 Covenant of Seller Related to Seller's Status as Special Purpose Entity**. Seller shall at all times comply with the requirements of, and qualify as, a Special Purpose Entity.

**Section 12.4 Covenants of Seller Related to Real Property Agreements**.

(a) Seller shall at all times maintain Site Control and 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 Real Property Agreements, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, is grounds for a termination of Seller's rights under the Real Property Agreements.

(b) Subject to this Section 12.4(b), Seller may from time to time supplement the Real Property Agreements listed in Appendix H to reflect any terminated or transferred Real Property Agreements and to include such additional easements, rights-of-way and other Real Property Agreements as may be required by Seller to perform its obligations under this Agreement; provided that such action shall not reduce or have any other effect on the Contract Capacity, the Expected Annual Generation, the Guaranteed Delivered Energy, the amount of Delivered Energy, or the Facility as described in this Agreement, or cause Seller to be out of compliance with its Permits. Seller shall provide Buyer with written notice of the termination, transfer or addition of any Real Property Agreements occurring prior to the Construction Commencement Milestone and prior written notice of any termination, transfer or addition of any Real Property Agreements occurring after the Construction Commencement Milestone, and the Parties shall revise Appendix B and Appendix H to reflect any such terminations, transfers or additions. Subject to

this Section 12.4(b), any terminated or transferred Real Property Agreements shall no longer constitute Real Property Agreements following such termination or transfer. Any additional Real Property Agreements shall be subject to the terms and conditions of this Section 12.4. Following the Commercial Operation Date, Seller may not remove any portions of or rights or interests in the Real Property under the Real Property Agreements or amend or terminate any of the Real Property Agreements, or otherwise alter, diminish, or otherwise take actions that would adversely affect the Facility, unless (i) Buyer has provided prior written consent to Seller, such consent to be determined in Buyer's reasonable discretion, or (ii) Seller has provided a written certification to Buyer that such action shall not adversely affect Buyer's ability to exercise the Project Purchase Option or Seller's ability to perform its material obligations under this Agreement.

(c) Seller shall at all times prevent the imposition of any Liens or encumbrances, other than Permitted Encumbrances, on Seller's interest in the real property that is subject to the Real Property Agreements. In the event a Lien or encumbrance other than a Permitted Encumbrance is imposed on Seller's interest in any property subject to a Real Property Agreement, Seller shall give Buyer immediate notice thereof and shall take immediate action to release such Lien or encumbrance.

(d) Seller shall not consent, agree to or permit, or take or cause to be taken, any action or non-action to bring about any rescission or termination of, or amendment to, any of the Real Property Agreements, or to take any action in connection with any of the Real Property Agreements that will impair or have an adverse effect on the rights, interest or security of Buyer, or elect to resolve any controversy, claim or dispute under the Real Property Agreements, or to assign, sublease, encumber, mortgage, or grant any security interest in or otherwise dispose of any of the Real Property Agreements or any portion thereof or interest therein without the consent of Buyer, except as permitted in this Agreement.

(e) Seller shall not develop or improve the Real Property other than so as to provide for the facilities and improvements of the Facility in accordance with this Agreement and the terms and conditions of any Permits and Environmental Documents.

(f) Seller shall provide Buyer with true and complete copies of the Real Property Agreements, which may be redacted to redact specific pricing information. Seller shall or shall cause the Lessor, if applicable, to timely and duly record in the land records of the applicable county or counties of the State of California, or as otherwise provided by applicable law, all Real Property Agreements, or memoranda of such Real Property Agreements, to the extent recordable under federal or state law, and shall promptly (and in no event five (5) Business Days thereafter) provide Buyer with true and complete copies of such recorded Real Property Agreements.

(g) Unless otherwise provided in the Consent and Agreement, to the extent that any Real Property Agreements prohibit assignment, or do not expressly permit assignment, of Seller's rights to cure a breach or default thereunder, Seller shall use commercially reasonable efforts to cause each such Real Property Agreement to provide a right for Buyer to cure any breach or default by Seller under such Real Property Agreement (subject to the prior right of any Facility Lender); provided, that using "commercially reasonable efforts" shall not require Seller to re-open

negotiations with landowners for the Real Property Agreements unless Seller amends or otherwise modifies or supplements the Real Property Agreements (whether by way of amendment or Consent and Agreement) to include a cure right with respect to any Real Property Agreement on behalf of the Facility Lenders, in which case, Seller shall also request a similar cure right for Buyer. Seller shall give Buyer immediate notice of (i) any default notice received by Seller or the Lessor or delivered by Seller or the Lessor under any of the Real Property Agreements, or (ii) the commencement of any action or proceeding or arbitration pertaining to any Real Property Agreement. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller or the Lessor, 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 in connection with a Real Property Agreement.

(h) Upon any payment by Buyer under any of the Real Property Agreements to cure any default of Seller or the Lessor thereunder, and thereby prevent termination of any of the Real Property Agreements, or the exercise of any other remedy of the other party or parties thereunder arising out of such default, Buyer shall be entitled to offset amounts otherwise due Seller pursuant to the Monthly Payment hereunder by the amount of such cure payment or remedy cost until Buyer has been fully repaid.

(i) As part of the monthly report provided under Section 4.5(a), Seller shall certify to Buyer, and shall provide Buyer with evidence, that the rent, fees or other payments payable by Seller under the Real Property Agreements and the Interconnection Agreement have been paid prior to the date on which such rent, fees or other payments would be delinquent. If Seller does not provide Buyer with such certification or evidence for the applicable month and if such rent, fees or other payments have not been paid, Buyer, as beneficiary under the Development Security and the Performance Security, may, but shall not be obligated to, cure such default by Seller as provided under this Section 12.4.

**Section 12.5 Covenants of Seller Related to Tax Financing.**

(a) Seller shall provide Buyer with at least one hundred twenty (120) days' prior written notice of the reasonably likely occurrence of any consolidation, merger, or reorganization or other similar transaction, or series of similar transactions (other than, for the avoidance of doubt, any Tax Financing), involving Seller, any Upstream Equity Owner or the Ultimate Upstream Equity Owner.

(b) Seller shall provide Buyer with at least sixty (60) days' prior written notice of the consummation of a Tax Financing, which notice shall include, as applicable, (a)(i) introductory and contact information about and for any potential Tax Equity Investors and (ii) a summary of proposed provisions related to, and the structure surrounding, the power to control the management and policies of Seller, and any entity that is jointly-owned by any Upstream Equity Owner and such Tax Equity Investor arising in connection with the Tax Financing, or (b) introductory and contact information about and for any potential tax credit purchasers. Such notice shall be in addition to, and not in lieu of, any notice required under Section 14.6. Promptly following the consummation of a Tax Financing, Seller shall provide

Buyer with a certificate from an authorized officer of Seller, certifying that a Tax Financing has occurred and that the transaction described in the notice meets all the requirements of a Tax Financing set forth in this Agreement.

(c) In addition to the items listed in subparagraph (b) above, in the event of a Sale Leaseback Financing, Seller shall also provide Buyer with true and correct copies of all agreements with the Lessor (with confidential terms redacted).

(d) It shall be a Default (which shall be subject to cure only if such Default is reasonably capable of being promptly and completely cured by Seller, and if not capable of being promptly and completely cured by Seller, shall be an immediate Default without opportunity to cure hereunder) should Seller enter into a Sale Leaseback Financing unless the Lessor or Lessors thereunder and Seller shall have concurrently entered into an agreement with Buyer providing for (i) substantially the terms set forth in Appendix E, (ii) an estoppel certificate certifying that this Agreement remains in full force and effect and binding on Seller and that each Real Property Agreement remains in full force and effect and binding on the third parties thereto, and (iii) a binding obligation of such Lessor or Lessors and Seller, upon any exercise by Buyer of its Project Purchase Option by delivery of the Purchase Option Exercise Notice as provided under Section 2.5 of the Option Agreement, to terminate such Sale Leaseback Financing prior to the Closing of the purchase by Buyer of the Facility Assets (as such terms are defined in the Option Agreement) by the reconveyance of the Facility Assets or the Facility Site, as applicable, by such Lessor or Lessors to Seller and the termination of the lease of the Facility or the Facility Site, as applicable, by such Lessor or Lessors and Seller, and the transfer upon the Closing of the Facility from such Lessor to Seller, and from Seller to Buyer, or directly from Lessor to Buyer, in either case, in accordance with the terms and conditions set forth in the Option Agreement.

(e) Seller shall deliver or cause to be delivered copies of all resolutions and other documents evidencing the actions taken to approve, execute and deliver such Sale Leaseback Financing Agreements and any the documents required in Section 12.5(d), in each case certified by an authorized representative of any Seller Party as being true, correct and complete, and an incumbency certificate signed by the secretary of such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party.

**Section 12.6 Additional Covenants of Seller**.

(a) Seller and each Seller Party shall, at its expense, take all steps necessary to maintain all Permits, including as set forth in Appendix K, for the performance of such Seller or Seller Party's obligations hereunder and under the Ancillary Documents to which such Seller Party is a party, the construction of the Facility, and the ownership and operation of the Facility, in accordance with the Requirements.

(b) Seller shall provide Buyer with a true and complete copy of the Interconnection Agreement. Seller shall maintain in full force and effect the Interconnection Agreement, and shall not permit any material amendment to or modification of, the Interconnection Agreement without the consent of Buyer, such consent not to be unreasonably withheld, conditioned or delayed; provided, that no such consent shall be required if such amendment or modification (i) is solely to update the equipment that will be utilized for the

interconnection facilities or the single line diagram to reflect changes in system design and/or differences in equipment performance compared to design specifications, (ii) does not constitute a material modification under the Interconnection Agreement, and (iii) does not materially adversely affect Seller's ability to perform its obligations under this Agreement.

(c) In the event that Seller has entered into any Shared Facilities Agreements in accordance with Section 14.22, Seller and each Seller Party shall maintain, and shall cause any Affiliates to maintain, in full force and effect, any Shared Facilities Agreement in form and substance approved by Buyer, and shall not permit any material amendment to or modification of, any Shared Facilities Agreement without the consent of Buyer.

(d) Seller shall not, at any time following the Commercial Operation Date, incur or permit Facility Debt in an amount that, in the aggregate as of the date it is incurred, exceeds seventy percent (70%) of the Facility Cost and (y) provided, that if the proceeds of the sale of PTCs are being financed by the Facility Lenders, during such PTC financing period, ninety percent (90%) of the Facility Cost.

## ARTICLE XIII
## DEFAULT; TERMINATION AND REMEDIES

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

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

(b) **Performance Defaults**. Failure by either Party or Seller Party to perform any of its duties or obligations under this Agreement or the Option Agreement when and as due (other than (i) the failure to make any payment, which is addressed in Section 13.1(a)), (ii) the failure to provide the Development Security in accordance with Section 5.6(a), which shall be an immediate Default for which no cure period is given; (iii) a "Security Default" as set forth in Section 13.1(e), (iv) the failure by Seller to replenish the Performance Security within the periods provided under Section 5.6(d), (v) a Default under Section 12.5(d), and (vi) except as otherwise set forth in this Agreement), which is not cured within thirty (30) days after receipt of written notice thereof from the other Party; provided, that if such failure cannot be cured within such thirty (30) day period despite commercially reasonable efforts and it is reasonable to expect that such failure may be cured within an additional sixty (60) days, and such Party continues to diligently proceed with such cure within such longer period of time, such Party shall have an additional sixty (60) days to cure.

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

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

(e) **Security Default.** The failure of Seller to timely issue, maintain or replace the Development Security or the Performance Security in compliance with the provisions of Section 5.6.

(f) **Insurance Default**. The failure of Seller to maintain and provide the required insurance for the required period of coverage as set forth in Appendix F, and such failure is not cured within ten (10) days after the initial date such coverage is not maintained.

(g) **Fundamental Change**. Except as permitted by Section 14.6, (i) a Party makes an assignment of its rights or delegation of its obligations under this Agreement or the Option Agreement, or (ii) a Change in Control occurs (whether voluntary or by operation of law).

(h) **Real Property Agreement Default**. Except as permitted under Section 12.4 or with Buyer's written consent, any Real Property Agreement fails to be in effect or is terminated for any reason, or amended in any material respect, and the same would have a Material Adverse Effect or limit in any way the exercise by Buyer of the Project Purchase Option.

(i) **Commercial Operation Date Default**. Failure by Seller to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date; provided, that it shall not be a Seller Default under this Section so long as Seller is paying Daily Delay Damages during the one-hundred eighty (180) day period following the Guaranteed Commercial Operation Date; provided, further, that notwithstanding anything to the contrary, it shall be an immediate Default if the Commercial Operation Date has not been achieved by the Outside COD (for the avoidance of doubt as such date is extended due to an extension of the Guaranteed Commercial Operation Date pursuant to Section 3.3(d)).

(j) **Shortfall Energy Termination Default.** The failure of the Facility during any three (3) consecutive Contract Year period (which shall be calculated, for any such failure that occurs during the Initial Stub Year or the Final Stub Year, to include such Initial Stub Year or Final Stub Year, as applicable, and three (3) additional calendar years) to deliver at least seventy percent (70%) of the Guaranteed Delivered Energy.

(k) **Failure to Provide Real Time Data**. The failure of Seller to provide any of the real-time data required to be delivered under Section 7.3, which failure is (i) due to the failure of Seller's equipment or otherwise in Seller's control, or operation or maintenance thereof, and (ii) not cured within twenty-four (24) hours after receipt of written email notice thereof from Buyer; provided, however, Seller shall have up to thirty (30) calendar days to cure such failure so long as such cure is not reasonably possible within twenty-four (24) hours and Seller is using continuous and diligent efforts to resolve such failure; provided, subject to Buyer's approval, which shall not be unreasonably withheld, conditioned or delayed, Seller shall have up to an additional (60) calendar days to cure such failure so long as (A) such cure is not reasonably possible within thirty (30) days and Seller is using continuous and diligent efforts to resolve such failure and (B) such cure can reasonably be expected to be cured within such extended cure period.

**Section 13.2 Failure to Perform under Interconnection Agreement**. (i) The failure by Seller to perform any of its duties or obligations under the Interconnection Agreement when

and as due that has a Material Adverse Effect, and is not cured within thirty (30) days after Seller is notified of such failure or (ii) any termination of any Interconnection Agreement.

**Section 13.3 Default Remedy**.

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may, at its sole option, (i) suspend performance of its obligations hereunder, including delivery of the Delivered Energy, (ii) sell Delivered Energy, Environmental Attributes and Capacity Rights to third parties pursuant to and in accordance with Section 6.3, or (iii) continue to provide services pursuant to its obligations under this Agreement; provided that nothing in this Section 13.2(a) shall affect Seller's other rights and remedies set forth in this Section 13.2. Seller's continued performance 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 required by Section 14.3 seeking injunctive relief in accordance with applicable California or federal 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 the right to terminate this Agreement upon giving notice of intent to terminate to Buyer. 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 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 Development Security or Performance Security against any amounts then payable by Seller to Buyer under this Agreement (ii) termination of this Agreement pursuant to Section 13.3, and (iii) exercise its rights under the Project Purchase Option, subject to the provisions of this Agreement, in each case upon notice of intent to terminate this Agreement to Seller. 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.

**Section 13.4 Termination for Default**.

(a) If a Default occurs, the Party that is not the Defaulting Party (the "***Non- Defaulting Party***") shall have the right, for so long as the Default is continuing, and subject to applicable cure rights, and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice ("***Termination Notice***") by the Non-Defaulting Party 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 Delivered Energy and associated Environmental Attributes and Capacity Rights that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer (if the Non-Defaulting Party) would have paid or Seller (if the Non-Defaulting Party) would have received therefor under this Agreement to the equivalent quantities and relevant market prices either quoted by a bona fide third party offer or which are reasonably expected by Buyer (if the Non-Defaulting Party) or by Seller (if 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. 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. 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.

(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) Delivered Energy in an amount equal to the Assumed Daily Deliveries, (ii) the Environmental Attributes associated therewith, and (iii) all Capacity Rights associated therewith. The "***Assumed Daily Deliveries***" is an amount equal to the greater of (A) the quotient of the Guaranteed Delivered Energy divided by three hundred and sixty five (365), and (B) the average daily amount of Delivered 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. 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. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Termination Payment shall be zero.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding Dispute resolution as provided in Section 14.3(a). Following resolution of the Dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) 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 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, 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 13.3(a)(ii)).

**Section 13.5 Cure Rights of Facility Lender and Buyer**. Buyer shall provide such consents to assignment, substantially in the form attached as Appendix O, as may be reasonably requested by Seller or any Facility Lender (other than a Tax Equity Investor); provided that the terms of such financing or refinancing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement (such consent, the "***Consent and Agreement***"). The Consent and Agreement shall provide such Facility Lender or its agent notice of the occurrence of any Default described in Section 13.1 and (if permitted under this Agreement) the opportunity to cure any such default, and shall require that the provisions of any Financing Agreement provide Buyer with the right, but not the obligation, at any time, to pay any or all amounts due from Seller thereunder, and to do any other act or thing required of Seller, in each case to cure any default of Seller thereunder, or to prevent the termination of such Financing Agreement or the exercise of any remedy by the Facility Lender thereunder that could preclude or impede Buyer from exercising its Project Purchase Option. Seller shall promptly repay Buyer for any costs or expenses incurred by Buyer in making any such payments or otherwise incurred by Buyer in connection with curing a default by Seller. In addition, Buyer shall, if reasonably requested by a Tax Equity Investor, provide a written consent and estoppel substantially in the form attached as Appendix V providing such Tax Equity Investor with the right, but not the obligation, at any time, to pay any or all amounts due from Seller to Buyer hereunder, and to do

any other act or thing required of Seller, in each case, to cure any default of Seller under this Agreement in a manner that is consistent with the applicable terms and conditions of this Agreement and the Option Agreement, and to provide a customary estoppel certificate, provided that the terms and conditions of any such consent, or any such estoppel certificate shall have no (and could not reasonably be expected to have any) adverse effect on Buyer's rights under this Agreement or the Option Agreement, and, except for a reasonable additional cure period for the Tax Equity Investor to cure a default of Seller as set forth in the consent with such Tax Equity Investor, which additional cure period shall be no longer than the cure period afforded the Facility Lender, shall be consistent with the terms and conditions of this Agreement.

## 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 the Effective Date, each Party shall notify the other Party in writing of the identity of its Authorized Representative and alternate if designated. Each Party 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, but shall have the authority to execute or direct the execution of the Ancillary Documents contemplated therein, or to take such other steps as shall be necessary to effectuate the terms of this Agreement. Prior to the Commercial Operation Date, the Authorized Representative of each Party will meet periodically to discuss issues related to the sharing of information on the development, construction, design and operation and maintenance of the Facility. Each Party by notice to the other Party may also designate a Person as its designee as provided in this Agreement and Buyer may appoint Buyer's Agent. To the extent that an Authorized Representative's contact information is not provided in Appendix C, 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.** All notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be in writing and shall be deemed properly sent if delivered in person, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix C. The Parties may update Appendix C, from time to time, to designate another person, address or office to which notices shall be delivered by delivering notice to the other Party in accordance with this Agreement. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests,

demands, consents, waivers and other communications through alternate methods, such as electronic mail.

**Section 14.3 Dispute Resolution**. Subject to Section 13.2(b), regarding suits for injunctive relief, disputes under this Agreement between Seller and Buyer may be resolved in accordance with the provisions of this Section 14.3.

(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 either Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.11 of this Agreement.

(d) As stated in Section 14.11, this Agreement shall be governed by, interpreted and enforced in accordance with laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the Dispute resolution process set forth in this Section 14.3, but subject to Section 14.19, the Parties shall comply with California law governing claims against public entities and presentment of such claims.

**Section 14.4 Further Assurances**. Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

**Section 14.5 Force Majeure**.

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement (other than the obligations of a Party to make payments of amounts due 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 that the Party has given a written detailed description of the event of Force

Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after (i) the initial awareness of the impact of the claimed Force Majeure or (ii) if earlier, the claiming Party reasonably should have become aware of such impact) (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 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 to, or Buyer is unable to receive Energy at, the Delivery Point due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Energy not delivered or received by reason thereof. 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, labor disturbance, act of the public enemy, war, insurrection, riot, terrorism, fire, storm or flood, explosion, epidemic or pandemic (excluding COVID-19 to the extent that the impact of such event related to COVID-19 was known, ought to reasonably have been known or reasonably foreseeable, as of the Effective Date, or could have been avoided or mitigated by contract or otherwise), or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, (i) which actually and demonstrably prevents one Party from performing any of its obligations under this Agreement, (ii) which could not reasonably be anticipated, or if could be anticipated, could not have been avoided or prevented by the exercise of commercially reasonable diligence, (iii) which is not within the reasonable control of, or the result of the fault, 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) which by the exercise of due diligence the affected Party is unable to prevent, overcome or avoid or cause to be prevented, overcome or avoided; provided, nothing in this clause (iv) shall be construed so as to require either 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 reasonable efforts 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: (1) any requirement to comply with a RPS Law or any change (whether voluntary or mandatory) in any EPS Law or RPS Law; (2) any increase of any kind in any cost; (3) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (4) Seller's ability to sell any Energy at a price in excess of those provided in this Agreement or Buyer's ability to purchase any Energy at a price less than those provided in this Agreement; (5) curtailment or other interruption of any Transmission Service, except if such curtailment or interruption of such Transmission Service on the Transmission System is due to a System Emergency; or (6) any changes in the financial condition of the 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.

(c) If based on a Force Majeure Notice, the unaffected Party reasonably concludes that after the Commercial Operation Date a Force Majeure or its impact on the affected Party or the Facility will continue (i) for a period of two hundred forty (240) consecutive days or (ii) an aggregate total of three hundred sixty-five (365) consecutive or non-consecutive days in any rolling five (5) year period, the unaffected Party shall have the right to terminate this Agreement effective upon notice to the affected Party. A termination due to a Force Majeure prior to the Commercial Operation Date is addressed pursuant to Section 3.3(d).

**Section 14.6 Assignment of Agreement; Change in Control.**

(a) Except as set forth in this Section 14.6, neither Party may assign any of its rights, or delegate any of its duties or obligations under this Agreement, or its portion of the Ancillary Documents, without the prior written consent of the other Party, such consent not to be unreasonably withheld. Any Change in Control (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld. Seller shall provide Buyer with one hundred twenty (120) days' prior written notice of any proposed Change in Control. Concurrently with any reorganization or financing transaction or transactions constituting any Change in Control in which Seller merges or consolidates with any other Person and ceases to exist, the successor entity to Seller shall execute a written assumption agreement in favor of Buyer pursuant to which any such successor entity shall assume all of the obligations of Seller under this Agreement and the Ancillary Documents and agree to be bound by all the terms and conditions of this Agreement and Ancillary Documents, as applicable, or the successor entity shall acknowledge the continuing obligations of Seller to perform all of the obligations of Seller under this Agreement and the Ancillary Documents.

(b) Buyer may assign this Agreement or the Ancillary Documents, without the consent of Seller, to one or more members of Buyer, to a California municipal utility, to a joint powers authority established under the Act, or to a California municipal district that provides electric utility service to customers in its district, so long as, at the time of such assignment, such assignee has, and is reasonably forecasted to maintain, an Investment-Grade Credit Rating.

(c) Seller shall not sell or transfer the Facility or the Facility Assets to any Person other than a Person to whom Seller assigns this Agreement and its portion of the Ancillary Documents in accordance with this Section 14.6, other than a Sale Leaseback Financing (for which notice is required), without the prior written consent of Buyer (and in such case Seller may only transfer the Facility and Facility Assets in whole and not in part), provided that any such sale or transfer shall be in compliance with the provisions of Section 12.5(d) and subject to compliance with the Right of First Offer and Right of First Refusal set forth in Section 14.21, or any transfer of any Real Property Agreements permitted pursuant to Section 12.4. Any purported sale or transfer in violation of this Section 14.6(c) shall be null and void and of no force or effect.

(d) Buyer's consent shall not be required in connection with the collateral assignment or pledge of (i) this Agreement, the Option Agreement or any other Ancillary Documents to any Facility Lender, or (ii) all or a portion of the membership interests in Seller or an Upstream Equity Owner, in either case, for the purpose of financing or refinancing of the development, construction, ownership and operation of the Facility; provided, however, that

(1) the terms of such financing or refinancing, and the documentation relating thereto, comply with the applicable terms and conditions of this Agreement, the Option Agreement and any other Ancillary Document, as applicable, and (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. 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 Energy, Environmental Attributes or Capacity Rights (not including the proceeds thereof) to any Facility Lender; provided, that the foregoing shall not limit Seller's right to encumber or pledge all of its assets pursuant to a collateral assignment permitted under this Agreement in favor of any Facility Lender so long as Seller maintains the right to sell all or any portion of the Energy, Environmental Attributes or Capacity Rights to Buyer free and clear of any Liens.

(e) It is specifically agreed that there are no third party beneficiaries of this Agreement, and that, except as provided in this Section 14.6, this Agreement shall not grant any rights enforceable by any Person not a party to this Agreement.

(f) In no event shall Buyer be liable to any Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement or the 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, such Facility Lender (or its designee that acquires title to the Facility, as applicable) shall be bound by the covenants and agreements of Seller in this Agreement and the 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 Facility Lender shall be made only to an entity that is a Qualified Transferee.

**Section 14.7 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 14.8 Attorney Fees & Costs/Reimbursement of Buyer's Attorneys' Fees.** Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement. Notwithstanding the foregoing, to the extent Buyer incurs legal costs in order to facilitate a Sale Leaseback Financing under Section 12.5(c) or the collateral assignment or pledge of this Agreement under Section 14.6(d), to evaluate whether the provisions of the Right of First Offer apply or whether a Change in Control has occurred, or such other action or review that is at the request of Seller,

including in Section 13.4, or as may be required due to the actions or omissions of, Seller, Seller shall bear Buyer's reasonable and documented legal costs therefor.

**Section 14.9 Voluntary Execution**. Both Parties acknowledge that they have read and fully understand the content and effect of this Agreement 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 14.10 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 14.11 Governing Law**. This Agreement shall be governed by, interpreted and enforced in accordance with and construed under the laws of the State of California without regard to conflict of law principles.

**Section 14.12 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 14.13 Execution in Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. The Parties may execute this Agreement by manual signature or by electronic signature, each of which shall have the same force and effect. A signed copy of this Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes, to the extent provided under applicable law, including California's Uniform Electronic Transactions Act.

**Section 14.14 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 14.15 Waiver**. The failure of either Party 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. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from pursuing any available remedies for breaches not rising to the level of a Default,

including recovery of damages caused by the breach of this Agreement and specific performance or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Each Party acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that either Party 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. Each Party hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

**Section 14.16 Relationship of the Parties**. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either such 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 14.17 Indemnification; Damage or Destruction; Insurance; Limit of Liability**.

(a) **Indemnification**. Seller undertakes and agrees to indemnify and hold harmless Buyer, each Participating Member, Los Angeles, the City Council of Los Angeles, the Board of Commissioners, and LADWP,, Glendale, Glendale's City Council, Glendale Water and Power Commission and GWP and Buyer's Board of Directors, and each of their respective officers, agents, employees, advisors, and Authorized Representatives, and each of the foregoing's assigns and successors in interest (collectively, "***Indemnitees***"), and, at the option of Buyer, defend such Indemnitees from and against any and all suits and causes of action (including proceedings before FERC), claims, charges, damages (including indirect, consequential, or incidental), demands, judgments, costs, expenses, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, including but not limited to attorney's fees (including allocated costs of internal counsel) or other monetary remedies and costs of litigation, obligation or liability of any kind or nature whatsoever, in any manner arising by reason of, or incident to, or connected in any manner with the non-performance or breach of this Agreement or any other act, error or omission or willful misconduct by or of Seller or Seller's officers, employees, agents, subcontractors of any tier, including but not limited to any such non-performance breach, act, error or omission or willful misconduct that results in intellectual property infringement or leads to 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 any kind or nature whatsoever, of either Party or third person, or loss of use (hereinafter "***Indemnified Liabilities***"), except to the extent caused by the gross negligence or willful misconduct of any such Indemnitee. The provisions of this paragraph shall be in addition to, and not exclusive of, any other rights or remedies which Indemnitees have at law, in equity, under this Agreement or otherwise. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this subsection may be unenforceable in whole or in part because they are violative of any Requirement of Law or public policy, Seller shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them. The provisions of this paragraph shall survive the expiration or termination of this Agreement.

(b) **Damage or Destruction**. Subject to the provisions of Section 14.5, in the event of any damage or destruction of the Facility or any part thereof, the Facility or such part thereof shall be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by Buyer. Any proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied, subject to the consent of the Facility Lender and the Tax Equity Investor, not to be unreasonably withheld, to the payment for such repair, replacement or reconstruction of the damage or destruction.

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

(d) **Condemnation or Other Taking**. For the Agreement Term, Seller shall promptly notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility or any portion thereof. Buyer may participate in any such proceeding and Seller will deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent (which shall not be unreasonably withheld), Seller shall not (i) agree to any compensation or award, nor (ii) 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 or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility. To the extent Buyer participates in any such proceeding in respect of any interests of Buyer and receives any award independent from that granted to Seller, Buyer may retain such award.

(e) **LIMITATION OF LIABILITY**. PRIOR TO THE COMMERCIAL OPERATION DATE, SELLER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR DAMAGES ARISING OUT OF THE PERFORMANCE OR UNEXECUSED NONPERFORMANCE OF ITS OBLIGATIONS PURSUANT TO THIS AGREEMENT AS A CONSEQUENCE OF A CLAIM OR SUIT INITIATED BY BUYER SHALL NOT EXCEED THE AMOUNT OF FORTY-EIGHT MILLION SIX HUNDRED THOUSAND DOLLARS ($48,600,000); PROVIDED, HOWEVER, THAT THE FOREGOING LIABILITY CAP SHALL NOT APPLY TO (A) INDEMNIFICATION OBLIGATIONS OF SELLER TO BUYER HEREUNDER IN RESPECT OF LIABILITIES OF BUYER TO THIRD PARTIES OR (B) LIABILITY ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER, OR ANY OF SELLER'S OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER. EXCEPT TO THE EXTENT INCLUDED IN (I) DAILY DELAY DAMAGES, SHORTFALL LIQUIDATED DAMAGES, SHORTFALL PENALTY, OR ANY OTHER LIQUIDATED DAMAGES, (II) INDEMNIFICATION OBLIGATIONS OF SELLER TO BUYER HEREUNDER IN RESPECT OF LIABILITIES OF BUYER TO THIRD PARTIES, AND (III) ANY OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY HEREUNDER SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER CONTRACT, TORT

(INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY AT LAW OR IN EQUITY, PROVIDED, HOWEVER, THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY ARISING OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER, OR ANY OF SELLER'S OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.

**Section 14.18 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 14.19 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, representatives and agents, as a condition to receiving confidential information hereunder, to keep confidential, except as required by applicable laws: (i) 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 (ii) documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ((i) and (ii), the "***Confidential Information***"). The provisions of this Section 14.19 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information which (A) is disclosed with the prior written consent of the originating Party, (B) 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, (C) 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 (D) 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 14.19, 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, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries, Affiliates, or parent;

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

(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, 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 Requirements of Law the credit support contemplated by this Agreement and the Ancillary Documents, including the Development Security, and the Performance Security, and the rights, Liens and priorities of Buyer with respect to such credit support.

(e) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California joint powers authority, and each Participating Member is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 7920, *et. seq.* ("***CPRA***"), and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950, *et. seq.* ("***Brown Act***"), each as may be amended or superseded from time to time. 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 or any Participating Member copying or releasing to a third party any Confidential Information of Seller pursuant to the CPRA or Brown Act.

(f) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under the CPRA, then Buyer will notify Seller of the request and its intent to disclose the documents. Buyer, as required by the CPRA, will 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 the Indemnitees from and against all suits, claims, and causes of action brought against any Indemnitee 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 all actual costs incurred by any Indemnitee, and specifically includes costs of experts and consultants as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against any Indemnitee, through and including any appellate proceedings. Seller's obligations to all Indemnitees under this indemnification provision shall be due and payable on a monthly, ongoing basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by all Indemnitees, as well as all damages or liabilities 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, subject to the limitations set forth in Section 14.17(e).

**Section 14.20 Mobile-Sierra**. Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), 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 14.21 Right of First Offer and Right of First Refusal**. From and after the fifth (5th) anniversary of the Commercial Operation Date and continuing through the Agreement Term, Buyer shall have a "***Right of First Offer***" (or "***ROFO***") and a "***Right of First Refusal***" (or "***ROFR***") for any proposed sale of all of the Facility or the Facility Assets or one hundred percent (100%) of the interests held directly or indirectly by Seller with respect to the Facility (any "***Disposition***"); provided that the ROFO and ROFR shall not apply to sales of any interests of Seller in connection with (a) any Tax Financing or Sale Leaseback Financing, (b) sales of any interests in Seller to any Affiliate of Seller, or (c) sales in connection with the exercise of a Facility Lender's remedies pursuant to any Financing Agreement to a Qualified Transferee.

(a) Seller shall not consummate any Disposition without complying with the provisions of this Section 14.21. Prior to Seller consummating any Disposition, Seller shall provide notice to Buyer of Seller's proposed transaction, including the proposed purchase price and basic terms and conditions associated therewith (a "***Proposed Sale Notice***"). Upon receipt of a Proposed Sale Notice, Buyer shall have seventy-five (75) days in which to notify Seller that Buyer may purchase the Facility Assets from Seller (a "***Proposed Purchase Notice***"). If Buyer provides Seller with a Proposed Purchase Notice, then unless and until Seller sends a notice to Buyer rejecting Buyer's proposed purchase price ("***Rejection Notice***"), the Parties shall undertake for a period of up to one hundred eighty (180) days after the date of Buyer's Proposed Purchase Notice to reach an agreement on the terms and conditions of a sale of the Facility Assets to Buyer and to close on the sale of such Facility Assets within ninety (90) days thereafter, which ninety (90) days may be extended to the extent required to obtain funding and any necessary third-party or governmental (including approval from a Participating Member's board or city council).

(b) If (i) Buyer does not provide a Proposed Purchase Notice to Seller, (ii) Seller issues a Rejection Notice or (iii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer and close on such sale within the time periods

set forth in Section 14.21(a), then Seller shall be free to negotiate a Disposition to any third party, subject to the ROFR; provided, however, that (A) any Disposition shall include the assignment of this Agreement and Seller's rights under the Ancillary Documents (in accordance with Section 14.6), and (B) a purchase agreement with respect to such Disposition is executed within one hundred eighty (180) days after the delivery of the Proposed Sale Notice, and such purchase agreement closes within ninety (90) days thereafter, which ninety (90) day period may be extended to the extent required to obtain any necessary third-party or governmental approvals. If Seller and such third party are unable to consummate the Disposition within the aforementioned time period, Seller shall be obligated to repeat the ROFO process. If Buyer provided a Proposed Purchase Notice, then prior to consummating any such Disposition, 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***") in which Seller shall confirm whether the agreed upon purchase price is less than or equal to 95% of the proposed purchase price in the Proposed Purchase Notice. If the proposed purchase price set forth in the Notice of Proposed Third Party Sale is equal to or less than ninety-five percent (95%) of the purchase price included in the Proposed Purchase Notice, then Buyer shall have forty-five (45) days to exercise its Right of First Refusal to purchase the Facility Assets on substantially similar terms to those 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. If Buyer exercises the ROFR, then Buyer and Seller shall attempt to reach agreement on the terms and conditions of a purchase and sale agreement within one hundred eighty (180) days after Buyer's submittal of the ROFR and close within ninety (90) days thereafter, which such ninety (90) day period may be extended to the extent required to obtain funding or any necessary third party or governmental approvals (including any approvals required by the Participating Members' board or city council). If the Parties cannot reach agreement within ninety (90) days after Buyer's submittal of the ROFR, Seller may consummate the proposed Disposition; provided that a purchase agreement is executed within two hundred seventy (270) days after delivery of the ROFR and such purchase agreement closes within ninety (90) days thereafter, which ninety (90) day period may be extended to the extent required to obtain any necessary third party or governmental approvals. If Buyer does not elect to exercise its Right of First Refusal and purchase the Facility Assets within such forty-five (45) days or if the proposed purchase price set forth in the Notice of Proposed Third Party Sale is greater than ninety-five percent (95%) of the purchase price included in the Proposed Purchase Notice, then Seller shall be free to consummate the Disposition; provided that (A) such any sale of the Facility Assets to a third party shall include the assignment of this Agreement and Seller's rights and obligations under the Ancillary Documents, and (B) a purchase agreement is executed within one hundred eighty (180) days after Seller's issuance of the Notice of Proposed Third Party Sale and such purchase agreement closes within ninety (90) days thereafter, which ninety (90) day period may be extended to the extent required to obtain any necessary third-party or governmental approvals. If Seller and such third party are unable to consummate the Disposition within the aforementioned time period, Seller shall be obligated to repeat the ROFO/ROFR process.

**Section 14.22 Future Phases**. During the Term, if Seller or Affiliates of Seller develop additional phases of the Facility or additional projects that (i) share real estate with the Facility Site or infrastructure or equipment of the Facility or (ii) interconnect through the Point of Interconnection, then Seller shall offer to Buyer a power purchase agreement (which shall be substantially in the form of this Agreement) and a purchase option (which shall be substantially in

the form of the Option Agreement) for such additional phase or project. Buyer and Seller shall have one hundred twenty (120) days in which to negotiate diligently in good faith, on an exclusive basis, the applicable definitive agreements. If Buyer and Seller cannot mutually agree on the terms of the definitive agreements after good faith diligent negotiation for a period of one hundred twenty (120) days, then Seller may sell the energy from such additional phase or project to a third party; provided that Seller may not offer terms with respect to such third party which are more favorable than the terms offered to Buyer. If Buyer and Seller mutually agree on the terms of an exclusivity agreement for the purchase of energy from such additional phase or project, then, for the period of time specified in the exclusivity period, Buyer and Seller shall negotiate diligently in good faith to reach agreement on the terms of a power purchase agreement and a purchase option with respect to such additional phase or project. If Buyer and Seller cannot mutually agree on terms of a power purchase agreement and a purchase option with respect to such additional phase or project after good faith diligent negotiation for the period of time specified in such exclusivity agreement, then Seller may sell the energy from such additional phase or project to a third party; provided that Seller may not offer terms with respect to the purchase of energy from such additional phase or project to such third party which are more favorable than the terms offered to Buyer. As of the Effective Date, storage is not included in the Facility. In recognition of emerging technologies and opportunities that will continue to evolve during the Agreement Term, the Parties may incorporate the use of storage technologies into the Facility; provided that the incorporation of the use of storage technologies shall be subject to terms and conditions mutually agreed to by Buyer and Seller. If in connection with Seller's or any of its Affiliates' development of additional phases of the Facility or additional projects, Seller reasonably determines that it requires the use of certain shared facilities, the right to occupy or use shared real property, or the ownership or governance of the rights associated with either, then upon written notice to Buyer from Seller, Buyer shall reasonably cooperate and negotiate in good faith with Seller or Seller's Affiliates to enter into one or more Shared Facilities Agreements with Seller's Affiliates, subject to the approval of Buyer, which approval shall not be unreasonably withheld so long as Buyer is not materially adversely impacted (including under this PPA) by the terms and conditions of any such Shared Facilities Agreement. Each such Shared Facilities Agreement shall provide Buyer with the right to approve any material amendments to each form for the purpose of protecting Buyer's rights under this Agreement and the Option Agreement, and shall provide that Buyer is a third party beneficiary for the purpose of enforcing the agreements, rights, obligations or remedies of Seller or any other party with whom Buyer has entered into a power purchase agreement.

**Section 14.23 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 14.24 Buyer and Participating Member Business Policies**.

Seller acknowledges that its agreement to abide by the business policies of Buyer and the Participating Members is material to Buyer's decision to enter into this Agreement, and accordingly, Seller agrees that it will comply with the following, as such policies may be amended or updated from time to time:

(a) **Recycling Policy**.

(i) Buyer supports the use of recycled content products of all types. Recycled content products help conserve natural resources, including water and energy, and reduce demands upon landfills.

(ii) To the extent feasible, Seller shall submit all written documents on paper with a minimum of thirty percent (30%) post-consumer recycled content. Existing company/corporate letterhead or stationery that accompanies these documents is exempt from this requirement. Documents of two (2) or more pages in length shall be duplex-copied (double-sided pages). Neon or fluorescent paper shall not be used in any written documents submitted to Buyer.

(b) **Non-Discrimination/Equal Employment Practices/Affirmative Action Construction & Non-Construction Agreements**. (i) During the performance of this Agreement, Seller shall not discriminate in its employment practices against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status, domestic partner status, or medical condition. All subcontracts awarded by Seller under this Agreement shall contain a like nondiscrimination provision. The applicable provisions of Executive Order No. 11246 of September 24, 1965; Part 60 741 of 41 Code of Federal Regulations pertaining to handicapped workers, including 60 741.4 Affirmative Action Clause; and Sections 10.8 to 10.13 of the Los Angeles Administrative Code ("***LAAC***") pertaining to nondiscrimination in employment in the performance of City of Los Angeles contracts are incorporated herein by reference and made a part hereof as if they were fully set forth herein. (ii) Any of the above-mentioned subcontracts shall be effective for twelve (12) months following the date of approval for the Affirmative Action practices. An Affirmative Action plan shall be in effect and on file with Buyer for the duration of this Agreement.

(c) **Small Business Enterprise ("SBE") and Disabled Veteran Business Enterprise ("DVBE") Opportunity Program.** (i) It is the policy of LADWP, which Buyer must comply with, to provide SBEs, DVBEs, Disadvantaged Business Enterprises ("***DBEs***"), Emerging Business Enterprises, Women Business Enterprises ("***WBEs***"), Minority Business Enterprises ("***MBEs***"), Lesbian, Gay, Bisexual, or Transgender Business Enterprises ("***LGBTBEs***") and all Other Business Enterprises ("***OBEs***") an equal opportunity to participate in the performance of all Buyer contracts. (ii) LADWP's goals for SBE/DVBE participation in performance of its contracts are twenty-five percent (25%) for SBEs and three percent (3%) for DVBEs. Seller shall assist Buyer in implementing this policy by taking all commercially reasonable steps to ensure that all available business enterprises, including SBEs and DVBEs, have an equal opportunity to compete for and participate in the work being requested by this Agreement. (iii) Seller shall notify LADWP if Seller is a certified SBE, DVBE, DBE, WBE, LGBTBE or MBE. Seller shall provide to LADWP (A) the company name, contact person, address, and telephone number of each proposed Subcontractor that qualifies as an SBE, DVBE, DBE, WBE, LGBTBE or MBE, and (B) copies of all certifications of such Subcontractor as an SBE, DVBE, DBE, WBE, LGBTBE or MBE, as applicable.

(d) **Child Support Policy**. Seller and any of its Subcontractors shall fully comply with all applicable state and federal employment reporting requirements for Seller's and

any Seller's Subcontractors' employees. Seller and any of its Subcontractors shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. Seller and any of its Subcontractors shall certify that the principal owners thereof (which shall include any person who owns an interest of ten percent (10%) or more) complies with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. Seller and any of its Subcontractors shall certify that such compliance will be maintained throughout the Agreement Term. Failure of Seller or any its Subcontractors to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owners to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute an event of default under this Agreement. Failure of Seller or any its Subcontractors or principal owners thereof to cure the event of default within ninety (90) days of notice of such event of default by Buyer shall subject this Agreement to termination.

(e) **Current Los Angeles City Business Tax Registration Certificate Required**. Seller shall obtain and keep in full force and effect during the Agreement Term either (i) all Business Tax Registration Certificates required by the City of Los Angeles Business Tax Ordinance, Article 1, Chapter II, Section 21.00 or (ii) Seller's Vendor Registration Number. Seller's Vendor Registration Number must be shown on all invoices submitted for payment. Failure to do so may delay payment. For additional information regarding applicability of the City Business Tax Registration, contact the City of Los Angeles Clerk's Office at (213) 978-1521.

(f) **Taxpayer Identification Number (TIN)**. Seller has provided its taxpayer identification number (TIN) to Buyer in writing. No payment will be made to Seller under this Agreement without a valid TIN number.

(g) **Equal Benefits Ordinance.** Seller agrees to comply with the requirements of the Equal Benefits Ordinance ("***EBO***"), codified at LAAC § 10.8.2.1, and to sign any required certifications related to such ordinance. Seller agrees to complete the form attached to Appendix Q related to the EBO and any certifications attached thereto.

(h) **Contractor Responsibility Ordinance**. Seller agrees to comply with the requirements of the Contractor Responsibility Ordinance ("***CRO***"), codified at LAAC § 10.40 *et seq.*, and sign any required certifications related to such ordinance. Seller agrees to complete the form attached to Appendix Q related to the CRO and any certifications attached thereto.

(i) **Sweat-Free Procurement Ordinance**. Seller agrees to comply with the requirements of the Sweat Free Procurement Ordinance ("***SFPO***"), codified at LAAC § 10.43 *et seq.*, and sign any required certifications related to such ordinance. Seller agrees to complete the form attached to Appendix Q related to the SFPO and any certifications attached thereto. In the case of impracticality in any provisions of the form due to the substitution of Buyer for the City of Los Angeles, Buyer will reasonably accommodate changes or substitutions in the requirements of the form as necessary to accomplish the purpose of the SFPO.

(j) **Iran Contracting Act of 2010**. In accordance with California Public Contract Code Sections 2200 2208, all bidders submitting proposals for, entering, or renewing contracts with the City of Los Angeles for goods and services estimated at $1,000,000 or more are

required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit" in the form attached to Appendix Q.

(k) **Prevailing Wage**. Seller and Seller's agents, employees and contractors shall, in connection with their performance of this Agreement or their work in respect of the Facility, comply with all applicable provisions of the labor and employment laws and all other Requirements of Law of the state(s) and municipality(ies) in which they operate, including requirements affecting the hours of work, wages and other compensation of employees, nondiscrimination and other conduct of the work. Workers at the Facility shall be paid not less than prevailing wages required under local labor and employment laws, if applicable. Seller shall ensure that the construction Facility is governed by a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or any other similar agreements providing for terms and conditions of employment with applicable labor organizations.

(l) **Los Angeles Municipal Lobbying Ordinance.** Seller agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if Seller qualifies as a lobbying entity under Los Angeles Municipal Code Section 48.02.

(m) **California Russia Sanctions.** Seller will use reasonable best efforts to ensure that Seller complies with California State Executive Order N-6-22, dated March 4, 2022 ("***State Executive Order***") concerning economic sanctions ("***Economic Sanctions***"). Seller has read the State Executive Order, is not the subject or target of any Economic Sanctions, and will use reasonable best efforts to comply with any reasonable request to report information or submit documents to the State, or Buyer, or both, before or after the expiration, termination, or cancellation of this Agreement. At any time and upon written notice to Seller, Buyer, in its sole discretion, may either immediately invoke any one or more of the remedies listed in Section 13.2 for Default under Section 13.1(b), or terminate this Agreement for Buyer's convenience under Section 13.3, if Buyer determines that any one or more of the following circumstances or events have occurred:

(i) Seller is the subject or target of Economic Sanctions;

(ii) Seller is conducting prohibited transactions with sanctioned individuals or entities; or

(iii) Seller has failed to comply, in any manner, with the State Executive Order.

**Section 14.25 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 Code.

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IN WITNESS WHEREOF, each Party was 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.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

Date: 4/16/26

By: _____
Tikan Singh
Vice President

Attest: _____
Daniel E. Garcia
Assistant Secretary

Approved as to legal form:

By: _____
Christine Godinez
General Counsel

Notch Peak Project, LLC, a Delaware limited liability company

By:_____

Name: Michael U. Alvarez

Title: Chief Operating Officer

# APPENDIX A

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## CONTRACT PRICES

**General Contract Prices**. Subject to all of the terms and conditions of this Agreement:

1. **Startup and Test Energy:** Buyer shall, subject to the limitations in Section 3.3(b) of the Agreement, purchase and pay for all Startup and Test Energy from the Facility (along with all associated Environmental Attributes and Capacity Rights) for an aggregate price equal to fifty percent (50%) of the applicable Full Contract Price (the "***Startup Price***").

2. **Payment for Delivered Energy After Facility Commercial Operation Date: Full Contract Price**.

   Commencing on the Commercial Operation Date of the Facility, Buyer shall purchase and pay for all Delivered Energy (along with all associated Environmental Attributes and Capacity Rights but excluding Excess Energy and its associated Environmental Attributes and Capacity Rights) for an aggregate price, as set forth below (the "***Full Contract Price***"):

   a. $46.75 per MWh fixed for the Delivery Term, if the Qualified IPP Retirement occurs by May 31, 2026;

   b. $50.85 per MWh fixed for the Delivery Term, if the Qualified IPP Retirement occurs (a) after May 31, 2026, and (b) by the date the Facility is "placed in service" for tax purposes pursuant to 26 C.F.R. § 1.48-9(b)(5) ("***Placed in Service***");

   c. $52.70 per MWh fixed for the Delivery Term, if the Qualified IPP Retirement does not occur by the date the Facility is Placed in Service.

   "***Qualified IPP Retirement***" means at least one unit of the Intermountain Power Plant is classified as retired by the U.S. Energy Information Administration of the U.S. Department of Energy in the Preliminary Monthly Electric Generator Inventory or the Electric Generator Inventory, without irregular location information, and as a result the coal-fired electric generating unit retirement condition for qualification for the Energy Community Adder for the ITC or PTC is satisfied for the Facility.

3. **Federal Tax Credit Adder Sharing.** If the Full Contract Price is set at the amount set forth in this Appendix A, Section 2.c. and the Facility qualifies for any Energy Community Adder for the ITC or PTC, Seller shall pass through to Buyer fifty percent (50%) of the

economic benefit (net only of out-of-pocket third-party expenses) with respect to the Energy Community Adder realized by Seller (or any upstream Affiliate of Seller including, in the case of a tax equity partnership that directly or indirectly owns Seller, the so-called Class B Member but excluding any Tax Equity Investor) from a Tax Equity Investor or a tax credit transferee substantially concurrently with when such benefit is actually received by Seller or its applicable Affiliate (such payment, the "***EC Adder Payment***") (and the period for which the EC Adder Payment is made, the "***EC Adder Payment Period***").

For the avoidance of doubt, (i) no amount shall be due to Buyer unless and until such benefit is actually realized in cash (or equivalent value) by Seller or its applicable affiliate, (ii) in no event shall Seller or its Affiliates be required to pay any amount associated with a discount at which the adder is monetized and (iii) amounts shall not be deemed to be "actually realized in cash (or equivalent value) by Seller or its applicable Affiliate" until any applicable restricted payment or distribution conditions under any project financing or Tax Financing related to the Facility have been satisfied. Seller shall not enter into or structure any project financing or Tax Financing, refinancing or other transaction, or add any feature thereto, that is designed to circumvent or frustrate the payment obligations owed to Buyer pursuant to this Section 3; provided, that a bona fide, arm's-length project financing or Tax Financing consistent with market practice shall not be deemed to violate such requirement solely because it may affect the timing or amount of such payments.

4. **Payment for Excess Energy: Excess Energy Price**. During the Initial Stub Year, each Contract Year thereafter, and the Final Stub Year, Buyer shall purchase and pay for all (a) Delivered Energy comprising Excess Energy 110%-120% (along with all associated Environmental Attributes and Capacity Rights) for an aggregate price equal to forty percent (40%) of the applicable Full Contract Price per MWh and (b) for all Delivered Energy comprising Excess Energy > 120% (along with all associated Environmental Attributes and Capacity Rights) for an aggregate price equal to twenty-five percent (25%) of the applicable Full Contract Price per MWh (the "***Excess Energy Price***").

# APPENDIX B

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

## FACILITY DESCRIPTION AND MILESTONE SCHEDULE

### ARTICLE I. FACILITY DESCRIPTION

| | | |
|---|---|---|
| 1. | Name of Facility: | Solar photovoltaic powered electric generating facility, known as the "Notch Peak Project" |
| 2. | Facility Site: | Millard County, Utah<br><br>The Project site is located at Latitude: 39°31'23.42"N; Longitude: 112°40'9.06"W |
| 3. | Generator Owner: | Notch Peak Project, LLC |
| 4. | Generator Operator: | Notch Peak Project, LLC, or a Qualified Operator |
| 5. | Equipment:<br>(a) Type of Facility: | Photovoltaic solar generation |
| | (b) Contract Capacity: | 324 MW-ac |
| 6. | Target Commercial Operation Date: | September 30, 2028 |
| 7. | Other included facilities: | N/A |

## ARTICLE II. MILESTONE SCHEDULE

*Note - a single "*" designates a Key Milestone.*

*Note – a double "**" indicates that the Parties anticipate that the Approvals Date will occur on or prior to October 31, 2026. If the Approvals Date has not occurred on or prior to October 31, 2026, the Guaranteed Commercial Operation Date set forth below shall be extended for each day of such delay until all such approvals have been obtained.*

| No. | Milestone Date | Milestone Description | Daily Liquidated Damages or Other Remedies for Delay |
|---|---|---|---|
| 1. | Complete | Execute the Interconnection Agreement | |
| 2. | Complete | Execute and deliver evidence of Site Control Agreements | |
| 3. | Ten (10) Business Days following Approvals Date | Provision of Development Security | |
| 4. | Commercial Operation Date | Post Performance Security | |
| 5. | Ninety (90) days following Approvals Date | Execute Facility financing documents | Mitigation Plan to complete |
| 6. | Ninety (90) days following Approvals Date | Construction Commencement Milestone | Mitigation Plan to complete |
| 7. | Guaranteed Commercial Operation Date** (as may be extended pursuant to the terms of this Agreement) | *Commercial Operation Date | $180,000 per day for each day of delay for up to 180 days of delay (up to amount of Development Security) |

# APPENDIX C

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

## BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION

1. Authorized Representative. Correspondence pursuant to Section 14.1 shall be transmitted to the following addresses:

1.1 If to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Executive Director
Email: projects@scppa.org; ExecutiveDirector@scppa.org

With a copy to:

Los Angeles Department of Water and Power
RE: Notch Peak Project
111 N. Hope Street, Room 1263
Los Angeles, California 90012
Attention: External Resources Management Group – Stanley Chang

Glendale Water and Power
141 N. Glendale Avenue, Level 4
Glendale, CA 91206
Attention: GWP – Power Management
Email: Dayahead@glendaleca.gov

Or, if sent electronically, under Section 4.3, Section 4.6, or Section 4.7, send to all the emails listed below:

RPSOPS@ladwp.com
Stanley.Chang@ladwp.com

1.2 If to Seller:

Notch Peak Project, LLC
c/o Longroad Energy

125 High Street
High Street Tower
Suite 1705
Attention: Asset Management
Email: services@longroadenergy.com
Fax: (617) 819-8083

With a copy to:

Longroad Energy
125 High Street
High Street Tower
Suite 1705
Attention: General Counsel
Email: contracts@longroadenergy.com
Fax: (617) 819-8083

2. Billings and payments pursuant to Section 6.1 and Appendix A shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Finance and Accounting,
Email: projectinvoices@scppa.org
and to: projects@scppa.org

With a copy to:

Los Angeles Department of Water and Power
SCPPA Accounting Section
Re: Notch Peak Project
Atif A. Haji Datoo
111 N. Hope St., Room 462
Los Angeles, California 90012

Or, if sent electronically, under Section 4.3, Section 4.6, or Section 4.7, send to all the emails listed below:

Atif.HajiDatoo@ladwp.com

2.2 If Payment to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Finance and Accounting, projectinvoices@scppa.org

With a copy to:

Los Angeles Department of Water and Power
SCPPA Accounting Section
Re: Notch Peak Project
Atif A. Haji Datoo
111 N. Hope St., Room 462
Los Angeles, California 90012

Or, if sent electronically, under Section 4.3, Section 4.6, or Section 4.7, send to all the emails listed below:

Atif.HajiDatoo@ladwp.com

2.3 If Billing to Seller:

Notch Peak Project, LLC
c/o Longroad Energy
125 High Street
High Street Tower
Suite 1705
Attention: Accounts Payable
Email: ap@longroadenergy.com
Fax: (617) 819-8083

2.4 If Payment to Seller:

Notch Peak Project, LLC

c/o Longroad Energy
125 High Street
High Street Tower
Suite 1705
Attention: Accounts Payable
Email: ap@longroadenergy.com
Fax: (617) 819-8083

3. All notices (other than scheduling notices) required under the Agreement shall be sent pursuant to Section 14.2, postage prepaid, to the address specified below:

If to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Executive Director
Email: projects@scppa.org

With a copy to:

Los Angeles Department of Water and Power
RE: Notch Peak Project
111 N. Hope Street, Room 1263
Los Angeles, California 90012
Attention: External Resources Management Group – Stanley Chang

Or, if sent electronically, under Section 4.3, Section 4.6, or Section 4.7, send to all the emails listed below:

RPSOPS@ladwp.com
Stanley.Chang@ladwp.com

And, if prior to the achievement of Commercial Operation, with a copy to:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Attention: Randy Krager, rkrager@scppa.org
Email: projects@scppa.org

If to Seller:

Notch Peak Project, LLC
c/o Longroad Energy

125 High Street
High Street Tower
Suite 1705
Attention: Asset Management
Email: services@longroadenergy.com
Fax: (617) 819-8083

With a copy to:

Longroad Energy
125 High Street
High Street Tower
Suite 1705
Attention: General Counsel
Email: contracts@longroadenergy.com
Fax: (617) 819-8083

4. Throughout the Delivery Term, all notices related to scheduling, forecasts, availability, real-time access to data, or an Access Failure related to the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Telephone: 626-793-9364
Facsimile: 626-793-9461
Attention: Director of Asset Management
Email: projects@scppa.org

With a copy to:

Los Angeles Department of Water and Power
RE: Notch Peak Project
111 N. Hope Street, Room 1263
Los Angeles, California 90012
Attention: External Resources Management Group – Stanley Chang
Telephone: 213-367-2382

And electronically to the emails listed below:

RPSOPS@ladwp.com
lawmarketing@ladwp.com

If to Seller:

Notch Peak Project, LLC
c/o Longroad Energy

125 High Street
High Street Tower
Suite 1705
Attention: Asset Management
Email: services@longroadenergy.com
Fax: (617) 819-8083

With a copy to:

Longroad Energy
125 High Street
High Street Tower
Suite 1705
Attention: General Counsel
Email: contracts@longroadenergy.com
Fax: (617) 819-8083

**APPENDIX D**

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

**FORM OF ATTESTATION**

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

_____ ("Seller") hereby sells, transfers and delivers to Southern California Public Power Authority ("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 | MWhrs generated |
|---|---|
| _____ 20__ | _____ |
| _____ 20__ | _____ |
| _____ 20__ | _____ |

in the amount of one Environmental Attribute or its equivalent for each megawatt hour 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: _____ tel

# APPENDIX E

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## SALE LEASEBACK REQUIREMENTS

If Seller enters into a Sale Leaseback Transaction, then, with respect to the Lease arising thereunder, Seller and the Lessor thereunder shall agree in writing with Buyer to the following:

(a) Seller shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all material 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 Lease, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, would reasonably be expected to impair the rights of Seller under the Lease, or could be grounds for the Lessor to terminate the Lease.

(b) Seller shall promptly, but in any case no later than two (2) Business Days after learning of the occurrence of any of the following, give Buyer notice of (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under the Lease or of the receipt by Seller of any notice from the Lessor thereof, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to the Lease. 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 the Lease. Seller shall deliver to Buyer, promptly following service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(c) In the event of the termination, rejection, or disaffirmance by Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under the Lease pursuant to the Bankruptcy Code, Seller hereby presently, absolutely, irrevocably and unconditionally grants and assigns to Buyer the sole and exclusive right to make or refrain from making any election available to lessees under the Bankruptcy Code (including, without limitation, the election available pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), 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 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 Lease or the leasehold estate created thereby as terminated under Section 365 of the Bankruptcy Code, after rejection or disaffirmance of the 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 Appendix E, Section (c).

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

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

(f) Upon any payment by Buyer to cure any default of Seller, as lessee thereunder, and thereby to prevent termination of the Lease or the exercise of any other remedy of the Lessor thereunder arising out of such default, Seller, within ten (10) days following receipt of notice from Buyer that it made such payment, shall pay the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to but excluding the date of such payment by the Seller.

(g) A memorandum of the Lease shall be recorded in the applicable county.

# APPENDIX F

# TO THE
# POWER PURCHASE AGREEMENT
# BETWEEN
# SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
# AND
# NOTCH PEAK PROJECT, LLC

## INSURANCE

## I. GENERAL REQUIREMENTS[1]

As specified in the Agreement, Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form reasonably acceptable to Buyer's Risk Management. Such insurance shall be maintained by Seller at Seller's sole cost and expense. 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.

With the exception of Workers' Compensation/Employers Liability Insurance, 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.

Said evidence of insurance shall contain a provision that the policy cannot be canceled or nonrenewed without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to Buyer, addressed as follows: Department of Water and Power of the City of Los Angeles, Attention: Risk Management, Room 465, Post Office Box 5111, 111 North Hope Street, Los Angeles, CA 90012.

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 a retroactive date back to the policy in effect as of the Effective Date with the same limits, terms and conditions of the expiring policy.

Buyer reserves the right to request at any time during the term or during any extension of this Agreement, applying generally accepted risk management principles, to adjust the amounts and types of insurance required hereunder to ensure such coverage remains adequate and relevant throughout the term and any extension of this Agreement, which Seller shall take commercially reasonable efforts to obtain. Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which Buyer may immediately terminate or suspend the Agreement.

Seller shall take commercially reasonable efforts to require, and shall be responsible for, all Major Subcontractors' compliance with the insurance requirements set forth herein. Seller shall also take commercially reasonable efforts to require its other Subcontractors to obtain and

[1] **NTD:** Subject to further review by both parties.

maintain, throughout the performance of any work, types of insurance with limits and terms that are normal and customary for the industry and type of services being performed by such subcontractor; provided that Seller shall obtain and maintain the insurance coverages listed in Section II of this Appendix F.

In the event that any insurance (including the limits or deductibles thereof) described in Section II, other than insurance required by law to be maintained, is not available on commercially reasonable terms in the global commercial insurance market, Buyer shall not unreasonably withhold its agreement to modify Seller's obligation to obtain such insurance to the extent of such unavailability; provided, however, that as a condition of agreeing to such modification, (i) Seller shall first request any such modification in writing, which request shall be accompanied by written reports prepared by Seller and its insurance broker, in a form reasonably acceptable to Buyer, certifying that such insurance is not available on commercially reasonable terms in the global commercial insurance market for similar facilities (and, in any case where the required amount is not so available, certifying as to the maximum amount which is available), and explaining in detail the basis for such conclusions; (ii) at any time after the granting of such modification (but no more frequently than once per year unless Buyer has reason to believe, in good faith, that the applicable insurance has become available on commercially reasonable terms), Buyer may reasonably request supplemental reports updating the reports and reaffirming the certifications described in (i), and Seller shall, within sixty (60) days after such reasonable request, provide to Buyer such supplemental reports in a form reasonably acceptable to Buyer; and (iii) any such modification shall be effective only so long as such insurance shall not be available on commercially reasonable terms in the global commercial insurance market (including re-insurers) and Seller shall promptly notify Buyer if such insurance becomes available, it being understood that the failure of Seller to timely furnish any supplemental report described in (ii) shall be considered conclusive evidence that such modification is no longer effective because such condition no longer exists.

## 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, non-owned and hired vehicles for performance of the work 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 two million dollars ($2,000,000.00) combined single limit per occurrence and shall apply to all operations of Seller. Limits may be satisfied through a combination of primary and excess policies.

The Commercial Automobile Liability policy shall include Buyer, Buyer's Board of Commissioners, its members, and their officers, agents, and employees as additional insureds with Seller and shall insure against liability for death, bodily injury or property damage resulting from the performance of this Agreement. The form of evidence of insurance shall be a Buyer Additional Insured Endorsement or equivalent or an endorsement to the policy acceptable to Buyer's Risk Management Section. Blanket additional insured endorsement shall be deemed acceptable to Buyer's Risk Management for auto liability coverage.

## 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 not less than twenty-five million dollars ($25,000,000.00) combined single limit per occurrence. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be on Buyer's Additional Insured Endorsement form or equivalent or on an endorsement to the policy acceptable to Buyer's Risk Management Section and shall provide for the following:

1. Include Buyer and its officers, agents, and employees as additional insureds for the activities and operations under this Agreement.

2. Include 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. Include a description of the coverages included under the policy.

For general liability coverage, a blanket additional insured endorsement shall be deemed acceptable to Buyer's Risk Management.

## C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage with "follow form" 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 as provided for Buyer on the Buyer Additional Insured Endorsement Form, or equivalent, or on an endorsement to the policy acceptable to Buyer's Risk Management Section. A blanket additional insured endorsement shall be deemed acceptable to Buyer's Risk Management Section. Such policy shall include, as appropriate, coverage for Commercial General Liability, Hired & Non-Owned Commercial Automobile 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 of the Agreement is to be performed and including Employer's Liability insurance, where possible, and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than one million dollars ($1,000,000.00) for each accident or illness and shall be a separate policy if not included with Workers' Compensation coverage. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. 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 Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

**E. Builders' Risk**

Builder's Risk insurance shall be of the "all risk" type, shall be written in full replacement value and shall protect the Seller and Buyer against risks of damage to buildings, structures and materials and equipment whether on site or in transit from any location worldwide. The amount of such insurance shall be not less than the insurable value of the work at completion, subject to standard and commercially available sublimits and deductibles. Buyer shall be an additional insured on the policy. The Builder's Risk insurance shall provide for losses to be payable to the Seller and the aforementioned additional insured, as their interests may appear, unless required otherwise by a Facility Lender. 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 the Buyer. The Builder's Risk policy shall insure against all risks of direct physical loss or damage to property from any cause, including testing, ensuing loss, commissioning, earthquake and flood, subject to standard and commercially available sublimits. Seller shall maintain such Builder's Risk insurance policy in full force and effect from the later of the Effective Date or the date of commencement of construction of the Facility through the Commercial Operation Date. Evidence of this coverage shall be provided by Seller to Buyer by the later of the Effective Date or commencement of construction of the Facility.

**F. Property All Risk Insurance**

Seller shall procure and maintain or cause to be procured and maintained an All Risk Physical Damage policy to insure the full replacement value of the property located at the Facility as described in this Agreement, subject to standard and commercially available sublimits and deductibles. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials or faulty design. This policy need not be in full force and effect until the date of expiration of the Builder's Risk policy described in Paragraph II.E. 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. Cyber Security Insurance**

Seller shall procure and maintain a cyber liability and financial loss, intellectual property infringement, and data protection liability insurance. Seller shall procure and maintain coverage for cyber liabilities and financial loss resulting or arising from acts, errors, or omissions, in connection with data maintenance, hosting, software development and other information technology services provided under this Agreement. Coverage shall include protection for liability arising from:

1. intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets);

2. breaches of security;

3. violation or infringement of any right, privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; and,

4. data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on a third party.

The minimum limits shall be three million dollars ($3,000,000) for each claim and in the aggregate.

## H. Pollution Liability Insurance

Seller shall procure and maintain, or cause to be procured and maintained, for the duration of the Agreement Term Third Party Pollution Liability insurance that provides coverage for liability caused by pollution conditions arising out of the operations of the Facility. Coverage must be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors, the policy must include work performed "by or on behalf" of the insured. Coverage may be satisfied through a standalone third party pollution liability policy or via endorsement under the General Liability policy.

The policy limit must provide coverage of no less than five million dollars ($5,000,000) per occurrence and in the aggregate. Coverage must apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically inured; cleanup costs; and costs of defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

Buyer, its officers, agents, employees, and representatives must be added to the policy as additional insureds by endorsement.

# APPENDIX G

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

## METEOROLOGICAL AND PYRANOMETER MEASUREMENTS

**Monitored Meteorological Data Points:**

1. Irradiance (horizontal and plane of array)
2. Ambient air temperature
3. Back of module temperature
4. Rainfall quantity
5. Wind speed
6. Wind direction
7. Relative humidity

# APPENDIX H

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## REAL PROPERTY AGREEMENTS

Leases

1. Solar Facilities Ground Lease dated September 1, 2013, by and between Granger Peck, trustee of the Granger Peck and Suying Dai Peck Family Trust U/A DTD 12/08/2020 (formerly Granger Peck, individually), as lessor, and Notch Peak Project, LLC, a Delaware limited liability company formerly known as Notch Peak Solar, LLC ("Notch Peak"), as lessee, as evidenced by that certain Memorandum of Lease recorded in the official records of the Millard County Recorder's Office (the "Official Records") on August 18, 2015, as Entry No. 00193089, as amended by that certain First Amendment to Solar Facilities Ground Lease dated January 12, 2016, and by that certain Second Amendment to Solar Facilities Ground Lease dated February 14, 2020, as evidenced by that certain Amended Memorandum of Lease recorded in the Official Records on March 9, 2020, as Entry No. Entry No. 00209190.

2. Solar Facilities Ground Lease dated August 2013, by and between Barbara Anne Pine, not individually but solely as sale Trustee of her Child's Trust created by Alice Roberts' Will and governed by certain provision of the Charles Roberts Family Trust under Trust Agreement dated October 10, 1972 as amended (formerly The Child's Trust for the Benefit of Barbara Pine), as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on September 3, 2015, as Entry No. 00193263, as amended by that certain First Amendment to Solar Facilities Ground Lease dated January 12, 2016, and by that certain Second Amendment to Solar Facilities Ground Lease dated February 27, 2020, as evidenced by that certain Amended Memorandum of Lease recorded in the Official Records on March 12, 2020, as Entry No. 00209225.

3. Solar Facilities Ground Lease dated September 10, 2013, by and between Maurice O. Ellsworth, as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on August 18, 2015, as Entry No. 00193095, as amended by that certain First Amendment to Solar Facilities Ground Lease dated January 12, 2016, and by that certain Second Amendment to Solar Facilities Ground Lease dated February 19, 2020, as evidenced by that certain Amended Memorandum of Lease recorded in the Official Records on March 9, 2020, as Entry No. 00209189.

4. Solar Facilities Ground Lease dated August 15, 2013, by and between Homer K. Cutrubus, as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on August 18, 2015, as Entry No. 00193090, as amended by that certain First Amendment to Solar Facilities Ground Lease dated January 12, 2016, and by that certain Second Amendment to Solar Facilities Ground Lease dated February 27, 2020, as evidenced by that certain Amended Memorandum of Lease recorded in the Official Records on March 9, 2020, as Entry No. 00209188.

5. Solar Facilities Ground Lease dated July 25, 2013, by and between Melissa Ann Wiley, as Successor Trustee of the Family Trust created under Michael and Mary Ann Hiskey Revocable Trust, dated June 20, 2017, as amended (formerly Michael K. Hiskey and Mary Ann Hiskey), as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on August 18, 2015, as Entry No. 00193091, as amended by that certain First Amendment to Solar Facilities Ground Lease dated November 12, 2015, as evidenced by that certain First Amendment to Memorandum of Lease recorded in the Official Records on January 12, 2016, as Entry No. 00194322, as amended by that certain Second Amendment to Solar Facilities Ground Lease dated January 15, 2016, as evidenced by that certain Second Amendment to Memorandum of Lease recorded in the Official Records on February 18, 2016, as Entry No. 00194702, as amended by that certain Third Amendment to Solar Facilities Ground Lease dated February 15, 2020, as evidenced by that certain Third Amended Memorandum of Lease recorded in the Official Records on March 9, 2020, as Entry No. 00209191, and as amended by that certain Fourth Amendment to Solar Facilities Ground Lease dated February 9, 2026, as evidenced by that certain Fourth Amended Memorandum of Lease recorded in the Official Records on February 17, 2026, as Entry No. 00235638.

6. Solar Facilities Ground Lease dated July 8, 2013, by and between Darrell A. Checketts and Nancy S. Checketts, as Trustee of The Checketts Family Revocable Trust dated March 29, 2016, as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on August 18, 2015, as Entry No. 00193093, as amended by that certain First Amendment to Solar Facilities Ground Lease dated January 12, 2016, and by that certain Second Amendment to Solar Facilities Ground Lease dated February 29, 2020, as evidenced by that certain Amended Memorandum of Lease recorded in the Official Records on March 12, 2020, as Entry No. 00209226.

7. Solar Facilities Ground Lease dated July 3, 2013, by and between Edward G. Blankstein, Ingrid C. Blankstein, Ari P. Blankstein and Andrea Blankstein-Otloski, Co-Trustees of the Blankstein Family Trust U/T/A dated April 28, 2006, as amended, as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on August 18, 2015, as Entry No. 00193092, as amended by that certain First Amendment to Solar Facilities Ground Lease dated January 12, 2016, and by that certain Second Amendment to Solar Facilities Ground Lease dated March 9, 2020, as evidenced by that certain Amended Memorandum of Lease recorded in the Official Records on March 26, 2020, as Entry No. 00209359.

8. Solar Facilities Ground Lease dated October 31, 2013, by and between Paul J. West Company, a co-partnership, as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on August 18, 2015, as Entry No. 00193094, as amended by that certain First Amendment to Solar Facilities Ground Lease dated January 12, 2016, and by that certain Second Amendment to Solar Facilities Ground Lease dated February 29, 2020, as evidenced by that certain Amended Memorandum of Lease recorded in the Official Records on March 12, 2020, as Entry No. 00209227.

9. Solar Facilities Ground Lease dated May 25, 2016, by and between KMJA, LLC, a Utah limited liability company, as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on June 16, 2016, as Entry No. Entry No. 00195817.

10. Solar Facilities Ground Lease dated December 14, 2016, by and between E-6 Resources, LLC, a Utah limited liability company, and Elb2 Consuelo, LLC, an Arizona limited liability company, as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Lease recorded in the Official Records on February 9, 2017, as Entry No. 00198246, as amended by that certain First Amendment to Solar Facilities Ground Lease dated February 24, 2020, and by that certain First Amendment to Solar Facilities Ground Lease dated December 20, 2021.

11. Renewable Energy Use Lease Agreement No. 50 dated October 1, 2025, by and between the State of Utah, School and Institutional Trust Lands Administration, as lessor, and Notch Peak, as lessee, as evidenced by that certain Memorandum of Agreement recorded in the Official Records on January 21, 2026, as Entry No. 00235420.

Easement

12. Easement Agreement No. 2787 dated [ ], by and between the State of Utah, School and Institutional Trust Lands Administration, as grantor, and Notch Peak, as grantee, recorded in the Official Records on [ ], as Entry No. [ ].

Surface Waivers

13. Surface Occupancy Waiver Agreement dated April 26, 2023, by and between Katherine Hulse, a married woman, as mineral owner, and Notch Peak, as surface lessee.

14. Surface Occupancy Waiver Agreement dated April 26, 2023, by and between Kimball Young, a married man, as mineral owner, and Notch Peak, as surface lessee.

15. Mineral and Solar Set-Aside and Joint Use Agreement dated December 16, 2025, by and between KMJA, LLC, a Utah limited liability company, as mineral owner, and Notch Peak, as surface lessee, recorded in the Official Records on January 21, 2026, as Entry No. 00235413.

# APPENDIX I

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

## TABLE 1

## EXPECTED ANNUAL GENERATION; GUARANTEED DELIVERED ENERGY

## Facility Contract Capacity: 324 MW

| Contract Year | Expected Annual Generation, MWh | Guaranteed Delivered Energy, MWh |
|---|---|---|
| Initial Stub Year | See note (1) | 80% of Expected Annual Generation |
| 1 | 860,491 | 688,393 |
| 2 | 856,189 | 684,951 |
| 3 | 851,908 | 681,526 |
| 4 | 847,648 | 678,119 |
| 5 | 843,410 | 674,728 |
| 6 | 839,193 | 671,354 |
| 7 | 834,997 | 667,998 |
| 8 | 830,822 | 664,658 |
| 9 | 826,668 | 661,334 |
| 10 | 822,534 | 658,028 |
| 11 | 818,422 | 654,737 |
| 12 | 814,330 | 651,464 |
| 13 | 810,258 | 648,206 |
| 14 | 806,207 | 644,965 |
| 15 | 802,176 | 641,741 |
| 16 | 798,165 | 638,532 |
| 17 | 794,174 | 635,339 |
| 18 | 790,203 | 632,163 |
| 19 | 786,252 | 629,002 |
| 20 | 782,321 | 625,857 |
| 21 | 778,409 | 622,727 |

| | | |
|---|---|---|
| 22 | 774,517 | 619,614 |
| 23 | 770,645 | 616,516 |
| 24 | 766,791 | 613,433 |
| 25 | 762,957 | 610,366 |
| 26 | 759,143 | 607,314 |
| 27 | 755,347 | 604,278 |
| 28 | 751,570 | 601,256 |
| 29 | 747,812 | 598,250 |
| 30 | 744,073 | 595,259 |
| Final Stub Year | See note (2) | 80% of Expected Annual Generation |

(1) The "***Expected Annual Generation***" for the Initial Stub Year equals 860,491 MWh, multiplied by the sum of the percentages (from the Expected Monthly Production Table below) of Energy generated by the Facility during the months between the Commercial Operation Date (prorated for the month in which the Commercial Operation Date occurs if the same does not occur on the first day of such month) and the end of the Initial Stub Year. For example, if the Commercial Operation Date is achieved on June 1, 2026, the Expected Annual Generation in the Initial Stub Year would be 860,491 MWh x 60.16% (June through December) (which is 517,671 MWh), and the Guaranteed Delivered Energy would be 80% of this number (which is 414,137 MWh).

(2) The Expected Annual Generation for the Final Stub Year equals 744,073 MWh multiplied by the sum of the percentages (from the Expected Monthly Production Table below) of Energy generated by the Facility during the months from January 1 of the Final Stub Year to the end of the Final Stub Year (prorated for final month in the Final Stub Year if not a full month). For example, if the Commercial Operation Date is achieved on June 1, 2026, the Expected Annual Generation in the Final Stub Year would be 744,073 MWh x 39.84% (January through May) (which is 296,439 MWh), and the Guaranteed Delivered Energy would be 80% of this number (which is 237,151 MWh).

## TABLE 2

## EXPECTED ENERGY MONTHLY PRODUCTION TABLE

The following table shows the percentage of generation by the Facility per calendar month for purposes of calculating the Guaranteed Delivered Energy for the Initial Stub Year and the Final Stub Year.

| Month | Percent | Month | Percent |
|---|---|---|---|
| Jan | 4.33% | Jul | 11.96% |
| Feb | 5.37% | Aug | 11.39% |
| Mar | 8.01% | Sep | 9.72% |
| Apr | 9.66% | Oct | 7.87% |
| May | 11.17% | Nov | 4.82% |
| Jun | 11.86% | Dec | 3.85% |
| | | **Total** | **100.0%** |

# APPENDIX J

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## QUALITY ASSURANCE PROGRAM

Seller shall implement a Quality Assurance ("***Q/A***") Program to ensure that the performance of the development, design and construction of the Facility fulfills the Requirements. The Q/A Program shall provide assurance that design, purchasing, manufacturing, shipping, storage, construction, testing and examination of all equipment, materials, services and maintenance of the Facility will comply with the Requirements and the manufacturers' and/or suppliers' requirements for successful operation of the Facility.

### Quality at Seller

What is quality? 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 meet or exceed manufacturers' and/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 will target six (6) areas to monitor quality:

1) A written work plan with accompanying Q/A Manual (as defined below).

2) Detailed review of the Facility design at the planning and conceptual design phase.

3) Detailed review of Facility final design prior to construction.

4) A quality control program during construction to verify implementation is in compliance with design documents and document any changes.

5) Independent engineering review of the entire process, from design review through Commercial Operation.

6) 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.

**Written Work Plan and Q/A Manual**

The idea of a written work plan and 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 written work plan and 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 one (1) electronic copy of the Q/A Manual at least sixty (60) days prior to the Facility construction commencement milestone to Buyer or Buyer's Representative. The Q/A Manual shall be kept current by Seller throughout the Agreement Term 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. It shall also provide the plan for detailed review of Facility conceptual design and final design, hold points, and methodology for document control and comment. Furthermore, it shall provide the plan and strategy for quality control and review during the construction of the Facility and for maintenance and operations during Commercial Operation. 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 or qualified internal personnel.

(e) Proper methods are employed for the qualification of personnel who are performing work for the development, design and construction of the Facility.

(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 Operation consistent with manufacturers' and suppliers' recommendations and best industry practices.

**Conceptual Design Review**

Seller shall have a team of professionals who develop and review the Facility layout and Facility conceptual design. The team shall consist of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed and meetings are held to assess optimization of the resource, constructability, minimization of cultural and biological impacts, land use restrictions, and landowner requirements. Preliminary road design will also be started and access to the Facility Site will be reviewed in detail. When this plan is ready for review, a formal plan and map shall be created and a final internal review is conducted. Following that shall be detailed studies for biological, cultural and other types of impacts completed by various third parties. The site plan will be reviewed, modified as necessary, and then used to begin the permitting and public review process. The site plan shall be further modified based on comments in that process. At that point, the site plan can be issued for construction, and final engineering can commence.

In parallel with this process, preliminary conceptual design will start for the major areas of the Facility, including the substation, transmission line, racking systems, and communications system; and road and grading done to develop construction estimates as well as materials specifications. All of these areas of conceptual designs shall be used to check and verify the assumptions used for development of the site plan.

Seller shall provide Buyer the foregoing designs and any related documents at (i) 60% through the Conceptual Design Review Process (as measured in Seller's sole discretion) and (ii) final completion of the Conceptual Design Review Process. Buyer may request interim designs throughout the Conceptual Design Review Process.

**Final Engineering Design**

Following finalization of the site plan, the detailed design will be done for the roads and grading, transmission line, and substation by third party engineering firms licensed to practice in the State of Utah. Each firm shall have its own quality assurance and checking procedures, however, Seller shall review the final work products in detail to check with conformance with this Agreement and provide comments as a second round of quality assurance. When Seller's

comments have been incorporated, the design of each area will be considered final, and that design will then be submitted to an independent engineer for review and comment. This ensures that another entity, in addition to Seller, has done a comprehensive review of all areas of the Facility and details to ensure conformance with this Agreement.

In parallel with final design and checking activities, final geotechnical studies will be conducted at the Facility Site, and a final resource assessment will be performed with the issued-for-construction Facility layout. If existing subsurface conditions are different from what is expected, the racking locations could be slightly modified. Any changes of this nature would be documented in as-built design drawings and approved of in advance by Seller.

Seller shall provide Buyer the foregoing designs and any related documents at (a) 60% through the Final Engineering Design Process (as measured in Seller's sole discretion) and (b) final completion of the Final Engineering Design Process. Buyer may request interim designs throughout the Final Engineering Design Process.

**Quality Assurance at the Construction Site**

Seller will engage a proven construction contractor to perform the construction activities. A Construction Quality Assurance Plan will be agreed upon between Seller and such contractor for all construction activity at the construction site. This Construction Quality Assurance Plan will be consistent with industry standards and norms and will assure all activities receive appropriate attention. Seller will perform active construction management oversight of the contractor during the construction of the Facility to further assure quality performance.

**Quality Assurance and Quality Control ("*Q/C*") Activities After Commercial Operation**

Throughout the Agreement Term, Seller shall perform Q/A and Q/C activities on all materials and equipment associated with the Facility, including all photovoltaic solar power generation equipment, on a periodic basic. Seller shall provide Buyer a detailed report identifying all areas of inspections performed, O&M contractor provided reports, results found, remedial actions taken, if any, and follow up for any corrective actions.

Seller shall provide Buyer with a schedule for performance actions needed as result of Q/A and Q/C activities. Buyer shall review the schedule, and provide comments to Seller.

## QUALITY ASSURANCE (Q/A) AND QUALITY CONTROL (Q/C) CHECKLIST

*[To be provided by Seller prior to Construction Commencement Milestone]*

**APPENDIX K**

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

**PERMITS**

*Shaded items have been obtained as of the Effective Date

| Agency/Office | Permit, Clearance, Approval, or Authorization | Permit Trigger |
|---|---|---|
| Millard County | Conditional Use Permit | Project requires a Conditional C-2 Use Permit in compliance with procedures set forth I Title 10, Chapter 8 of the Millard County Zoning Ordinance. |
| Millard County | Environmental Assessment Report | County Land Use, Development and Management Act, UCA Title 17, Ch.79, Secs. 401-403 & 506 |
| Utah Division of Water Quality | Utah Pollutant Discharge Elimination System General Construction Stormwater Permit | Construction activities that will disturb 1 acre or more of land. |

**APPENDIX L**

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

**OPTION AGREEMENT**

[See attached.]

# OPTION AGREEMENT

**by and between**

**NOTCH PEAK PROJECT, LLC**
**as "Seller"**

**and**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**as "Buyer"**

**Dated as of April 16, 2026**

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# OPTION AGREEMENT

THIS OPTION AGREEMENT is entered into as of this 16th day of April, 2026, by and between Notch Peak Project, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("***Seller***"), and SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ("***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 (California Government Section 6500 *et seq.*). Each of Buyer and Seller is referred to individually in this Agreement as a "***Party***" and together they are referred to as the "***Parties***."

## RECITALS

WHEREAS, Seller and Buyer have entered into that certain Power Purchase Agreement of even date herewith (the "***PPA***") relating to the purchase by Buyer of Delivered Energy, Capacity Rights and associated Environmental Attributes (each as defined in the PPA) generated by a photovoltaic solar facility to be developed, constructed, owned or leased (in accordance with the PPA) and operated by Seller in Millard County, Utah; and

WHEREAS, Seller desires to grant to Buyer, and Buyer wishes to have, an option, exercisable at various times as set forth herein, to purchase the Facility Assets (as defined herein) on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and Buyer entering into the PPA, and in consideration of the agreements herein and in the other Operative Documents (as defined herein) and in reliance upon the representations and warranties therein and herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

## ARTICLE I
## DEFINITIONS

1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Agreement, including in its Recitals, Schedules and Exhibits, shall have the meanings given in Exhibit 1.1. Capitalized terms used herein but not defined in Exhibit 1.1 shall have the meanings ascribed thereto in the PPA.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein, the rules of interpretation set forth in the PPA shall apply to this Agreement.

## ARTICLE II
## OPTION TO PURCHASE; CLOSING

2.1 Option to Purchase. Seller hereby grants Buyer an option, on the terms and conditions set forth in this Agreement, to purchase all of Seller's right, title and interest in and to the Facility Assets, but not the Excluded Assets, and to assume the Assumed Liabilities, but not the Excluded Liabilities, on and subject to the terms and conditions set forth in this Agreement (the "***Project Purchase Option***"). The Project Purchase Option may only be exercised with respect to all of Seller's right, title and interest in and to the Facility Assets, and not with respect to only a portion thereof.

2.2 Exercise of Project Purchase Option. Buyer may exercise the Project Purchase Option in accordance with the provisions of Section 2.3 and Section 2.4 at any time following the Approvals Date:

(a) one (1) year prior to the tenth (10th) anniversary of the Commercial Operation Date;

(b) one (1) year prior to the fifteenth (15th) anniversary of the Commercial Operation Date;

(c) one (1) year prior to every subsequent five (5) years after the fifteenth (15th) anniversary of the Commercial Operation Date until the end of the Agreement Term;

(d) during the sixty (60) day period commencing on the date on which a Termination Notice is provided by Buyer to Seller pursuant to Section 13.4(a) of the PPA.

Each opportunity of Buyer to exercise the Project Purchase Option set forth in Sections 2.2(a), 2.2(b), 2.2(c) and 2.2(d) above shall be referred to herein as a "***Purchase Option Opportunity***."

Seller acknowledges that Buyer has no obligation to exercise the Project Purchase Option and that Buyer may decline to exercise the Project Purchase Option for any or no reason, as Buyer deems appropriate in its sole discretion.

2.3 Tentative Exercise Notice. Buyer shall exercise the Project Purchase Option (if at all) by delivering to Seller a written notice of exercise signed by Buyer (the "***Purchase Option Tentative Exercise Notice***") within the periods of time specified in Section 2.2. Within forty-five (45) days after it receives the Purchase Option Tentative Exercise Notice, Seller will deliver to Buyer (the date of such delivery being the "***Schedule Delivery Date***") the following, dated as of the Schedule Delivery Date: (a) Schedule 3.3 (Real Property Matters); (b) Schedule 3.4 (Seller's Consents); (c) Schedule 3.5 (Certain Assets); (d) Schedule 3.6 (Title to Facility Assets); (e) Schedule 3.7 (Environmental Matters); (f) Schedule 3.8 (Liabilities); (g) Schedule 3.9 (Tax Matters); (h) Schedule 3.10 (Compliance with Laws); (i) Schedule 3.11 (Litigation); (j) Schedule 3.12(a) (Contracts); (k) Schedule 3.12(b) (Exceptions to Assumed Contracts); (l) Schedule 3.13 (Intellectual Property); (m) Schedule 3.15 (Permits); (n) Schedule 3.17 (Employee Matters); (o) Schedule 3.18 (General Matters); and (p) Schedule 3.20 (Support Obligations) ((a) through (p) collectively, the "***Seller Disclosure Schedules***"), each of which shall be applicable to the Facility and be reasonably acceptable to Buyer, and which shall include, as required, any qualifications or exceptions required to make the representations in Article III true and correct in all material respects, and Seller, at its sole discretion, may elect, to submit an RWI Proposal along with the submission of the Seller Disclosure Schedules. Thereupon, Buyer will deliver to Seller Schedule 4.3 (Buyer's Consents) (together with the Seller Disclosure Schedules, the "***Disclosure Schedules***"). Each Disclosure Schedule shall include and set forth the properties, materials, instruments, matters and all other specifications and information as indicated in the form of such Disclosure Schedule attached to this Agreement.

2.4 Fair Market Value; Exercise Notice.

(a) The Fair Market Value shall be determined in accordance with Exhibit 2.4. After the Disclosure Schedules have been delivered and the Fair Market Value has been determined pursuant to Section 2.4(a), Buyer may elect, in its sole discretion to (i) decline to exercise the Project Purchase Option with respect to the applicable Purchase Option Opportunity, or (ii) exercise the Project Purchase Option for the Final Purchase Price determined in accordance with Exhibit 2.4. If Buyer elects to exercise the Project Purchase Option, upon determination of the Final Purchase Price in accordance with Exhibit 2.4, Buyer shall give written notice (the "***Purchase Option Exercise Notice***") to Seller no later than the Purchase Option Exercise Deadline, which notice shall state that Buyer is electing to exercise the Project Purchase Option under this Agreement and designating the applicable Closing Date. If Buyer elects not to exercise the Project Purchase Option, Buyer shall notify Seller of such election. The delivery of a Purchase Option Exercise Notice by Buyer shall constitute a binding and irrevocable commitment by Buyer to purchase, subject to the acceptance of such Purchase Option Exercise Notice by Seller in accordance with Section 2.4(c) and the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII by the applicable Closing Date.

(b) If Buyer (i) declines to exercise the Project Purchase Option pursuant to Section 2.4(b)(i), or (ii) fails to timely deliver a Purchase Option Tentative Exercise Notice or Purchase Option Exercise Notice with respect to any Purchase Option Opportunity within the deadlines therefor under Sections 2.3 and 2.4(a) respectively, then Buyer's right to exercise the Project Purchase Option with respect to such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not affect Buyer's right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity).

(c) If Buyer elects to exercise the Project Purchase Option, then Seller may elect, in its sole and absolute discretion, within thirty (30) days after Buyer delivers the Purchase Option Exercise Notice, to (i) decline to accept the Purchase Option Exercise Notice with respect to the applicable Purchase Option Opportunity, or (ii) accept Buyer's exercise of the Project Purchase Option for the Final Purchase Price determined in accordance with Exhibit 2.4 by providing written notice of such acceptance to Buyer (the "***Acceptance Notice***"); provided, that if Seller submitted an RWI Proposal pursuant to Section 2.3, then such Acceptance Notice may be contingent upon Buyer's agreement to accept such proposal. The delivery of the Acceptance Notice shall create a binding obligation of Seller to sell, the Facility Assets as specified herein, subject to the provisions set forth in Exhibit 2.4 and the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII, by the applicable Closing Date.

(d) If Buyer delivers the Purchase Option Exercise Notice and Seller delivers the Acceptance Notice, then, subject to Section 2.6, the Closing Date shall occur (i) in the case of a Project Purchase Option exercised pursuant to Section 2.2(a), on the tenth (10th) anniversary of the Commercial Operation Date, (ii) in the case of a Project Purchase Option exercised pursuant to Section 2.2(b), on the fifteenth (15th) anniversary of the Commercial Operation Date, (iii) in the case of a Project Purchase Option exercised under Section 2.2(c), on the twentieth (20th), twenty-fifth (25th) or thirtieth (30th) anniversary of the

Commercial Operation Date, as applicable, and (iv) in the case of a Project Purchase Option exercised under Section 2.2(d), no later than twelve (12) months after the delivery by Buyer of a Purchase Option Exercise Notice.

(e) If Seller does not provide an Acceptance Notice within the time period set forth in Section 2.4(d), then Buyer's right to exercise the Project Purchase Option with respect to such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not effect Buyer's right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity). For the avoidance of doubt, neither Party shall have any liability to the other as a result of Seller's election not to provide an Acceptance Notice within the time period set forth in Section 2.4(c).

2.5 Memorandum of Option. Concurrently with the Approvals Date, the Parties shall execute and acknowledge a memorandum of option in the form attached hereto as Exhibit 2.5, and Seller shall record such memorandum in the Official Records of Millard County, Utah. Seller shall be responsible for payment of all fees and Taxes associated with such recording.

2.6 Closing. In the event Buyer delivers a Purchase Option Exercise Notice, the closing of the purchase and sale of the Facility Assets (the "***Closing***") shall occur at 11:59 p.m. local time on the Closing Date designated pursuant to Section 2.4(d), or such later date within the following fourteen (14) days as shall be thereafter designated by Buyer due to conditions affecting Buyer's bond financing with respect to the acquisition of the Facility Assets. The Closing shall be held at the offices of Buyer in Glendora, California, or such other reasonable location in California that Buyer designates in a timely notice to Seller, unless the Parties otherwise agree. All events at the Closing shall be deemed to occur simultaneously, unless otherwise provided herein. In the event the Closing has not occurred by the Closing Date in respect of a Purchase Option Opportunity, then Buyer (in the case of the conditions set forth in Article VII) or Seller (in the case of the conditions set forth in Article VIII), upon written notice to the other Party and without liability, may terminate the Project Purchase Option with respect to such Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective (but such termination shall not effect Buyer's right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity); provided that a Party cannot terminate any Project Purchase Option with respect to a Purchase Option Opportunity if the failure of the Closing to occur is the result of the failure on the part of such Party to perform its obligations under this Agreement.

2.7 No Additional Warranties. OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPLICITLY SET FORTH IN THIS AGREEMENT, NO OTHER REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS OR IMPLIED SHALL BE GIVEN OR DEEMED GIVEN AS TO THE FACILITY OR THE FACILITY ASSETS CONSTITUTING THE FACILITY.

2.8 Assumed Liabilities. At the Closing, Buyer shall assume and agree to pay for, perform, fulfill and discharge from and after the Closing, the liabilities and obligations relating to the Facility Assets or the Business 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***"), including the following:

(a) Any Taxes attributable to the ownership of the Facility Assets or operation of the Business for any Post-Closing Tax Period, except for those Taxes attributable to a Pre-Closing Tax Period imposed on Buyer as transferee or successor by contract or under any Requirement of Law as set forth in Section 2.9(b)(iii);

(b) Any liability or obligation arising from or relating to any period of time or event occurring after the Closing or that, with notice or lapse of time, could constitute or result in a breach of any Assumed Contracts or Transferred Permit arising from or relating to any period of time or event occurring after the Closing, but only to the extent such liability or obligation does not (i) arise from or relate to any breach by Seller of any Assumed Contract or Transferred Permit prior to Closing, (ii) arise from or relate to any event, circumstance, or condition occurring or existing on or prior to Closing that, with notice or the lapse of time, would constitute a breach of any such Assumed Contract or Transferred Permit, and (iii) arise from any violation of law, breach of warranty, tort or infringement committed by Seller at any time;

(c) Any liability or obligation for the remediation or cleanup of the Facility Site under applicable Environmental Laws attributable to the Release of Hazardous Substances arising or occurring after the Closing Date; but only to the extent such liability or obligation does not (i) arise from or relate to any act or omission of Seller prior to Closing, and (ii) arise from any violation of law, breach of any Permit or breach of any Contract committed by Seller at any time; or

(d) Any liability or obligation for the decommissioning or demolition of the Facility and any environmental and other liability associated with such decommissioning or demolition, without regard to the timing or cause of such decommissioning or demolition.

2.9 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, Buyer 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 Buyer by Seller or otherwise be known to Buyer), any liabilities or obligations of any nature, fixed or contingent or known or unknown related to the Facility Assets or the Business other than as specifically set forth in Section 2.7 (with all such unassumed obligations referred to in this Agreement as the "***Excluded Liabilities***"). Without limiting the generality of the preceding sentence, it is agreed that Buyer 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 Buyer by Seller or otherwise be known to Buyer), all of which are included in the Excluded Liabilities:

(a) Any liability or obligation with respect to any Taxes due from Seller, and any Taxes on or attributable to Facility Assets with respect to any Pre-Closing Tax Period;

(b) (i) Any and all Taxes of any member of an affiliated, consolidated, combined or unitary group of which Seller (or any predecessor thereto) is or was a member, including under Treasury Regulations Section 1.1502-6 or any analogous or similar state, local or non-U.S. law or regulation, (ii) all Transfer Taxes, and (iii) all Taxes imposed on

Buyer in respect of Seller and the transactions contemplated hereby as transferee or successor, by contract or under any Requirement of Law, in each case with respect to any Pre-Closing Tax Period;

(c) Any liability or obligation of Seller (other than for Taxes), whether it is ascertainable in nature and amount by reference to the express written terms of any Assumed Contracts or Transferred Permits, relating to the Facility Assets or the Business, including arising out of Seller's ownership and operation of the Facility Assets to the extent that such liability or obligation (i) arose, or otherwise relates to the period, prior to Closing, or (ii) relates to Seller's ownership or operation of the Facility Assets or the Business prior to Closing;

(d) Any liability or obligation of Seller arising out of Seller's ownership and operation of any assets other than the Facility or any business other than the Business at any time;

(e) Any liability or obligation of Seller under (i) any Contract (including with respect to any contractors or subcontractors thereunder) other than an Assumed Contract or (ii) any Permit other than a Transferred Permit;

(f) Any liability or obligation under any Assumed Contract or a Transferred Permit to the extent such liability or obligation arises from or relates to any breach by Seller of any provision of any such Assumed Contracts or Transferred Permits on or prior to the Closing;

(g) Any liability or obligation (other than for Taxes) arising from or relating to any period of time or event occurring prior to the Closing or that, with notice or lapse of time, could constitute or result in a breach of any Assumed Contracts or Transferred Permit arising from or relating to any period of time or event occurring on or prior to the Closing;

(h) Any liability or obligation with respect to any Assumed Contracts or Transferred Permits that is not ascertainable, in nature and amount, solely by reference to the express written terms of any Assumed Contracts or Transferred Permits;

(i) Any liability or obligation of Seller arising from or relating to any breach by Seller of any provision of this Agreement, or arising from a breach by Seller, or any event, circumstance or condition occurring or existing on or prior to the Closing that, with notice or lapse of time, constitutes or results in a breach by Seller under this Agreement, the PPA (including the Ancillary Documents), or any of the Operative Documents;

(j) Any liability or obligation under any Contract entered into during the Applicable Diligence Period and not assumed by Buyer pursuant to Section 5.10;

(k) Any liability or obligation for the remediation or cleanup of the Facility Site under applicable Environmental Laws attributable to the Release of Hazardous Substances arising or occurring on or prior to the Closing Date;

(l) Any liability or obligation of Seller with respect to the employment or termination of any employee or group of employees by Seller, 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 Seller is a party or by which Seller is bound (whether oral or written and whether express or implied in fact or in law) or any past practice or custom or otherwise, it being understood and agreed that after the Closing, Buyer will itself be specifying the terms on which it offers employment to any individual to whom it, in its sole discretion, chooses to offer employment and will not be bound by any term of employment of Seller in effect at or at any time prior to the Closing;

(m) Any liability or obligation of Seller for pension fund payments or unfunded pension fund liabilities;

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

(o) Any liability or obligation of Seller or its Affiliates (other than for Taxes) arising out of or related to any claim or loss against Seller or its Affiliates or any third-party claims or losses which adversely affects the Facility Assets and which shall have been asserted prior to the Closing or to the extent the basis of which shall have arisen exclusively prior to the Closing;

(p) Any liability or obligation of Seller 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 (and including workers' compensation claims, discrimination, wrongful discharge, or unfair labor practice), 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 Seller or its Affiliates arising prior to the Closing; and

(q) Any liability or obligation of Seller or its Affiliates representing Facility Debt incurred by Seller or its Affiliates or Liens or encumbrances other than Closing Permitted Encumbrances.

Seller shall remain liable for or otherwise pay or discharge, or cause the payment or discharge, of all Excluded Liabilities prior to the Closing.

2.10 Schedule Updating: Final Purchase Price.

(a) No later than the date that is thirty (30) days prior to the designated Closing Date (the "***Updated Schedule Delivery Date***"), Seller shall have provided Buyer with updated Seller Disclosure Schedules which shall be the final Seller Disclosure Schedules for purposes of its representation and warranties made under Article III as of the Closing. Notwithstanding the foregoing, any update included in an updated Seller Disclosure Schedule delivered pursuant to this Section 2.9(a) shall have no effect for purposes of

determining the satisfaction of any condition to Closing set forth in Article VII and shall not alter the effect of Buyer's right to terminate this Agreement pursuant to Section 10.2.

(b) At the Closing, upon the terms and subject to the conditions set forth herein, Buyer shall, in exchange for the sale, transfer, assignment, conveyance and delivery of the Facility Assets by Seller, and the assumption by Buyer of the Assumed Liabilities in accordance with this Agreement, pay Seller the Final Purchase Price determined in accordance with Exhibit 2.4. Such Final Purchase Price shall be paid by Buyer by wire transfer of immediately available funds to an account designated in writing by Seller. The Parties agree to allocate the Final Purchase Price (and all other capitalizable costs) among the Facility Assets in accordance with Code §1060 and the U.S. Department of Treasury regulations thereunder (and any similar provision of state, local, or non-U.S. law, as appropriate).

2.11 Proration. Buyer and Seller agree that any items normally prorated, including those listed below, relating to the Business and the Facility Assets, shall be prorated as of the Closing, with Seller being liable therefor to the extent such items relate to periods (or portions thereof) ending on or prior to the Closing, and Buyer being liable to the extent such items relate to periods (or portions thereof) beginning after the Closing with, to the extent practicable, a cash settlement on the Closing:

(a) personal property and real estate Taxes, assessments and other charges, if any, by the applicable municipality, on the basis of the applicable municipality's fiscal year, on or with respect to the Business;

(b) rent, Taxes and other items payable by or to Seller under any of the Assumed Contracts assigned to and assumed by Buyer hereunder which are associated with the Facility Assets;

(c) any Permit, registration, compliance, assurance fees or other fees with respect to any Transferred Permit comprising part of the Facility Assets; and

(d) sewer rents and charges for water, telephone, electricity and other utilities.

In connection with the prorations referred to in this Section 2.11, in the event that the actual amounts for such items are not available on the Closing Date, the proration to be used as of the Closing Date shall be based upon actual Taxes or fees for the preceding year (or such other appropriate period of time) for which actual Taxes or fees are available. The prorated amounts of Taxes or fees shall be adjusted upon the request of Seller, on the one hand, or Buyer, on the other hand, within sixty (60) days following the date on which actual amounts become available. Seller and Buyer shall furnish each other with such documents and other records as may be reasonably requested in order to confirm any adjustments to the proration calculations made pursuant to this Section 2.11. The Parties shall make any true-up payments owed to the other Party within thirty (30) days following receipt by the Parties of all required information required in connection with the prorations referred to in this Section 2.11. Taxes shall be prorated as provided in the definition of "Straddle Period".

2.12 Closing Costs; Transfer Taxes and Fees. Seller shall be solely responsible for all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed by reason of the transfer of the Facility Assets as provided hereunder (collectively, "***Transfer Taxes***"), and any deficiency, interest or penalty asserted with respect thereto, under applicable Requirements of Law. Seller shall provide Buyer with evidence reasonably satisfactory to Buyer that all Transfer Taxes have been paid by Seller. If any Transfer Taxes are imposed on Buyer and Buyer pays such Transfer Taxes, Buyer shall have the right to seek reimbursement for its payment of such Transfer Taxes from Seller, and Seller shall be obligated to reimburse Buyer for such payment.

2.13 Decommissioning and Other Costs. Unless a Closing occurs pursuant to the exercise by Buyer of 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 such decommissioning or demolition, without regard to the timing or cause of such decommissioning or demolition.

2.14 Closing Obligations. At the Closing: (a) Seller will deliver (or will have delivered) to Buyer each of the certificates, instruments, documents and agreements referred to in Article VII to be provided by Seller on or prior to the Closing, and (b) Buyer will deliver (or will have delivered) to Seller (i) the Final Purchase Price, and (ii) each of the certificates, instruments, documents and agreements referred to in Article VIII to be provided by Buyer on or prior to the Closing.

2.15 Bulk Sales Law. Unless waived by Buyer or otherwise not applicable, Seller shall, prior to the Closing, comply with the requirements of sellers under any applicable bulk sales law.

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES OF SELLER

Upon the exercise of the Project Purchase Option, Seller represents and warrants to Buyer as follows as of the Schedule Delivery Date and the Closing Date and, with respect to Sections 3.1 and 3.2, the Effective Date (with the understanding that, following the Schedule Delivery Date, Seller shall have the right, until it delivers final Seller Disclosure Schedules as provided in Section 2.10(a), to update any information contained in the Seller Disclosure Schedules if the occurrence of events or the discovery of new information makes the revision of such Seller Disclosure Schedules necessary, but subject to a Purchase Price adjustment as set forth in Exhibit 2.4 and the limitations on the effect of such revisions set forth in Section 2.10(a)):

3.1 Organization and Good Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its state of organization and is qualified to do business in the State of California and the State of Utah, and has the legal power and authority to own its properties, to carry on its Business as now being conducted and to enter into and perform its obligations under this Agreement and each of the Operative Documents to which Seller is a party.

3.2 Authority; Absence of Conflict or Breach. The sale of the Facility Assets and the execution, delivery and performance by Seller of this Agreement and each of the Operative Documents have been duly authorized by all necessary limited liability company action on the

part of Seller and the owners of any interest in Seller and do not require any consent or approval other than those which have already been obtained or otherwise as disclosed in the Seller Disclosure Schedules. This Agreement and each of the Operative Documents to which Seller is a party constitute the legal, valid and binding obligation of Seller, enforceable in accordance with their respective 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. The execution and delivery of this Agreement and each of the Operative Documents to which Seller is a party, the consummation of the sale of the Facility Assets and the fulfillment of and compliance with the provisions of this Agreement and the Operative Documents to which Seller is a party do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements 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 Seller (except as contemplated hereby).

3.3 Real Property Matters.

(a) If Seller entered into a Sale Leaseback Financing of the Facility Site in accordance with the PPA, the Lessor (as defined in the PPA) has provided Buyer evidence, which evidence Buyer has either confirmed in writing is satisfactory to Buyer or has not objected to in writing, of a binding obligation of such Lessor or Lessors and Seller to terminate such Sale Leaseback Financing (as defined in the PPA) on or prior to the Closing by the (i) reconveyance of the Facility Site by such Lessor or Lessors to Seller and the termination of the lease of the Facility Site by such Lessor or Lessors and Seller, or (ii) transfer of the Facility Site directly by such Lessor or Lessors to Buyer, provided that any such transfer from Lessor directly to Buyer shall be on the same terms and conditions as a transfer of the Facility Site from Seller to Buyer as set forth in this Agreement.

(b) As of the Closing Date, Schedule 3.3 contains a true, correct and complete list of any Contracts, including the Land Documents, that provide Seller with any rights in or to real property ("***Real Property Contracts***"), including rights in the nature of leases, easements, licenses, rights of way, franchise agreements, restrictive covenants, purchase agreements, agreements to relinquish or limit surface access rights with regards to minerals, options to purchase or lease, or applications for or bids to Governmental Authorities with respect to any of the foregoing interests in real property (collectively, "***Real Property Interests***"), as well as leases (including farm and grazing leases) and other agreements that grant or purport to grant, or reserve or purport to reserve to third parties, interests in or to the land which is subject to Real Property Interests ("***Third Party Property Interests***"). True, correct and complete copies of the Real Property Contracts have been delivered to Buyer. As of the Closing Date, Seller holds no Real Property Interests other than those that are set forth in such Real Property Contracts. Neither Seller, nor to Seller's Knowledge, any counterparty thereto, is in default in any material respect of any material obligation with respect to the Real Property Contracts. Each of the Real Property Interests granted by a Real Property Contract provides legal, valid, and enforceable rights in favor

of Seller and constitutes a legal, valid and binding obligation of Seller and, to Seller's Knowledge, of the other parties thereto. To the extent obtained by or in the possession or control of Seller, or any Affiliate of Seller, true, correct and complete copies of all title reports, surveys, mineral reports for any severed minerals (including any evaluation as to feasibility or likelihood of mineral extraction and any separate chain of title for severed minerals), material records searches (for any governmental records not included in any title reports) and exception documents referenced in such reports, policies, or searches have been delivered to Buyer.

(c) Except as set forth in Schedule 3.3, Seller has not received any written notice of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning or land use law, regulation or rule or other Requirement of Law relating to or affecting any of the Real Property Interests.

(d) Except as set forth in Schedule 3.3, Seller has not previously severed any mining, mineral or water rights from any of the Real Property Interests and has disclosed to Buyer any information known to Seller or any Affiliate of Seller regarding any severed mining, mineral or water rights affecting the Real Property Interests.

(e) Except as set forth in Schedule 3.3, other than with respect to the Real Property Contracts or Permits and any Third-Party Property Interests, Seller has not received any written notice that any agreements with any Governmental Authority or public or private utility affect the Real Property Interests.

(f) Except as set forth in Schedule 3.3, each of the Real Property Interests consisting of a "fee estate" has been legally subdivided and is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with any such Real Property Interests consisting of a Fee Estate or any portion thereof. Except as set forth in Schedule 3.3, with respect to Real Property Interests comprising either a leasehold or easement estate, the Facility Assets have either been separately assessed for real estate tax purposes by Millard County or any liability of the holder of such leasehold or easement estate for real estate taxes has been apportioned pursuant to the Real Property Contracts creating the leasehold or easement estate.

(g) Except as set forth in Schedule 3.3, none of the Real Property Interests has been designated as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.* or any regulation adopted in accordance therewith, and there has been no occurrence or condition on any real property adjoining any of the Real Property Interests that is reasonably likely to cause such Real Property Interest or any part thereof to be designated as border zone property.

3.4 Consents. Except as set forth in Schedule 3.4, including the Consent required under the Federal Power Act, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with, any Person, including any Governmental Authority, is

required for the sale of the Facility Assets or the execution and delivery by Seller of this Agreement or any of the Operative Documents to which it is a party or in order for Seller to perform its obligations hereunder or thereunder.

3.5 Assets of the Business. Except as set forth in Schedule 3.5, the Facility Assets (a) constitute all of the assets, properties, rights, privileges, claims, Permits and Contracts of every kind and nature, real or personal, tangible or intangible, absolute or contingent, wherever located, owned or used (including those necessary to access and utilize any common use facilities) necessary to conduct operations on the Premises, to operate the Facility, and to sell, and deliver Energy generated by the Facility, in substantially the same manner as it has historically been operated by Seller, and (b) are free from material defects caused by errors or omissions in design, engineering or construction, and are generally consistent with the description of the Facility set forth in the PPA. Except as provided in Schedule 3.5, the Fixtures and Equipment are in good repair and operating condition, ordinary wear and tear excepted.

3.6 Title to Facility Assets. Except as provided in Schedule 3.6, on the Schedule Delivery Date, Seller has good (and, with respect to real property, marketable) title to all of the Facility Assets, free and clear of all Liens, except for the Purchase Option Permitted Encumbrances. Except as provided in Schedule 3.6, at the Closing, Seller shall deliver and Buyer shall acquire good (and, with respect to the real property, marketable) title to all of the Facility Assets free and clear of all Liens, except for Closing Permitted Encumbrances.

3.7 Environmental. Except as set forth in Schedule 3.7:

(a) There are no pending or outstanding or threatened Agency Actions concerning the Facility or the Premises with respect to Environmental Laws applicable to Seller, the Facility or the Premises, or to Seller's ownership, operation and use of the Facility. Seller is, and at all times has been, and has owned (except in connection with any Sale Leaseback Financing) and operated (or its designated Qualified Operator has operated) the Facility and the Premises in compliance with all applicable Environmental Laws. There are no writs, injunctions, decrees, Orders or judgments outstanding, or any notices, actions, suits, Proceedings or investigations outstanding or pending or threatened involving Seller relating to (i) its compliance with any Environmental Laws with respect to any of the Facility Assets, the Premises, or any other asset owned or used by Seller or in which it has or had an interest in connection with the Facility, or (ii) the Release of any Hazardous Substances at the Premises.

(b) All Permits required by Environmental Laws and necessary for the operation of the Facility have been obtained and are currently in full force and effect. Seller's operations at the Premises and in connection with the Facility Assets are in compliance with all the requirements of such Permits. Seller is not in possession of any current written notice of violation or other notification from any Governmental Authority or from any other Person alleging that Seller has committed any act, or failed to act, in any manner or under any circumstance that would preclude continued operation of the Facility Assets, including the Premises, under any of these Permits.

(c) Each of the Facility Assets and Seller are in compliance with all Environmental Laws. There are currently no circumstances or conditions existing on the Premises which could reasonably be expected to prevent or substantially interfere with Seller's compliance with Environmental Laws in connection with Seller's operation of the Facility Assets and use of the Premises.

(d) Hazardous Substances have not been generated, used, treated or stored on, or transported to or from, any of the Premises in violation of Environmental Laws.

(e) There is no asbestos contained in or forming any part of any building, building component, structure or other asset that is part of the Facility Assets, and no asbestos is or has been stored, disposed of or otherwise been present at the Premises or on or in any of the Facility Assets, and Seller does not have any liability for asbestos in connection with the use, operation, renovation or demolition of any of the Facility Assets.

(f) There has been no Release or threatened Release of Hazardous Substances by Seller or any party under the reasonable control of Seller and, to Seller's Knowledge, there has been no Release or threatened Release of Hazardous Substances by any other party at, on, under or from any of the Premises or at, on, under or from any property adjoining any of the Premises, other than in compliance with applicable Environmental Laws or as has previously been remediated in accordance with applicable Environmental Laws.

(g) In connection with its ownership and operation of the Facility Assets, Seller has disposed of all wastes, including those containing any Hazardous Substances, in compliance with all applicable Environmental Laws, and Seller has not received any notice or demand letter from any Person claiming Seller may be liable for any on- or off-site Release or threatened Release of Hazardous Substances. Seller has not received written notice from any Person or Governmental Authority indicating that there has been ongoing or past Release of Hazardous Substances at, from or migrating beneath of on to any of the Real Property Interests.

(h) There are not now, and never have been, any above-ground or underground storage tanks or PCB-containing transformers or equipment located at the Premises.

(i) To the extent obtained by or in the possession or control of Seller or any Affiliate of Seller, Seller has provided Buyer with all reports, surveys, studies, correspondence, investigations, tests and environmental sampling and analyses (whether commissioned by Seller or otherwise) concerning the wildlife, cultural resources, natural resources, the Environmental Condition of any of the Facility Assets, and Hazardous Substances in, at, on and under the Premises, regardless of whether such Environmental Conditions were caused by, or arose from, Seller's operation of the Facility, Seller's ownership of all or any portion of the Facility Assets, Seller's compliance with applicable Environmental Laws in the operation of the Facility, the use of the Facility Assets, or otherwise.

(j) Seller has not received any written request for information nor any written notification that it is a potentially responsible party under CERCLA or any similar state Environmental Laws, including any such request or notification relating directly or indirectly to any of the Facility Assets, and none of the Premises is proposed to be listed or is listed on the National Priorities List under CERCLA or any similar state Environmental Laws requiring environmental investigation or cleanup.

3.8 No Undisclosed Liabilities. Seller has no liabilities (absolute, accrued, contingent or otherwise) in excess of Twenty Five Thousand Dollars ($25,000) in the aggregate, except for those (a) set forth in Schedule 3.5, Schedule 3.7, Schedule 3.8, Schedule 3.9, Schedule 3.10, or Schedule 3.11, (b) otherwise disclosed in writing to Buyer or explicitly set forth in any of the Assumed Contracts, Transferred Permits, or Support Obligations, (c) constituting Excluded Liabilities, or (d) disclosed in the Financial Statements.

3.9 Taxes. As of the Schedule Delivery Date, and again as of the designated Closing Date, any Liens for Taxes are set forth in Schedule 3.9, and, except to the extent set forth therein:

(a) There are no Liens for Taxes on any of the Facility Assets, except for Purchase Option Permitted Encumbrances and, upon the Closing, Closing Permitted Encumbrances.

(b) The Facility Assets do not include, for Taxes purposes, any equity interest in any corporation, any partnership or other entity.

(c) All Tax Returns that Seller (or any Affiliate of Seller) is required to file with respect to the Facility Assets have been filed with the appropriate Governmental Authorities, all such Tax Returns were correct and complete in all material respects and all Taxes due and payable by Seller and all Tax assessments made against Seller by any Governmental Authority have been paid whether or not shown to be due on such Tax Returns. All property Taxes due and payable with respect to the Facility Assets or any fee property thereunder have been paid (whether or not shown to be due on any Tax Return) and all Tax Returns related thereto have been filed with the appropriate Governmental Authorities.

(d) Seller has not received any written notice from any Governmental Authority of, and has no other Knowledge of, any outstanding claims or assessments with respect to any Tax relating to the Facility Assets and no such claim is pending or is presently being asserted in writing against the Seller or with respect to any of the Facility Assets.

(e) Seller has no Knowledge of any proposed Tax assessment against the Facility Assets, other than a proposed Tax assessment that is being actively contested by Seller in good faith and by appropriate proceedings, so long as the results of any such actively-contested assessment could not reasonably be expected to have a Material Adverse Effect hereunder.

(f) Seller is not subject to any pending Tax audit, investigation, action or Proceeding with any Governmental Authority that has been asserted in writing, and there

is no threatened Tax audit, investigation, action or Proceeding by any Governmental Authority that has been asserted in writing with respect to any of the Facility Assets that remains pending. Seller has not received written notice of any claim by any Governmental Authority in any jurisdiction where it does not file Tax Returns or pay Taxes that it is or may be subject to Tax by that jurisdiction.

(g) Seller has timely withheld and timely paid all Taxes that are required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor or other Person.

3.10 Compliance With Laws. Except as set forth in Schedule 3.10, Seller is in full compliance in all respects with all Requirements of Law applicable to the Facility Assets and operation and use of the Facility, and there are no condemnations or similar proceedings applicable to any part of the Facility.

3.11 Litigation. Except as set forth in Schedule 3.11:

(a) There are no Proceedings pending, or to Seller's Knowledge threatened, against the Facility or any material portion thereof;

(b) There are no existing Orders, writs, injunctions, judgments or decrees of any court, arbitrator, tribunal or other Governmental Authority against the Facility or any material portion thereof.

3.12 Assumed Contracts.

(a) Seller has delivered or made available to Buyer true and complete copies of all Contracts. Schedule 3.12(a) contains a true, correct and complete list of all Contracts (excluding Land Contracts) and any Contract listed therein that is not an Assumed Contract is identified with an asterisk (*).

(b) Except as set forth in Schedule 3.12(b), all Assumed Contracts are in full force and effect, and neither Seller nor, to Seller's Knowledge, any other party thereto is in default under or in breach of any of them, nor does any event or condition exist that after notice or lapse of time or both could constitute a default thereunder or breach thereof on the part of Seller or, to Seller's Knowledge, any other party thereto (except for defaults, events of default and other events as to which requisite waivers have been, or prior to Closing will have been, obtained). Except as set forth in Schedule 3.12(b), no approval, consent, or waiver of or by any Person that has not already been obtained is needed in order that the Assumed Contracts continue in full force and effect following the consummation of the transactions contemplated by this Agreement, and no Assumed Contract includes any provision, the effect of which may be to terminate (or give rise to a right of termination under) such Assumed Contract, to give rise to, enlarge, or accelerate any obligations of Seller thereunder, or to give additional rights to any other Person, upon or by reason of the consummation of the transactions contemplated by this Agreement.

3.13 Intellectual Property.

(a) Schedule 3.13 lists all of the patents, patent applications, inventions, improvements, computer programs, computer applications, operating programs, other programs and software, including system documentation and instructions, engineering, construction and other drawings (other than drawings not needed for the operation, maintenance or repair of the Facility), designs, technology, know-how, trade secrets, trademarks, trademark applications, trade names, copyrights and other proprietary rights and proprietary information used in connection with the operation and/or maintenance of the Facility as of the Schedule Delivery Date, including control room operating system software (collectively, the "***Intellectual Property Assets***").

(b) Except as set forth in Schedule 3.13, Seller owns or is the licensee of, the Intellectual Property Assets. No assignment or Consent from any third party is necessary to transfer, license, assign or convey to Buyer, as appropriate, any of the Intellectual Property Assets.

(c) Except as set forth in Schedule 3.13, none of the Intellectual Property Assets infringes on or conflicts with the intellectual property rights of others.

(d) Except as set forth in Schedule 3.13, there have been no claims, and there is no basis for any claim, challenging the scope, validity or enforceability of any of the Intellectual Property Assets. Except as set forth in Schedule 3.13, there are no instances where it has been held, or to Seller's Knowledge claimed or alleged, whether directly or indirectly, and, to Seller's Knowledge, there is no basis upon which a claim may be made, that any activity of Seller relating to the operation or maintenance of the Facility, infringes or may infringe upon, is in violation of, or misappropriates, any rights of a third party.

3.14 Brokers or Finders. Neither Seller nor any of its officers, directors, employees, shareholders or Affiliates has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Buyer or any of its Affiliates to pay any finder's fee, brokerage fees or commission or similar payment in connection with the transactions contemplated hereby.

3.15 Permits. All Permits are set forth on Schedule 3.15 and any Permit listed therein that is not a Transferred Permit is identified with an asterisk (*). Except as set forth on Schedule 3.15, all non-environmental Permits required by any Requirement of Law for the operation of the Facility have been obtained, are currently in effect, are final and non-appealable, and are transferrable to Buyer. Except as set forth on Schedule 3.15, Seller's operations at the Premises and in connection with the Facility Assets are in compliance with all the requirements of such Permits and, as of Closing, Seller is not in possession of, and, to the Knowledge of Seller, there is no basis for the issuance of, any written notice of violation or other notification from any Governmental Authority or from any other Person alleging that the Facility is in violation of such Permits or that Seller has committed any act, or failed to act, in any manner or under any circumstance that could have a Material Adverse Effect on the continued operation of the Facility Assets, including the Premises, by Buyer under any of these Permits. Seller has made available to Buyer complete and correct copies of each such Permit, together with all amendments thereto. Except as set forth on Schedule 3.15, no suspension, cancellation of termination of any such Permit is, to Seller's Knowledge, threatened or imminent.

3.16 Investment Company Act. Seller is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act.

3.17 Employees and Employee Benefit Plans. Except as set forth in Schedule 3.17, Seller does not have and has never had any employees, and Seller does not maintain or contribute to, and has not ever maintained or contributed to, any pension, profit-sharing, deferred compensation, bonus, stock, option, share, appreciation right, severance, group or individual health, dental, medical, life, insurance, survivor benefit or similar plan, policy or arrangement for the benefit of any director, officer, consultant or employee, whether active or terminated, of Seller.

3.18 General Representation. Except as set forth in Schedule 3.18, no representation or warranty made by Seller, its agents and Representatives in this Agreement, including the schedules and exhibits hereto, or any of the Operative Documents, or in any certificate or other agreement delivered by Seller to Buyer in connection with the transactions contemplated hereby or thereby, contains any untrue statement of a fact, or omits to state a fact necessary in order to make the statements contained herein, in light of the circumstances in which they were made, not misleading. All information contained in the Provided Materials is or will be, or is or will be consistent with, the information which has been used by Seller in the management of the Business and also with what has been or will be reported to Seller's management, equity holders and the Facility Lender in connection with the Business.

3.19 Regulatory Status. The Facility is an "Exempt Wholesale Generator," as that term is defined under 18 C.F.R. § 366.1, and is also a "public utility" under the Federal Power Act, and the regulations of the Federal Energy Regulatory Commission ("***FERC***") thereunder (collectively, the "***FPA***"). The status of Seller and the Facility hereunder is not subject to any pending or threatened challenge, petition or investigation by or before the FERC. Seller requires no authorization under the FPA to execute, deliver, and perform its obligations under this Agreement, apart from such authorizations from FERC that have already been received or will be received as of the Closing Date. The Facility is interconnected to the electrical grid pursuant to a valid and effective agreement for such interconnection, which agreement is sufficient to permit the delivery of the Facility's entire net electrical output to the therein-specified point of interconnection.

3.20 Support Obligations. All of the Support Obligations that have been provided by, on behalf of, or for the benefit of, Seller or the Facility are as described on Schedule 3.20. True, correct and complete copies of each Support Obligation have been delivered to Buyer and such Support Obligations constitute all of the credit and other contractual support and assurance that Buyer is required by any law (including any Permit) or Contract to provide as of the Closing Date.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF BUYER

Upon the exercise of the Project Purchase Option, Buyer represents and warrants to Seller as follows as of the date on which Buyer delivers the Purchase Option Exercise Notice to Seller and the Closing Date and, with respect to Sections 4.1 and 4.2, the Effective Date:

4.1 Organization. Buyer is a validly existing joint powers agency formed under the laws of the State of California and has the legal power and authority to own its properties, to carry

on its business as now being conducted and to enter into and perform its obligations under this Agreement and each of the Operative Documents to which Buyer is a party.

4.2 Authority; Absence of Conflict or Breach. The purchase of the Facility Assets and the execution, delivery and performance by Buyer of this Agreement and each of the Operative Documents executed and delivered by Buyer in connection with such purchase have been duly authorized by all necessary action on the part of each of Buyer's Members and do 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 and Buyer's Members will be required for Buyer to exercise the Project Purchase Option; provided, further, that on the date on which Buyer delivers the Purchase Option Exercise Notice to Seller and the Closing Date, Buyer and Buyer's Members shall have obtained all required authorizations, consents or approvals of Buyer's or Buyer's Members' regulatory or governing bodies required for Buyer to consummate the Closing, except for the required authorizations, consents or approvals of Buyer or Buyer Members with respect to Buyer's bond financing for the acquisition of the Facility Assets. This Agreement and each of the Operative Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer enforceable in accordance with their respective 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 Consents. Except as set forth in Schedule 4.3, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the purchase of the Facility Assets or the execution and delivery by Buyer of any of the Operative Documents to which it is a party or in order for Buyer to perform its obligations hereunder.

4.4 Brokers or Finders. Neither Buyer nor any of Buyer's Members, officers, directors, employees, shareholders or Affiliates has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Seller or any of its Affiliates to pay any finder's fee, brokerage fees, or commission or similar payment in connection with the transactions contemplated hereby.

4.5 Litigation. There are no Proceedings pending or, to Buyer's knowledge, threatened, against Buyer which could reasonably be expected to materially adversely affect its ability to perform its obligations with respect to the purchase of the Facility Assets pursuant to the Project Purchase Option.

## ARTICLE V
## COVENANTS OF SELLER PRIOR TO CLOSING DATE

5.1 Access to Materials. Prior to the Schedule Delivery Date, Seller will furnish to Buyer all information required hereunder to be furnished by the Schedule Delivery Date. Between the Schedule Delivery Date and the earlier of (a) the Closing Date or (b) the date upon which Buyer has declined to exercise the applicable Purchase Option Opportunity, such Purchase Option Opportunity has expired or is no longer in effect, or the Agreement has terminated (such period, the "***Applicable Diligence Period***"), upon reasonable advance notice, Seller will (i) afford Buyer and its Representatives (and the Qualified Appraiser) full and complete access during normal

business hours to the Facility and to Seller's personnel, Assumed Contracts, Permits, Books and Records, properties and other documents and data relating to the Facility (provided that Buyer shall observe, and shall cause its Representatives to observe, all of Seller's security protocols and such access shall not disturb or interfere with the normal operations of the Facility Assets in any material respect), (ii) furnish Buyer and Buyer's Representatives (and the Qualified Appraiser) with copies of all such Assumed Contracts, Permits, Books and Records, and other existing documents and data in Seller's possession or to which Seller has access with respect to the Facility or pertaining to the design of the Facility (including design schematics, blueprints or other similar documents) and other Facility Assets as Buyer or the Qualified Appraiser may reasonably request, and (iii) furnish Buyer and its Representatives (and the Qualified Appraiser) with such additional financial, operating, and other data and information of or pertaining to the Business in Seller's possession or to which Seller has access as Buyer and its representatives (and the Qualified Appraiser) may reasonably request. All such Assumed Contracts, Books and Records, documents, data and information required to be furnished by Seller under this Section 5.1 are collectively referred to as the "***Provided Materials***." Buyer shall have the right to diligently review the Provided Materials. The Provided Materials may be redacted as necessary to allow for disclosure to Buyer and the Qualified Appraiser to the extent any Provided Materials are (A) subject to confidentiality, non-disclosure or similar agreements in favor of third parties whose consent to disclose cannot be obtained by the Closing, (B) legally-privileged information of Seller, (C) concerning any alleged dispute or pending litigation, investigation or Proceeding involving Seller or its Affiliates that is protected by or subject to a court order or the attorney-client privilege or (D) sensitive and proprietary economic information of Seller that is not relevant to the purchase, ownership, operation, maintenance, repair or use of the Facility or Facility Assets.

5.2 Investigations. During the Applicable Diligence Period, upon reasonable advance notice (but not less than twenty four (24) hours), Seller shall afford Buyer and its Representatives (and the Qualified Appraiser) with reasonable access to the Facility Assets 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 and, in Buyer's sole discretion, a phase 2 environmental site assessment, during normal business hours in such manner that complies with Seller's safety protocols and in such manner so as not to materially disturb or interfere with the normal operations of the Facility Assets and subject to a reasonable number of visits.

5.3 Financial Statements. On the Schedule Delivery Date, Seller will deliver to Buyer unaudited balance sheets and unaudited statements of income and cash flow of Seller for the three (3) most recent fiscal years of Seller, prepared in material compliance with GAAP. From and after the Schedule Delivery Date, as soon as available and in any event during the Applicable Diligence Period or the end of each fiscal quarter of Seller, Seller will provide Buyer with unaudited statements of income and cash flow for such quarter, setting forth in comparative form figures for the corresponding period of the preceding fiscal year. All Financial Statements (as defined below) shall be accompanied by a certificate signed by an authorized officer of Seller stating that such financial statements present fairly in all material respects the financial condition of Seller and that the same have been prepared in compliance with GAAP. Seller will also deliver to Buyer copies of all financial statements or other financial information delivered to any Facility Lender during the Applicable Diligence Period contemporaneously with the delivery thereof to such Facility Lender. The financial statements required to be provided by Seller to Buyer under this Section are collectively referred to as the "***Financial Statements.***"

5.4 Operation of the Business. During the Applicable Diligence Period, Seller 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.

5.5 Disposition of Assets. During the Applicable Diligence Period, unless required by any contract entered into by Seller prior to the Schedule Delivery Date, Seller shall not (a) sell or otherwise dispose of or encumber (other than Purchase Option Permitted Encumbrances) 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 Assumed Contract, Permit or Warranties, without the prior written approval of Buyer.

5.6 Required Approvals. As promptly as practicable following Buyer's delivery of the Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Seller will make, and thereafter diligently pursue during the Applicable Diligence Period, all registrations, qualifications or filings to be identified in Schedule 3.4 or necessary or appropriate to obtain all the Consents therein identified.

5.7 Notification. During the Applicable Diligence Period, Seller shall give prompt notice (each notice, a "***Change Notice***") to Buyer of the occurrence or non-occurrence of any event, change, effect or development of any kind which would or could reasonably be expected to result in: (a) any representation or warranty of Seller contained in any Operative Document or this Agreement being untrue or incorrect in any material respect on the date such representation or warranty is to be made or that would otherwise result in a Material Adverse Effect, or (b) a breach of any of Seller's covenants under this Agreement or any Operative Document. Each Change Notice must include a detailed description of the event, change, effect, development or failure and a description of the action Seller has taken and proposes to take with respect thereto. The delivery of a Change Notice will not be deemed to (i) modify any representation or warranty hereunder (other than to the extent included in updated Seller Disclosure Schedules in accordance with Section 2.9), (ii) modify any condition set forth in Article VII, or (iii) limit or otherwise affect the remedies available hereunder to Buyer. Buyer shall thereafter have the right, but not the obligation, to terminate the Project Purchase Option with respect to the applicable Purchase Option Opportunity, in which case such Purchase Option Opportunity shall no longer be effective; provided, however, that such termination shall not affect Buyer's right to exercise any Project Purchase Option with respect to a future Purchase Option Opportunity.

5.8 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Seller will, and will cause its Affiliates to, use all commercially reasonable efforts to satisfy the conditions in Article VII and Article VIII to be performed by Seller and its Affiliates.

5.9 Waivers of Claims. During the Applicable Diligence Period, Seller shall not incur, create, assume or otherwise become liable for indebtedness for borrowed money, or issue any debt securities, other than those that are or will be discharged at or prior to Closing, nor shall it waive or release any right that it has relating to the Facility Assets or any Assumed Liabilities

(other than to the extent provided for pursuant to Section 5.5). If any Assumed Contract necessary for the operation of the Facility (and is required for ongoing operations of the Facility consistent with past practices and Prudent Utility Practices) expires or is terminated prior to the Closing Date, then Seller will replace same with a contract approved by Buyer, such approval not to be unreasonably withheld. The preceding sentence shall not be deemed a limitation of the obligations of Seller under Section 5.5.

5.10 Additional Contracts. Any Contract entered into by Seller during the Applicable Diligence Period shall be an Excluded Liability unless Buyer agrees in writing to include such Contract as an Assumed Contract.

5.11 Transitional Services. During the period between Buyer's delivery of the Purchase Option Tentative Exercise Notice until the earliest to occur of (a) Buyer's delivery of the Purchase Option Exercise Notice, (b) the Purchase Option Exercise Deadline, (c) termination of the relevant Purchase Option Opportunity, or (d) termination of this Agreement, Buyer and Seller shall negotiate in good faith an agreement for transition operation and maintenance services upon terms and conditions to be mutually agreed upon by both Parties, in form and substance consistent with Exhibit 5.11.

5.12 Replacing or Procuring Intellectual Property Assets. If Seller within six (6) months prior to the Closing Date has information or reasonably believes that (1) any of the Intellectual Property Assets allegedly or actually infringes or is likely to infringe upon any third-party intellectual property rights, or (2) any of the Intellectual Property Assets licenses used to operate or maintain the Facility and the Facility Site is to expire, to be terminated or enjoined within six (6) months prior to or after the Closing Date, Seller shall immediately notify Seller of such alleged, actual or potential infringement or license status. Upon Buyer's request, Seller shall, at Seller's own expense: (i) procure for Buyer the right or license to continue using the Intellectual Property Asset(s) at issue; or (ii) replace the Intellectual Property Asset(s) at issue with a functionally equivalent, non-infringing product, if commercially practicable. Exercise of any of the above-mentioned options shall not cause undue business interruption to the operation or maintenance of the Facility and the Facility Site, or diminish the intended benefits, output and enjoyment of the Facility and the Facility Site by the Seller under this Agreement or the PPA.

5.13 Shared Facilities. If in connection with Seller's or any of its Affiliates' development of additional phases of the Facility or additional projects that (i) share real estate with the Facility Site or infrastructure or equipment of the Facility or (ii) interconnect through the Point of Interconnection, Seller reasonably determines that it requires the use of certain shared facilities, the right to occupy or use shared real property, or the ownership or governance of the rights associated with either, then upon written notice to Buyer from Seller, Buyer shall reasonably cooperate and negotiate in good faith with Seller or Seller's Affiliates to enter into one or more Shared Facilities Agreements with Seller's Affiliates, subject to the approval of Buyer, which approval shall not be unreasonably withheld so long as Buyer is not materially adversely impacted (including under this Agreement or in connection with its use of the Facility) by the terms and conditions of any such Shared Facilities Agreement.

## ARTICLE VI
## COVENANTS OF BUYER PRIOR TO CLOSING DATE

6.1 Notification. During the Applicable Diligence Period, Buyer shall give reasonable notice to Seller of the occurrence or non-occurrence of any event, change, effect or development of which Buyer has knowledge and that would cause (a) any representation or warranty of Buyer contained in any Operative Document or this Agreement to be untrue or incorrect in any material respect on the date such representation or warranty is to be made, or (b) a breach of any of Buyer's covenants under this Agreement or any Operative Document. Each Change Notice must include a detailed description of the event, change, effect, development or failure and a description of the action Buyer has taken and proposes to take with respect thereto. The delivery of a Change Notice will not be deemed to (i) modify any representation or warranty hereunder, (ii) modify any condition set forth in Article VII, or (iii) limit or otherwise affect the remedies available hereunder to Seller.

6.2 Required Approvals. As promptly as practicable following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Buyer will make, and thereafter during the Applicable Diligence Period pursue, all registrations, qualifications or filings identified in Schedule 4.3 or necessary or appropriate to obtain any Consent therein identified.

6.3 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Buyer will use reasonable efforts to cause the conditions in Article VII and Article VIII to be performed by Buyer, to be satisfied.

## ARTICLE VII
## CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

Buyer's obligation to purchase the Facility Assets and to take the other actions required to be taken by Buyer at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer in its sole discretion, in whole or in part):

7.1 Accuracy of Representations. All of Seller's representations and warranties in this Agreement and the other Operative Documents (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date when deemed made and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

7.2 Seller's Performance. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

7.3 Consents. Each of the Consents identified in Schedule 3.4 and Schedule 4.3 must have been obtained and must be in full force and effect.

7.4 Additional Seller Documents. Seller, at its sole cost and expense, shall deliver each of the following documents to Buyer:

(a) legal opinion of Seller's counsel, dated the Closing Date, with respect to the enforceability of the Agreement and due authorization by Seller to sell the Facility Assets and related matters, in form and substance reasonably acceptable to Buyer;

(b) a written certificate, in form and substance satisfactory to Buyer, executed and delivered by Seller by its authorized officer, certifying that each of the conditions specified in Sections 7.1, 7.2, and 7.3, have been satisfied;

(c) a Bill of Sale, dated as of the Closing Date, in form and substance reasonably acceptable to Buyer ("***Bill of Sale***"), and executed by Seller by its authorized officer;

(d) agreements and related documentation effective to transfer to Buyer the Real Property Interests, Transferred Permits, the Assumed Contracts, and any other Facility Assets (together with the Bill of Sale, the "***Asset Assignment Documents***") in form and substance reasonably acceptable to Buyer, executed by Seller by its authorized officer;

(e) an irrevocable commitment by a title company acceptable to Buyer to issue an extended coverage owner's policy of title insurance based upon a recent ALTA survey, including such endorsements as Buyer may reasonably require, insuring Buyer in the amount of the Final Purchase Price, that title to the Premises (in fee, leasehold and/or easement, as applicable) is vested in Buyer, subject only to those exceptions that are Closing Permitted Encumbrances;

(f) confirmation in writing by Seller that any existing operations and maintenance agreement with respect to the Facility shall terminate upon the Closing Date (unless Buyer elects to assume such agreement, in which case such agreement shall be deemed an Assumed Contract);

(g) duly executed pay-off letters for the release or termination of all Liens securing Facility Debt, if any, that acknowledge repayment in full of such Facility Debt (unless Buyer otherwise agrees in writing that any such Liens shall not be released or terminated);

(h) if Seller has entered into a Sale Leaseback Financing, evidence satisfactory to Buyer of the (i) reconveyance of the Facility Site by Lessor or Lessors to Seller and the termination of the lease of the Facility by such Lessor or Lessors and Seller or (ii) transfer of the Facility Site directly by such Lessor or Lessors to Buyer on the same terms and conditions as a transfer of the Facility Site from Seller to Buyer as set forth in this Agreement;

(i) the Seller Guaranty, dated as of the Closing Date and executed by Seller Guarantor; and

(j) such other documents as Buyer may reasonably request for the purpose of (i) evidencing the accuracy of any of Seller's representations and warranties, (ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, or (iii) evidencing the satisfaction of any condition referred to in this Article VII; provided, that any such documentation shall have been identified by Buyer in writing on or prior to the date upon which Buyer delivers the Purchase Option Exercise Notice to Seller.

7.5 Litigation. No Proceeding shall have been instituted or any other action taken or Requirement of Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending, that could reasonably be expected to delay, restrain or prohibit any part of the transactions contemplated by this Agreement or to seek any divestiture or to revoke or suspend any Permit by reason of any or all of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of all or any part of the transactions contemplated by this Agreement would constitute a violation of the Requirements of Law or Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit all or any part of the transactions contemplated by this Agreement or to require such divestiture, revocation or suspension; unless, in any such case, such Governmental Authority or other Person could not reasonably be expected to prevail or shall have withdrawn such notice and abandoned such Proceeding, action, Requirement of Law or Environmental Law, in each case, to the reasonable satisfaction of Buyer.

7.6 Liens. Title to the Facility Assets shall be free and clear at the Closing of all Liens other than Closing Permitted Encumbrances (which shall include any Lien approved in writing by Buyer as a Purchase Option Permitted Encumbrance following the Schedule Delivery Date).

7.7 No Material Adverse Effect. During the Applicable Diligence Period, no action shall have been taken or omitted and no event shall have occurred or be threatened which has had or could reasonably be expected to result in a Material Adverse Effect.

7.8 Assets and Property. If a Material Casualty Event occurs prior to the Closing Date, the Parties shall have complied with the terms of Section 9.3.

## ARTICLE VIII
## CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

Seller's obligation to sell the Facility Assets and to take the other actions required to be taken by Seller at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in its sole discretion, in whole or in part):

8.1 Accuracy of Representations. All of Buyer's representations and warranties in this Agreement and the other Operative Documents (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and as of the date when deemed made.

8.2 Buyer's Performance.

(a) All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing, and each of these covenants and obligations (considered collectively and individually), must have been performed and complied with in all material respects.

(b) Buyer must have paid the Final Purchase Price to Seller.

8.3 Consents. Each of the Consents identified in Schedule 3.4 and Schedule 4.3 must have been obtained and must be in full force and effect.

8.4 Additional Buyer Documents. Buyer shall deliver each of the following documents to Seller:

(a) a legal opinion with respect to the enforceability and due authorization by Buyer (but not with respect to any of Buyer's Members) of this Agreement and the purchase of the Facility Assets;

(b) the Bill of Sale and other Asset Assignment Documents (as delivered by Seller pursuant to Section 7.4) executed by Buyer by its authorized Representative; and

(c) any Performance Security then held by Buyer pursuant to Section 5.6 of the PPA.

8.5 Litigation. No Proceeding shall have been instituted or any other action taken or Requirement of Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending, that could reasonably be expected to delay, restrain or prohibit any material part of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Agreement would constitute a violation of the Requirements of Law or Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit any part of the transactions contemplated by this Agreement, unless, in any such case, such Governmental Authority or other Person could not reasonably be expected to prevail or shall have withdrawn such notice and abandoned such Proceeding, action, Requirement of Law or Environmental Law, in each case, to the reasonable satisfaction of Seller.

## ARTICLE IX
## MUTUAL COVENANTS, TAXES AND OTHER MATTERS

9.1 Tax Matters. Seller, at its own expense, will file, to the extent required by applicable Requirements of Law, all necessary Tax Returns and other documentation with respect to its portion of any Transfer Taxes, and, if required by applicable Requirements of Law, Buyer will join in the execution of any such Tax Returns or other documentation and will take such positions in such returns as are reasonably requested by Seller.

(a) With respect to any Tax Return reporting Taxes with respect to the ownership or operation of the Facility Assets for any taxable period ending on or before the Closing Date that is due after the Closing Date or for any Straddle Period, Buyer shall prepare and timely file all such Tax Returns, if any, and shall duly and timely pay all such Taxes, whether imposed on Buyer or Seller, shown to be due on such Tax Returns. Buyer shall make such Tax Returns available for Seller's review and approval no later than fifteen (15) Business Days prior to the due date for filing such Tax Return. With respect to each Tax Return filed in accordance with this Section 9.1(a), each Party shall reimburse the other Party, within ten (10) Business Days of demand therefor, for any such Taxes shown as due on such Tax Return that it is responsible for under this Agreement but that were paid by the other Party or economically borne by the other Party pursuant to Section 2.11 in accordance with the reimbursement procedures set forth in the flush language of Section 2.11, *mutatis mutandis*.

(b) Each of Buyer and Seller shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative Proceeding relating to liability for Taxes, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, Proceedings or determination. Each Party will take any and all commercially reasonable steps, act in good faith, and cooperate fully, to permit the other Party to comply with its/their obligations and secure its/their rights to indemnification hereunder.

(c) Seller will be entitled to any refunds or credits of Taxes with respect to the ownership or operation of the Facility Assets that pertains to any Pre-Closing Tax Period (and such refunds and credits shall be Excluded Assets), and Buyer shall be entitled to such refunds or credits of Taxes that pertain to any Post-Closing Tax Period. Each of Buyer and Seller will promptly notify and forward to the other Party the amounts of any such refunds or credits received by such Party, but to which the other Party is entitled, within sixty (60) days after receipt thereof.

(d) After the Closing, Buyer will notify Seller in writing, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any Representative thereof, of any pending or threatened Tax audit, or any pending or threatened Proceeding that involves Taxes relating to the Facility Assets that pertains to any Pre-Closing Tax Period, and furnish Seller with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Facility Assets that pertains to any Pre-Closing Tax Period. After the Closing, Seller will notify Buyer in writing, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any Representative thereof, of any pending or threatened Tax audit, or any pending or threatened judicial or administrative Proceeding that involves Taxes relating to the Facility Assets, and furnish Buyer with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Facility Assets.

(e) Notwithstanding any provision of this Agreement to the contrary, with respect to any claim for refund, audit, examination, notice of deficiency or assessment or any Proceeding that involves Taxes relating to the Facility Assets (collectively, "***Tax Claim***"), each of Buyer and Seller will reasonably cooperate with the other Party in prosecuting or contesting any Tax Claim, including making available original books, records, documents and information for inspection, copying and, if necessary, introduction of evidence at any such Tax Claim contest or Proceeding and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder with respect to such Tax Claim or to testify at Proceedings relating to such Tax Claim. Seller will control all Proceedings taken in connection with any Tax Claim that pertains entirely to any period ending on or prior to the Closing Date, and Buyer will control all Proceedings taken in connection with any Tax Claim that pertains to any period commencing after the Closing Date, and Seller and Buyer will jointly control all Proceedings taken in connection with any Tax Claim pertaining to any period commencing prior to and ending after the Closing. Seller shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to a period ending on or prior to the Closing without Buyer's prior written consent, which consent shall not be unreasonably withheld or delayed; neither Buyer nor Seller shall have the right to settle or otherwise compromise any Tax Claim which pertains to a Straddle Period without the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed; and Seller shall have no right to settle or other compromise any Tax Claim which pertains entirely to any taxable period or portion thereof beginning after the Closing.

9.2 Seller Cooperation Post-Closing. In furtherance, and not in limitation of, the transitional services agreement to be executed in connection with Section 5.11, Seller agrees that, for a period of two (2) years after the Closing, it will use good faith efforts to respond to Buyer's inquiries relating to the Facility or the Facility Assets.

9.3 Risk of Loss.

(a) Promptly following the delivery by Buyer of a Purchase Option Exercise Notice and delivery by Seller of the Acceptance Notice, Seller shall make Buyer a named insured under Seller's all risk property insurance policy through the Applicable Diligence Period. If, either at the time of Buyer's delivery of a Purchase Option Exercise Notice or at any time during the Applicable Diligence Period, all or any portion of the Facility is damaged or destroyed in whole or in part by a Material Casualty Event or becomes subject to or threatened with any condemnation or eminent domain proceeding (the "***Affected Portion***"), and the amount that is the greater of the (i) fair market value of the Affected Portion (such value to be determined as of the date immediately prior to such damage, destruction or actual or threatened condemnation or eminent domain proceeding) or (ii) the cost of repair of the Affected Portion, as determined by a qualified independent engineer (which engineer has appropriate training and sufficient experience to evaluate the proper repair scope) (such greater amount, the "***Diminished Amount***") is equal to or greater than three percent (3%) of the then-current Fair Market Value, then such Fair Market Value shall be reduced by an amount equal to one hundred percent (100%) of the Diminished Amount; provided, that (1) notwithstanding whether Buyer is named as a "named insured"

on any such all-risk property insurance policy, Seller shall receive all proceeds from all risk property insurance with respect to such Material Casualty Event (whether paid out prior to or after the Closing Date) or any such condemnation or eminent domain proceeding, (2) Buyer shall have the option to either (A) if Buyer requests Seller to repair the Facility, to delay the Closing Date for such reasonable time as may be necessary for Seller to complete restoration of the Affected Portion, or (B) proceed with Closing on the scheduled Closing Date with the Final Purchase Price adjusted to reflect the Diminished Amount, and (3) if Seller, at Buyer's request, restores the Affected Portion prior to the Closing Date (if and as extended by Buyer pursuant to the foregoing clause (2)(A)) to the reasonable satisfaction of Buyer utilizing all available insurance proceeds and equity contributed by Seller, the Fair Market Value shall be adjusted to the Fair Market Value as computed prior to deduction of the Diminished Amount.

(b) If, during the Applicable Diligence Period, all or any portion of the Facility is damaged or destroyed in whole or in part by a Material Casualty Event or becomes subject to or threatened with any condemnation or eminent domain proceeding, such that it cannot reasonably be expected (as determined by the Qualified Appraiser(s)), that, (i) in the case of a Material Casualty Event, the Facility will be fully repaired within sixty (60) days after the Closing Date or (ii) in the case of a condemnation or eminent domain proceeding, such condemnation or eminent domain proceeding would not have a Material Adverse Effect, then Buyer may, in its sole discretion, elect to terminate this Agreement or withdraw from the present Project Purchase Opportunity.

9.4 Liabilities.

(a) From and after Closing, Buyer shall assume, pay, perform and discharge when due, and, as between Buyer and Seller, shall be solely responsible for, the Assumed Liabilities. Other than as set forth in Section 9.1, Seller shall have no liability or obligation for the Assumed Liabilities from and after the Closing Date (and Buyer shall have no liability or obligation for the Assumed Liabilities prior to the Closing Date).

(b) Except for the Assumed Liabilities, Buyer shall not assume by virtue of this Agreement or the transactions contemplated by this Agreement, and shall have no liability under this Agreement for, the Excluded Liabilities.

9.5 Insurance. Buyer acknowledges and agrees that, effective upon the Closing, Seller's insurance policies in respect of the Facility and the Facility Assets shall be terminated or modified to exclude coverage of the Facility Assets, except to the extent required to address a Material Casualty Event under Section 9.3. Buyer acknowledges and agrees that it may need to provide to certain Governmental Authorities and third parties evidence of replacement or substitute insurance coverage for the continued operation of the Facility Assets following the Closing.

9.6 Securities Replacement. Within ten (10) Business Days after the Closing Date, Buyer shall, at its sole cost, (i) with respect to any Support Obligations set forth on Schedule 3.20 (whether any such Support Obligation is in the form of a letter of credit, bond or cash deposit) ("Seller Support Obligations"), deliver to the applicable beneficiary or counterparty duly executed

replacement or substitute Support Obligations, in each case, in a form that satisfies the requirements of the beneficiaries of the Seller Support Obligations (such replacement or substitute security, the "Replacement Security"), and (ii) use commercially reasonable efforts to cause the beneficiary of each such Seller Support Obligation, as soon as practicable following receipt of the Replacement Security thereof pursuant to this Section 9.6, to terminate, surrender, and redeliver to Seller each instrument constituting or evidencing such Seller Support Obligation. If the applicable beneficiary of any Seller Support Obligation delivers or returns any such Seller Support Obligations, including any cash deposit amounts, to Buyer and Seller has not previously been reimbursed for such amounts, Buyer shall promptly, and in any event within seven (7) Business Days, deliver such Seller Support Obligations to Seller or, in the case of cash deposit amounts, pay such cash deposit amounts to Seller. Except as set forth in the immediately preceding sentence, Buyer shall have no obligation pursuant to this Section 9.6 to pay any amount to Seller in respect of any Seller Support Obligation that is in the form of a cash deposit.

9.7 RWI Insurance Proposal. Seller may propose to procure, at its sole cost and expense, insurance coverage for misrepresentations or breaches by Seller of its representations and warranties made to Buyer pursuant to Article III, subject to customary exclusions, in which case, Seller shall provide Buyer relevant details of the proposed representations and warranties insurance and such insurance coverage may be Buyer's sole recourse (subject to customary exclusions) for breaches by Seller of its representations and warranties made to Buyer pursuant to Article III that are covered by such representations and warranties insurance (the "RWI Proposal") and Buyer shall consider such proposal in good faith.

## ARTICLE X
## TERM AND TERMINATION

10.1 Term. This Agreement shall become effective when it is executed by each of the Parties and delivered to the other Party and the term of this Agreement shall continue for the Agreement Term (including any survival periods set forth in Section 2.4 of the PPA), or such other period as may be provided in this Agreement, but in any event up to and including the Closing Date, if any, unless terminated earlier as provided in Section 10.2.

10.2 Termination Events. This Agreement shall be terminated upon the delivery of a termination notice under Section 2.6 of the PPA. In addition, this Agreement may, by notice given prior to the Closing, be terminated:

(a) by either Buyer or Seller upon (i) a failure by the other Party to perform any of its duties or obligations under this Agreement when and as due which is not cured to the reasonable satisfaction of the Party obligated to perform such duties or obligations under this Agreement by the earlier of the Closing Date or the date that is thirty (30) days after receipt of written notice thereof from the other Party, or (ii) an inaccuracy in any material respect of any representation, warranty, certification or other statement made by the other Party herein or in any other document contemplated hereby or in any Operative Document at any time given by a Party in writing pursuant hereto or thereto, or in connection herewith or therewith at the time made or deemed to be made;

(b) either (i) by Buyer if satisfaction of any of the conditions in Article VII has become impossible due to an event outside of Buyer's reasonable control despite the

exercise of due care and diligence (and in no event through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not previously waived such condition; or (ii) by Seller if satisfaction of any of the conditions in Article VIII has become impossible due to an event outside of Seller's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Seller to comply with its obligations under this Agreement) and Seller has not previously waived such condition;

(c) (i) by either Party, if a Default of the other Party shall have occurred under the PPA or any Ancillary Document or the PPA or any Ancillary Document is terminated or shall fail to be in full force and effect prior to or concurrently with this Agreement, or (ii) by either Party, if the other Party or such other Party's Affiliates shall contest the validity or enforceability of the PPA or any provision thereof in writing or deny that it has any further liability thereunder; or

(d) by mutual consent of Buyer and Seller.

10.3 Effect of Termination. In the event of termination of this Agreement:

(a) To the extent reasonably available, upon a request from the other Party, each Party will redeliver all documents, work papers and other material of the other Party relating to the transactions contemplated hereby or by the other Operative Documents to the Party furnishing the same, whether so obtained before or after the execution hereof, and each Party will withdraw any applications for approval of transfer of Permits and surrender any Permits already transferred, as necessary;

(b) The provisions of Article XII shall survive in full force and effect;

(c) Neither Party shall have any liability or further obligation to the other Party, except as stated in subsections (a) and (b) of this Section 10.3, and except for any breach of representation, warranty or obligation arising under this Agreement or otherwise occurring prior to the proper termination of this Agreement. The foregoing provisions shall not limit or restrict the availability of specific performance or other injunctive relief to the extent that specific performance or such other relief would otherwise be available to a Party hereunder; and

(d) The PPA shall remain in full force and effect in accordance with its terms.

## ARTICLE XI
## LIMITATION OF LIABILITY

11.1 Survival of Representations, Etc.. The representations, warranties, covenants and agreements of Seller and Buyer contained herein shall survive the consummation of the transactions contemplated hereby and the Closing Date, without regard to any investigation made by either of the Parties or, subject to Section 11.2, the fact that the damaged Party had knowledge of any misrepresentation or breach of warranty or covenant at the time of Closing or at any other time, until the expiration of two (2) years after the Closing Date (a) other than with respect to the covenants set forth in Section 2.11 and Section 9.1 and the representation

and warranties set forth in Sections 3.1, 3.2, 3.5, 3.6 and 3.9, which shall survive for the applicable statute of limitations, and (b) Section 3.7, which shall survive upon expiration of five (5) years after the Closing Date (at which time, in each case, the other Party shall be precluded from making a claim or commencing a cause of action with respect thereto). The termination of any representation and warranty provided herein shall not affect the rights of a Party in respect of a Claim made by such Party with specificity and in a writing received by the other Party prior to the expiration of the applicable survival period provided herein.

11.2 Limitation of Liability.

(a) Notwithstanding anything contained in this Agreement to the contrary:

(i) In no event shall Seller's aggregate liability to Buyer (1) for breach of Seller's representations and warranties under Article 3 of this Agreement exceed twenty percent (20%) of the Final Purchase Price, and (2) otherwise under this Agreement or any Operative Document to Buyer under any theory of liability (whether contract, tort, strict liability or otherwise) exceed one hundred percent (100%) of the Final Purchase Price; provided that the foregoing limitations shall not apply (A) to any liability arising under or caused in whole or in part by Seller's fraud, (B) to the extent based upon a breach of any covenant made in Section 2.11 and Section 9.1 or any representation or warranty made in Section 3.1, 3.2, 3.4, 3.6, 3.9, 3.13 or 3.14, (C) to Excluded Liabilities or (D) to bodily injury or property damage arising from activities conducted on any Premises on or prior to the Closing or from Hazardous Substances that were present at or on the Premises on or prior to the Closing and that were released by Seller or any other Person for whose conduct Seller is held responsible at any time on or prior to the Closing.

(ii) in no event shall Seller have any liability under this Agreement or any Operative Document following the Closing for any event, circumstance or condition arising from Facility Assets to the extent that, prior to the Purchase Option Exercise Deadline, Buyer (A) had actual knowledge of such event, circumstance or condition, (B) such event, circumstance or condition was disclosed to Buyer in a Disclosure Schedule, or (C) such event has been included in the determination of Fair Market Value.

(iii) payments by a Party in respect of any claim for indemnification pursuant to Section 12.1 shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment received by the Party being indemnified in respect of any such claim.

(iv) Each Party being indemnified under this Agreement shall take all reasonable steps to mitigate any loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such loss.

## ARTICLE XII
## GENERAL PROVISIONS

12.1 Indemnification.

(a) Seller undertakes and agrees to indemnify and hold harmless Buyer, and its officers, agents, employees, attorneys, consultants, advisors, and representatives (collectively, "***Indemnitees***") from and against any and all charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, arising by reason of any (i) material breach of this Agreement or any of the Operative Documents by Seller, (ii) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is qualified by materiality to have been true when made, (iii) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is not so qualified by materiality to have been true in all material respects when made, or (iv) Excluded Liabilities.

(b) Buyer shall promptly notify Seller of any action, suit, proceeding, demand, or breach (a "***Claim***") with respect to which Buyer claims indemnification; provided, however, that failure of Buyer to give such notice shall not relieve Seller of its obligations under this Section 12.1, unless such failure or delay actually and demonstrably prejudices Seller's ability to effectively defend such Claim. If such Claim relates to any action, suit, proceeding, or demand instituted by a third party against the Indemnitees (a "***Third Party Claim***"), Buyer shall notify Seller thereof, and upon receipt of notice from Buyer, Seller shall be entitled to participate in the defense of such Third Party Claim, and if and only if each of the conditions set forth in clauses (i) through (iii) below is satisfied, Seller shall be entitled to assume the defense of such Third Party Claim, and in the case of such an assumption, Seller shall have the authority to negotiate, compromise, and settle such Third Party Claim (provided that Seller shall not settle any such Third Party Claim without consent of Buyer, not to be unreasonably withheld or delayed, unless such settlement (x) includes a full and complete release of Buyer and Indemnitees by the claimant, (y) does not include an admission of guilt or responsibility of Buyer, and (z) does not include any non-monetary conditions that would be binding on Buyer):

(i) Seller has selected counsel to handle the defense that is reasonably acceptable to Buyer;

(ii) Buyer does not give Seller written notice, which shall be given within sixty (60) days of Buyer's notice to Seller of the Claim, that, in the exercise of its reasonable discretion, matters of policy or a conflict of interest make separate representation by Buyer's own counsel advisable; and

(iii) Seller establishes to the reasonable satisfaction of Buyer that Seller has (and will continue to have) adequate financial resources to satisfy and discharge such Claim.

(c) Buyer shall retain the right to participate in the defense of any Third Party Claim, the defense of which has been assumed by Seller pursuant hereto, but Buyer shall bear and shall be solely responsible for its own costs and expenses in connection with such participation, unless such Claim is determined by a court of competent jurisdiction against Seller, in which case, Seller shall be solely responsible for Buyer's reasonable and documented costs and expenses in connection with Buyer's participation. In the event Seller shall fail or not be entitled to assume the defense of any Third Party Claim, then Buyer shall control the defense and settlement thereof, and Seller shall be responsible for (i) the reasonable and documented costs and expenses of a single counsel selected by Buyer, and (ii) any judgment on or settlement of such Third Party Claim entered into by Buyer with the consent of Seller (not to be unreasonably withheld or delayed), which shall be conclusive and binding on Seller for all purposes.

(d) Any liability for indemnification under this Section 12.1 shall be determined without duplication of recovery by Indemnitees.

(e) No individual Representative of either Party shall be personally liable for any losses under the provisions contained in this Section 12.1. Nothing herein shall relieve either Party of any liability to make any payment expressly required to be made by such Party pursuant to this Agreement.

(f) Subject to Section 12.2, Section 12.12 and except in the case of fraud, willful misconduct or negligence Buyer acknowledges and agrees that its sole and exclusive remedy with respect to any and all Claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement from and after the Closing Date, shall be pursuant to the indemnification provisions set forth in this Section 12.1 and in Section 12.2. Nothing in this Section 12.1(f) shall limit any Person's right to seek and obtain any specific performance of the obligations set forth in this Agreement or equitable relief to which any Person shall be entitled pursuant to Section 12.12.

(g) Any payment pursuant to this Article XII shall be treated by the Parties hereto as an adjustment to the purchase consideration for the Facility Assets by the Parties for income Tax purposes, unless otherwise required by the Requirements of Law.

12.2 Intellectual Property Indemnification. Seller, at its own expense, undertakes and agrees to defend, indemnify and hold harmless Buyer and the Indemnitees from and against all charges, damages, civil fines and penalties, or losses of any kind or nature whatsoever arising out of any Third Party Claim of infringement, actual or alleged, direct or contributory, caused by the use of any Intellectual Property Assets in connection with the operation and maintenance of the Facility in accordance with industry standards for its intended use as designed; provided, however, that this Section 12.2 will not apply to the extent the underlying actual or alleged infringement arises from (a) the Buyer's material breach of this Agreement or (b) the combination of the Intellectual Property Assets with any materials not used by Seller immediately prior to the Closing Date, except that Seller's obligations under this Section will apply to any Third Party Claims arising from the combination of the Intellectual Property Assets with any other materials or

products where such combination is described in or contemplated by the applicable written specifications, documentation, usage manuals or other instructions or information guides.

12.3 Expenses. Except as otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants. Both Parties agree that, in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement.

12.4 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 in accordance with Exhibit 1.1 and according to the application of the rules on interpretation of contracts.

12.5 Voluntary Execution. The 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.

12.6 Notices. All notices, requests, demands, consents, waivers, and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when given in the manner set forth in Section 14.2 of the PPA.

12.7 Entire Agreement; Amendments.

(a) This Agreement (including all Schedules and Exhibits) and the PPA contain the entire understanding concerning the subject matter herein and supersede and replace any prior negotiations, discussions or agreements between the Parties 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 or the other documents of even date herewith between the Parties that induced the other Party to sign this document.

(b) This Agreement may be amended or modified only by an instrument in writing signed by both Parties.

12.8 Further Assurances. The Parties agree to furnish upon request to the other Party such further information, to execute and deliver to the other Party such other documents, and to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the other Operative Documents.

12.9 Waiver. The failure of either Party 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.

12.10 Severability. In the event all or part of 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, however, that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

12.11 Consequential or Punitive Damages. Neither Party shall be liable to the other Party for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity, including damages for lost revenues, income or profits.

12.12 Equitable Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by either Party and that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or equity. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

12.13 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.14 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California without consideration of conflicts of law principles. The venue for any litigation relating to this Agreement shall be in Los Angeles, California and each Party hereby waives any objections on the basis of *forum non-conveniens* or otherwise with respect to the venue of any such action being heard in Los Angeles, California.

12.15 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. The Parties may execute this Agreement by manual signature or by electronic signature, each of which shall have the same force and effect.

12.16 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either such 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.

12.17 Third Party Beneficiaries. Except as expressly provided herein, this Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

12.18 Provisions of PPA. The provisions of Section 14.3 ("Dispute Resolution"), Section 14.6 ("Assignment of Agreement; Change in Control"), Section 14.17(a) ("Indemnification"), Section 14.19 ("Confidentiality") and Section 14.20 ("Mobile Sierra") of the PPA are incorporated herein in their entirety, *mutatis mutandis*.

12.19 Exhibits and Schedules. The Exhibits and Schedules referred to in and attached to this Agreement are incorporated herein in full by this reference. To the extent that the terms and conditions of an Exhibit or Schedule conflict with the terms and conditions of the main body of this Agreement, the terms and conditions of the main body of this Agreement shall control.

12.20 Relationship with PPA. Except as otherwise specifically stated herein, this Agreement is independent of the PPA and, as a separate agreement, shall survive the amendment, modification, or termination of the PPA, except as otherwise provided herein. In the event of a conflict between this Agreement and the PPA, this Agreement shall control.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

NOTCH PEAK PROJECT, LLC, a Delaware limited liability company

By: Michael U. Alvarez
Name: Michael U. Alvarez
Title: Chief Operating Officer

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

Date: 4/16/26 By:
Tikan Singh
Vice President

Attest:
Daniel E. Garcia
Assistant Secretary

Approved as to legal form and content:

By:
Christine Godinez
General Counsel

**EXHIBIT 1.1**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

## DEFINITIONS

"***AAA***" shall have the meaning ascribed to it in Exhibit 2.4.

"***Acceptance Notice***" shall have the meaning ascribed to it in Section 2.4(c).

"***Affected Portion***" shall have the meaning ascribed to it in Section 9.3(a).

"***Agency Action***" means any notice of violation, complaint, order, consent order, consent agreement, assessment of a fine or penalty or other similar demand for action brought by a Governmental Authority having the requisite authority and jurisdiction to bring such action.

"***Agreement***" means this Option Agreement.

"***Applicable Diligence Period***" shall have the meaning ascribed to it in Section 5.1.

"***Asset Assignment Documents***" shall have the meaning ascribed to it in Section 7.4(d).

"***Assumed Contracts***" means all of Seller's rights under the Contracts to which Seller is a party or to which the Facility is subject, as set forth in Schedule 3.3 and Schedule 3.12(a) (excluding any Contract identified with an asterisk (*)).

"***Assumed Liabilities***" shall have the meaning ascribed to it in Section 2.7.

"***Bill of Sale***" means the document described in Section 7.4(c).

"***Books and Records***" means, to the extent relating to any period of time prior to the Closing, (a) all books, records, purchasing records, lists, files and papers in the possession or control of Seller or its Affiliates pertaining to the Facility Assets and the Facility, and all records and lists concerning suppliers to and personnel of the Facility or Taxes with respect thereto; (b) all ledgers, and reports, plans, drawings, maps, photographs, technical manuals and operating records of every kind maintained by Seller with respect to the Facility, whether in hard copy or electronic format; and (c) all software used by Seller primarily in connection with the operation of the Facility, in each case to the extent transferable; provided that Books and Records may include inextricable information or data unrelated to the Facility, in which case such information or data may be redacted; provided, further that Books and Records shall not include income Tax Returns and associated workpapers and other documentation.

"***Business***" means the business of owning and operating the Facility.

"***Buyer***" shall have the meaning ascribed to it in the first paragraph of this Agreement.

"***CERCLA***" means the federal Comprehensive Environmental Response, Compensation and Liability Act.

"***Change Notice***" shall have the meaning ascribed to it in Section 5.7.

"***Claim***" shall have the meaning ascribed to it in Section 12.1(b).

"***Closing***" shall have the meaning ascribed to it in Section 2.6.

"***Closing Date***" means the date on which the Closing is required to take place, as set forth in Section 2.6.

"***Closing Permitted Encumbrances***" means any Purchase Option Permitted Encumbrances other than those (i) that secure any form of Facility Debt, if any, or any other monetary obligation (other than Liens for Taxes not yet due and payable) and (ii) otherwise accepted by Buyer in writing.

"***Consent***" means any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (including any issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Requirement of Law or Environmental Law).

"***Contract***" means any agreement, arrangement, lease, commitment, sales order, purchase order, indenture, mortgage, right, warrant or instrument, which provides for ownership or operation of the Facility or the Premises and is intended to, or purports to be, or is required to be binding and enforceable as contemplated under this Agreement, including the Land Documents, but excluding the Permits.

"***Diminished Amount***" shall have the meaning ascribed to it in Section 9.3(a).

"***Disclosure Schedules***" shall have the meaning ascribed to it in Section 2.3.

"***Environment***" includes (a) the navigable waters, the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act and (b) any other surface water, ground water, drinking water supply, stream sediments, soil, land surface or subsurface strata, or ambient air, plant and animal life, and any other environmental medium or natural resource within the United States, or a foreign nation or under jurisdiction of the United States or a foreign nation.

"***Environmental Conditions***" means the presence of Hazardous Substances which have been Released into the Environment or the presence of Hazardous Substances that could reasonably be expected to pose a threat of Release of Hazardous Substances into the Environment.

"***Excluded Assets***" means, notwithstanding any other provision of this Agreement, the following assets:

(a) cash, certificates of deposit and other bank deposits, treasury bills and other cash equivalents or other investments, on hand or in bank accounts, and all of Seller's bank accounts, intercompany accounts and accounts receivable;

(b) accounts and notes receivable relating to the period prior to the Closing Date, including amounts owing under the PPA;

(c) all of Seller's rights under the PPA and any other Contract between Seller and Buyer or between Seller and any other third party for the sale of Facility Energy or Capacity Rights from the Facility;

(d) any Contract between Seller and its Affiliates, other than for on-going operations and maintenance of the Facility on commercially reasonable terms;

(e) any Contract that is not an Assumed Contract;

(f) any Permit that is not a Transferred Permit;

(g) any computers not used primarily in connection with the Facility, any communication or data network systems not used primarily in connection with the Facility, and any other equipment not reasonably required to operate the Facility;

(h) all refunds or credits, if any, of Taxes of, due to or from Seller and any refunds of Taxes with respect to the ownership or operation of the Facility Assets for any Pre-Closing Tax Period;

(i) any income Tax Returns of Seller;

(j) all corporate, financial and tax records of Seller that (i) do not relate in whole or in part to the Facility, (ii) relate solely to any Excluded Asset, (iii) relate solely to any Excluded Liability, (iv) relate to the organization, existence, capitalization or debt financing of Seller, (v) relate to information about Seller or its Affiliates pertaining to energy or project evaluation methodologies, economic evaluation of the Facility Assets (other than the Financial Statements), energy or other economic predictive models, or (vi) do not constitute Books and Records;

(k) all rights to claims, refunds or adjustments against Buyer or any other third parties arising out of the period prior to the Closing Date;

(l) Seller's insurance policies; and

(m) the assets identified as "Excluded Assets" in Schedule 3.5; provided that no asset that is required for the operation or maintenance of the Facility in the ordinary course and as intended may be listed on Schedule 3.5.

"***Excluded Liabilities***" shall have the meaning set forth in Section 2.8.

"***Facility Assets***" means all of the following (excluding those assets constituting Excluded Assets):

(a) the Facility;

(b) the Premises;

(c) all Assumed Contracts (including all Real Property Contracts and the Interconnection Agreement);

(d) all Transferred Permits;

(e) all Fixtures and Equipment;

(f) all Books and Records;

(g) all Permits;

(h) all Intellectual Property Assets;

(i) all Supplies;

(j) all Transmission Assets;

(k) all Warranties; and

(l) all other assets, properties, rights, privileges, claims and Contracts (excluding any Contract identified with an asterisk(*)) of every kind and nature, real or personal, tangible or intangible, absolute or contingent, wherever located, owned or used (including those necessary to access to utilize any common use facilities), comprising the Facility.

"***Fair Market Value***" shall mean, with respect to a particular time of calculation, the amount a willing buyer would pay for the Facility Assets and all rights, title and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell on the applicable Closing Date, taking into account all relevant facts and circumstances relating to the Facility Assets, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities and the Disclosure Schedules, as of the Closing Date, and assuming (1) compliance with the terms and provisions of the PPA through the Agreement Term, including delivery of the generation for the then-remaining Agreement Term at the Contract Price or Replacement Energy, as applicable, and (2) that the Facility is able to generate revenue for the remaining Useful Life of the Facility Assets 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 (except in the case Buyer is exercising its Project Purchase Option as a result of a Default of Seller 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 Assets), as determined in accordance with Exhibit 2.4.

"***Final Purchase Price***" shall have the meaning ascribed to it in Exhibit 2.4.

"***Financial Statements***" shall have the meaning ascribed to it in Section 5.3.

"***Fixtures and Equipment***" means the fixtures, equipment (including solar panels, control rooms and other auxiliaries, furniture, office equipment, communications equipment, fixtures, furnishings, machinery, vehicles, computers, air conditioning ventilation and heating equipment and control stations), but excluding Supplies and other tangible personal property located on the Premises and owned or used by Seller in connection with the operation of the Facility.

"***FPA***" means the Federal Power Act.

"***Hazardous Substances***" means any substance, material or waste that is regulated by or forms the basis of liability now or hereafter under, any Hazardous Substances Law or Environmental Law, including any material, substance or waste that is (a) defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any Environmental Law, (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance.

"***Hazardous Substances Law***" means any current or future treaty, constitution, law, statute, ordinance, rule, Order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance concerning the generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Substances, including, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act of 1976, CERCLA, the Toxic Substances Control Act, the Oil Pollution Act, the Safe Drinking Water Act, and includes the Occupational Safety and Health Act of 1970, to the extent that it relates to the handling of and exposure to hazardous or toxic materials or similar substances.

"***Indemnitees***" shall have the meaning ascribed to it in Section 12.1(a).

"***Intellectual Property Assets***" shall have the meaning ascribed to in Section 3.13(a).

"***Interconnection Agreement***" shall have the meaning ascribed to it in the PPA.

"***Investment Company Act***" means the Investment Company Act of 1940.

"***Knowledge***" means the actual, current knowledge after due inquiry of any officer or any other agent, employee or representative of Seller responsible for the management of the operation or maintenance of the Facility, of any fact, circumstance or condition.

"***Land Documents***" means the documents listed in Appendix H of the PPA, as may be updated.

"***Material Adverse Effect***" means a material adverse change (or changes which, taken together, result in a material adverse change) in, or effect on, Seller, the Facility, the business, condition (financial or otherwise) or results of operations of the Business, or any of the Facility Assets; provided, however, that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change arising out of or attributable to: (i) general economic, political or regulatory conditions; (ii) conditions generally affecting the electric generating, transmission or distribution industries; (iii) changes in the national, regional, state or local renewable energy industry or wholesale or retail markets for electric power, power generation, power transmission or other fuel supply or transportation or related products and operations, including those due to actions by competitors and regulators; (iv) changes in the markets for or costs for electricity, generally; (v) new generating facilities and their effect on pricing or transmission; (vi) labor strikes, requests for representation, organizing campaigns, work stoppages, slowdowns or other labor disputes; (vii) epidemics, pandemics or disease outbreaks (including COVID-19) and any material worsening of any epidemic, pandemic or disease outbreak threatened or existing as of the Closing Date, or nay shutdown or material limitation of federal, state or local government services, declaration of martial law, quarantine or similar directive, guidance, policy or other similar action by any Governmental Authority in connection with any epidemic, pandemic or disease outbreak; (viii) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index; (ix) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (x) any action required or expressly permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of the Buyer; (xi) any changes in applicable Requirements of Law or accounting rules (including GAAP) or the interpretation or enforcement thereof; (xii) the announcement, pendency or completion of the transactions contemplated by this Agreement; (xiii) any breach, violation or non-performance of any provision of this Agreement by Buyer; (xiv) changes in or effects on the Facility Assets which are cured (including by the payment of money) by Seller; (xv) effects of weather, meteorological conditions or events or other natural disasters or acts of God; or (xvi) any failure by the Facility to meet any internal or published projections, forecasts or revenue or earnings predictions (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be excluded); provided further, that the exclusions provided in clauses (i)-(ix), (xi) and (xv) shall not apply to the extent the Facility is disproportionately adversely affected by any such event, occurrence, fact, condition or change relative to other similarly situated participants in the industries in which the Facility generally operates.

"***Material Casualty Event***" means any physical damage or destruction to all or a portion of the Facility that would materially and adversely affect the capacity or output of the Facility, or Buyer's ownership or operation of the Facility Assets as of and following the Closing.

"***National Priorities List***" means the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United

States and its territories and that guides the Environmental Protection agency in determining which sites warrant further investigation.

"***Operations Period***" means the six (6) month period of time prior to the delivery by Buyer of the Purchase Option Exercise Notice.

"***Operative Documents***" means each of the agreements, instruments, certificates and other documents executed and delivered by a Party under this Agreement in connection with the performance and consummation of the transaction contemplated by this Agreement, but excluding the PPA and Ancillary Documents as defined in the PPA.

"***Order***" means any final, non-appealable award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority, or by any arbitrator.

"***Organizational Documents***" means as applicable, (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; (c) the certificate of organization and the operating agreement of a limited liability company; and (d) any amendment to any of the foregoing.

"***Party***" and "***Parties***" shall have the meaning ascribed to it in the preamble to this Agreement.

"***Post-Closing Tax Period***" means any taxable period, or portion thereof for any Straddle Period, that does not constitute a Pre-Closing Tax Period.

"***PPA***" shall have the meaning ascribed to it in the recitals to this Agreement.

"***Pre-Closing Tax Period***" means any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on the Closing Date.

"***Premises***" means the fee, leasehold, easement and other Real Property Interests held by Seller in connection with the ownership or operation of the Facility, together with all buildings, improvements, structures and fixtures thereon owned by Seller, and all easements, privileges, rights-of-way, lands underlying any adjacent streets or roads, appurtenances, licenses and other rights owned by Seller pertaining to or accruing to the benefit of such property.

"***Proceeding***" means any action, order, writ, judgment or decree outstanding, arbitration, audit, hearing, investigation, claim, litigation, or suit (whether civil, criminal, regulatory, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Person.

"***Project Purchase Option***" shall have the meaning ascribed to it in Section 2.1.

"***Provided Materials***" shall have the meaning ascribed to it in Section 5.1.

"***Purchase Option Exercise Deadline***" means a period of one hundred eighty (180) days after the date of delivery of the Disclosure Schedules for the applicable Purchase Option Opportunity.

"***Purchase Option Exercise Notice***" shall have the meaning ascribed to it in Section 2.4(a).

"***Purchase Option Opportunity***" shall have the meaning ascribed to it in Section 2.2.

"***Purchase Option Permitted Encumbrances***" means (a) any Lien approved by Buyer in a writing; (b) Liens for Taxes not yet due and payable or for Taxes being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer that has been posted or provided in such manner and amount as to assure Buyer that any Taxes determined to be due will be promptly paid in full when such contest is determined; (c) zoning, building codes and other land use laws regulating the use or occupancy of the Premises or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over the Premises; (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 either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer has been posted or provided in such manner and amount as to assure Buyer that any amounts determined to be due will be promptly paid in full when such contest is determined; (e) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations which do not materially impair the Premises affected thereby for the purpose for which title was acquired or materially interfere with or impair the operation of the Facility Assets; (f) Liens in favor of Facility Lenders; (g) the Real Property Agreements, or memoranda of such Real Property Agreements, or Liens contemplated the Real Property Agreements; and (h) Liens created or reserved pursuant to or contemplated by the PPA (including Section 14.6 thereof), this Agreement (including any Liens imposed by the memorandum of this Agreement) or any Performance Security under the PPA.

"***Purchase Option Tentative Exercise Notice***" shall have the meaning ascribed to it in Section 2.3.

"***Qualified Appraiser***" means a nationally recognized, appropriately licensed, certified general real estate appraiser, which shall (a) be qualified to appraise independent electric generating businesses, (b) have been engaged in the appraisal or business valuation and consulting business for a period of not less than five (5) years, (c) be qualified and have expertise at calculating forward projections of power curves and valuations, and (d) not be associated with Seller, Buyer or any of their respective Affiliates.

"***Real Property Contracts***" shall have the meaning ascribed to it in Section 3.3(b).

"***Real Property Interests***" shall have the meaning ascribed to it in Section 3.3(b).

"***Release***" means any physical release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances in the Environment, including the movement of Hazardous Substances through or in the Environment, including the Premises.

"***Replacement Security***" shall have the meaning ascribed to it in Section 8.4(d)(i).

"***Representative***" means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors,

"***Schedule Delivery Date***" shall have the meaning ascribed to it in Section 2.3.

"***Seller***" shall have the meaning ascribed to it in the first paragraph of this Agreement.

"***Seller Disclosure Schedules***" shall have the meaning ascribed to it in Section 2.3.

"***Seller Guarantor***" means an entity to be mutually agreed by the Parties.

"***Seller Guaranty***" means the guaranty to be executed by Seller Guarantor in the form attached hereto as Exhibit 7.4(i).

"***Straddle Period***" means any taxable period that includes but does not end on the Closing Date. For all purposes of this Agreement, with respect to Taxes for any Straddle Period, the portion of such Taxes related to the portion of the Tax period ending on and including the Closing Date shall, (i) in the case of any property or ad valorem Taxes, equal the product of (A) the amount of such Tax for the entire Straddle Period and (B) a fraction the numerator of which is the total number of days from the beginning of the Straddle Period through and including the Closing Date and the denominator of which is the total number of days in the entire Straddle Period and (ii) in the case of all other Taxes other than Transfer Taxes (such as franchise Taxes, Taxes that are based upon or related to income or receipts, based upon production or occupancy or imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible)) be computed on a "closing-of-the-books" basis as though the relevant Straddle Period ended at the end of the Closing Date.

"***Supplies***" means those supplies, inventories and spare parts on the Premises or otherwise dedicated to the Facility as of the Closing Date.

"***Support Obligations***" means any letters of credit, cash collateral, parent company guaranties, surety bonds and other similar credit support.

"***Tax Claim***" shall have the meaning ascribed to it in Section 9.1(e).

"***Tax Return***" means any return, report, information return or other document (including any related or supporting information) required to be supplied to any authority with respect to Taxes, and including any amendment thereof or thereto.

"***Third Party Claim***" shall have the meaning ascribed to it in Section 12.1(b).

"***Third Party Property Interests***" shall have the meaning ascribed to it in Section 3.3(b).

"***Transfer Taxes***" shall have the meaning ascribed to it in Section 2.11.

***"Transferred Permit"*** means any Permit transferred to Buyer at Closing, as set forth in Schedule 3.15 (excluding any Permit identified with an asterisk (*)).

"***Transmission Assets***" means the fixtures, equipment (including transformers and switchgear) and other tangible property interests owned by Seller and required for the interconnection and transmission of Energy to the Point of Delivery.

"***Updated Schedule Delivery Date***" shall have the meaning ascribed to it in Section 2.9(a).

"***Useful Life of the Facility Assets***" shall mean no less than thirty-five (35) years from the Commercial Operation Date.

"***Warranties***" means all rights of Seller under or pursuant to all third-party warranties, representations and guarantees made by manufacturers and suppliers in connection with the Facility Assets or services furnished to Seller pertaining to the Facility or affecting the Facility Assets.

**EXHIBIT 2.4**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

## PURCHASE PRICE

The "***Fair Market Value,***" as defined for purposes of this Agreement in Exhibit 1.1, shall be determined in accordance with this Exhibit 2.4.

Within sixty (60) days following the delivery of the Disclosure Schedules, the Parties shall meet and attempt to agree on the Fair Market Value based on the Disclosure Schedules. If the Parties are unable to agree on the Fair Market Value within sixty (60) days after the delivery of the Disclosure Schedules, then each of Seller and Buyer shall, within fourteen (14) additional days, select an independent recognized appraiser who will meet the requirements for the Qualified Appraiser. Within forty-five (45) days following the deadline for the Parties to select Qualified Appraisers, each such independent recognized appraiser shall determine the Fair Market Value. Upon completion of the two appraisals, each of Buyer and Seller shall deliver the results to the other Party. If the Fair Market Value appraisals of the two independent appraisers vary by less than ten percent (10%), the Fair Market Value determination shall be the simple average of the Fair Market Value determinations of the two appraisals. If the variance is greater than ten percent (10%), the two independent appraisers shall either select a third independent appraiser, who meets the requirements for a Qualified Appraiser, or, if the two independent appraisers fail to agree on a third independent appraiser within fourteen (14) days following delivery of the second appraisal, a third independent appraiser shall be appointed by the American Arbitration Association ("AAA") upon application by either Party in accordance with the applicable rules and regulations of the AAA for such selection. The third independent appraiser shall select one of the appraisals generated by the two independent appraisers within thirty (30) days of retention and such appraisal shall be the Fair Market Value determination. If the third independent appraiser selects the appraisal originally prepared by Buyer's independent appraiser, Seller shall pay the fees and costs of the third independent appraiser. If the third independent appraiser selects the appraisal originally prepared by Seller's independent appraiser, Buyer shall pay the fees of the third independent appraiser.

The Fair Market Value shall be adjusted from time to time by the amount (as determined by the Parties in good faith, or absent their mutual agreement, by the Qualified Appraiser or the independent appraisers using the same methodology set forth in paragraph 2 above) necessary to compensate Buyer for (i) any differences between the Seller Disclosure Schedules originally delivered to Buyer on the Schedule Delivery Date and any updated Seller Disclosure Schedules delivered to Buyer from time to time prior to Closing, (ii) any item or omission in a Seller Disclosure Schedule that is not resolved to the reasonable satisfaction of Buyer, (iii) any differences in Facility Assets, Excluded Assets, Assumed Liabilities or

Excluded Liabilities from the Schedule Delivery Date to the Closing, (iv) the inability of Seller to satisfy any of the Buyer Closing Conditions set forth in Article VII, (v) a Material Casualty Event or any real or threatened condemnation or eminent domain proceeding as described under Section 9.3(a) of the Agreement, but solely to the extent an adjustment to Fair Market Value is required under such Section 9.3, or (vi) any issue that requires the delivery of a Change Notice.

The "***Final Purchase Price***" to be paid by Buyer at the Closing shall be the Fair Market Value determined in accordance with this Exhibit 2.4, as such may be adjusted hereunder.

**EXHIBIT 2.5**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**FORM OF MEMORANDUM OF OPTION**

AFTER RECORDING, RETURN TO:

Attn: _____

**MEMORANDUM OF OPTION AGREEMENT**

**THIS MEMORANDUM OF OPTION AGREEMENT** (this "***Memorandum***") is dated as of _____, 202_ (the "***Effective Date***"), by and between NOTCH PEAK PROJECT, LLC, a Delaware limited liability company (the "***Seller***"), and SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, 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 (California Government Section 6500 et seq.) (together with its successors and assigns, "***Buyer***").

**RECITALS**

A. Buyer and Seller entered into that certain Option Agreement dated of even date herewith (the "***Agreement***"), which by its terms grants to Buyer an option to purchase the Facility Assets, including the Premises as legally described on Exhibit A attached hereto, all as more particularly described in the Agreement and incorporated herein by this reference.

B. Buyer and Seller have executed and acknowledged this Memorandum for the purpose of providing constructive notice of the Agreement.

C. Capitalized terms used but not otherwise defined in this Memorandum shall have the meanings given to such terms in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer provide record notice of the following:

(a) 1. **Grant of Option and Option Term**. Pursuant to the Agreement, Seller has granted to Buyer an exclusive, irrevocable option to purchase the Facility Assets (the "***Project Purchase Option***"). The Project Purchase Option may be exercised at any time: (a) one (1) year prior to the tenth (10th) anniversary of the Commercial Operation

Date; (b) one (1) year prior to the fifteenth (15th) anniversary of the Commercial Operation Date; (c) one (1) year prior to every subsequent five (5) years after the fifteenth (15th) anniversary of the Commercial Operation Date until the end of the Agreement Term; (d) during the sixty (60) day period commencing on the date on which a Termination Notice is provided by Buyer to Seller pursuant to Section 13.4(a) of the PPA.

2. **Manner of Exercise**. Buyer may exercise the Project Purchase Option during a Purchase Option Opportunity by delivering written notice to Seller and complying with the terms of Section 2.3 of the Agreement.

3. **Covenant by Seller**. Seller hereby covenants to and for the benefit of Buyer that neither Seller nor any of its agents, employees, directors, officers, shareholders, members, or representatives shall contract with any other party to sell, convey, lease, sublease, grant any option rights with respect to, or encumber in any way all or any portion of the Facility Assets in a manner that would adversely affect the rights of Buyer under the Agreement.

4. **Effect of Agreement**. The Parties intend that the Agreement create a valid option in favor of Buyer as to the Facility Assets on the terms set forth in the Agreement and shall inure to the benefit of, and bind, each of the Parties and their respective successors and assigns.

5. **No Conflict**. In the event of any conflict or inconsistency between the provisions of this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control. Nothing in this Memorandum shall be deemed to amend, modify, change, alter, amplify, limit, interpret or supersede any provision of the Agreement or otherwise limit or expand the rights and obligations of the Parties under the Agreement.

6. **Counterparts**. This Memorandum may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

[Remainder of Page Intentionally Left Blank. Signature Pages Follow.]

IN WITNESS WHEREOF, Buyer has caused this Memorandum to be executed and delivered by its duly authorized representative.

BUYER:

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

Date: _____ By:_____

Name:
Title:

Attest: _____

Name:
Title:

Approved as to legal form and content:

By:_____

Name:
Title:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

| |
|---|
| A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document. |

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me,_____, Notary Public personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE _____

PLACE NOTARY SEAL ABOVE

IN WITNESS WHEREOF, Seller has caused this Memorandum to be executed and delivered by its duly authorized representative.

**SELLER**:

NOTCH PEAK PROJECT, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 202_, by _____, as _____ of Notch Peak Project, LLC, a Delaware limited liability company.

_____
[SEAL] Notary Public

My commission expires:

Exhibit A – Legal Description of the Premises

**[LEGAL DESCRIPTION + TAX PARCEL NUMBER TO BE INSERTED]**

**EXHIBIT 5.11**
**FORM OF TRANSITION SERVICES AGREEMENT**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

This **TRANSITION SERVICES AGREEMENT** (this "Agreement") is entered into on [•], 20[__] (the "Effective Date"), by and between Notch Peak Project, LLC, a Delaware limited liability company ("Seller") and SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, 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 Power Act (California Government Section 6500 *et seq.*) ("Buyer"). Seller and Buyer are hereinafter sometimes collectively referred to as the "Parties," and each individually as a "Party."

**W I T N E S S E T H:**

WHEREAS, the Parties have entered into that certain Option Agreement, dated as of [_____] (the "Option Agreement"), pursuant to which, among other things, Seller has agreed to sell, transfer, assign, convey and deliver to Buyer, and Buyer has agreed to purchase, receive and assume from Seller, the Facility Assets (as defined in the Option Agreement), upon the terms and subject to the conditions set forth in the Option Agreement; and

WHEREAS, Section 5.11 of the Option Agreement provides that Seller or its Affiliates will provide Buyer with transitional operation and maintenance services; and

WHEREAS, Buyer hereby requests that Seller (or its Affiliates) perform certain transitional operation and maintenance services for a period of time following the Closing Date to facilitate the transition of the operations of the Facility to Buyer; and

WHEREAS, Seller is willing to provide, or cause its Affiliates to provide, such services to Buyer subject to the terms and conditions set forth herein:

NOW, THEREFORE, in consideration of the premises and the covenants set forth herein and the benefits to be derived herefrom, the Parties hereby agree as follows:

## ARTICLE I
## DEFINED TERMS

Capitalized terms used in this Agreement shall have (unless provided elsewhere in this Agreement) the meanings given to such terms in the Option Agreement and as set forth below:

"Services" means the services that are listed on Schedule 1 attached hereto; provided, however, that the term "Services" shall not include the services listed under the heading "Excluded Services" on Schedule 1 attached hereto.

## ARTICLE II
## DESCRIPTION OF SERVICES

2.1 Seller's Undertakings. The purpose of this Agreement is to give Buyer the option, but not the obligation, to receive the Services from Seller or Seller's Affiliates on an interim basis in order to permit Buyer the opportunity to obtain alternate sources of supply of such Services prior to the expiration of the Initial Term, or if extended, the Extension Term (as such terms are defined in Section 3.1 below). Seller agrees to provide, or to cause the provision through its Affiliates, the Services to Buyer during the Initial Term or Extension Term, if any, in accordance with the terms and conditions of this Agreement, in a professional, workmanlike manner, subject to the Requirements of Law and in a manner that is substantially the same as the manner in which such Services were performed prior to the date of this Agreement.

2.2 Resources Committed. Seller shall provide the Services set forth on Schedule 1, provided that Seller shall not be required to provide any services to Buyer that neither Seller nor its Affiliates previously provided and/or performed in connection with the ownership of the Facility Assets or the Business prior to the Closing Date. Nothing herein shall require Seller to install equipment, acquire licenses, expand any systems or services or expend or devote any resources beyond the level provided by Seller and its Affiliates to the Business during the Operations Period. In connection with the performance of the Services, Seller may, at its sole cost and expense and at all times on an arms-length basis: (a) subcontract with a non-Affiliate and/or personnel of a non-Affiliate to perform any portion of the Services to be performed hereunder; (b) utilize personnel who are employees of Affiliates of Seller; or (c) subcontract work to Affiliates of Seller; provided that all such personnel and subcontractors shall be fully qualified to perform the applicable Services pursuant to the terms and conditions of this Agreement and Buyer shall have consented in writing to such personnel and subcontracts, such consent not to be unreasonably withheld or delayed; provided, that if such subcontract is on substantially the same terms and conditions as was being provided to Seller prior to the Closing Date, then such subcontract shall be deemed to be acceptable to Buyer.

## ARTICLE III
## TERM AND TERMINATION

3.1 Term. The initial term of this Agreement (the "Initial Term") shall commence as of the Closing Date and shall continue in effect for a maximum of six (6) months; provided, however, that following the expiration of the Initial Term this Agreement may be extended for up to three additional terms (or such greater number that is agreed by the Parties), each not to exceed two (2) months (each such two (2) month extensions, an "Extension Term" and collectively with the Initial Term, the "Term") if Buyer provides written notice not less than thirty (30) days prior to the expiration of the Initial Term.

3.2 Termination of Entire Agreement. Notwithstanding anything herein or elsewhere to the contrary, this Agreement may be terminated and the transactions contemplated hereby abandoned, at any time, upon the occurrence of any of the following events or conditions:

(a) upon the mutual written agreement of the Parties to terminate this Agreement;

(b) by Seller, upon Buyer's breach of a material obligation under this Agreement (including Buyer's failure to pay Seller amounts owing hereunder) and such breach is not remedied to Seller's reasonable satisfaction within thirty (30) days after notice to Buyer of such breach; or

(c) by Buyer, upon Seller's breach of a material obligation under this Agreement and such breach is not remedied to Buyer's reasonable satisfaction within fifteen (15) days after notice to Seller of such breach or if such breach is not capable of rectification within fifteen (15) days, if Seller has not promptly commenced to rectify the breach within such fifteen (15)-day period and is not proceeding diligently to rectify the breach; provided, however, that such right to continue to rectify a breach shall end upon expiration of this Agreement.

In the event of termination of this Agreement pursuant to this Section 3.2, no Party will have any further liability or obligation hereunder, except that any such termination will not affect (i) the provisions of Section 4.1, Article V and Article VI, which will survive any such termination, or (ii) the rights and obligations of the Parties accruing prior to such termination.

3.3 Termination of Particular Service. Notwithstanding anything herein or elsewhere to the contrary, Buyer shall have the right, upon thirty (30) days written notice to Seller, to terminate this Agreement as to any Service listed on Schedule 1. Upon the effectiveness of the termination of any particular Service, Seller shall no longer be required to provide such Service to Buyer, and Buyer shall incur no additional obligations to pay Seller the fee associated with the provision of such Service, other than obligations that have accrued prior to the termination of such Service, including, without limitation, any third-party fees, penalties or other payments related to the termination by Seller of such Service.

3.4 Termination Procedures. Upon any termination of this Agreement (in whole or in part), each Party shall cooperate with the other Party as reasonably necessary to assist Buyer in transferring responsibility for the provision of the terminated Service(s) to Buyer (or any third party as designated in writing by Buyer).

## ARTICLE IV
## FEES, BILLING, AND PAYMENT

4.1 Compensation. Buyer shall, in accordance with Section 4.2, (a) pay Seller the fees set forth on Schedule 1 attached hereto for the provision of each particular Service provided under this Agreement and (b) except as set forth in Section 3.3 above, reimburse Seller for any incidental, out-of-pocket expenses reasonably incurred by Seller or Seller's Affiliates in connection with

performing the Services. All amounts paid by Buyer to Seller hereunder shall be paid in full without any deduction or withholding for taxes or any other fees or expenses.

4.2 Billing and Payment. After the end of each calendar month, Seller shall send to Buyer an invoice, setting forth a description of the Services provided during the prior calendar month and identifying the fees that are to be paid. Buyer shall pay to Seller the amounts due and payable on each such invoice within sixty (60) days after its receipt thereof. If Buyer in good faith disputes any portion of an invoice, and Buyer notifies Seller in writing of the nature and basis of such good faith dispute within sixty (60) days after Buyer's receipt of such invoice, Buyer shall have the right to withhold payment of the disputed portion and Buyer shall pay only the undisputed portion. Seller shall be entitled to a late fee on any undisputed amounts, and any amounts not disputed in good faith by Buyer, due hereunder that remain unpaid following the date due hereunder at the rate of one percent (1%) per month.

4.3 Access. During the Term, Buyer will provide Seller, Seller's Affiliates and their respective authorized representatives, at each such Party's sole risk, reasonable access (during regular business hours and upon reasonable prior notice), to Buyer and its employees, representatives, facilities and books and records as Seller, Seller's Affiliates and their respective authorized representatives may reasonably request which are reasonably necessary for providing the Services and not subject to confidentiality restrictions; provided, that (i) Buyer shall have the right to have a representative present for any communication with employees or representatives of Buyer; (ii) such access and activities incidental thereto shall be undertaken in accordance with the Requirements of Law and Buyer's generally applicable policies and procedures; and (iii) Buyer shall have the right to impose reasonable restrictions and requirements for safety purposes. Buyer grants to Seller and its representatives access to the Facility for a period of thirty (30) days after the expiration or termination of this Agreement so that Seller may demobilize its work force, including the removal of its personal property that was brought to the Facility by Seller to provide the Services.

4.4 Records Retention. Each Party shall retain all records relating to this Agreement for so long as required by any Governmental Authority having jurisdiction.

## ARTICLE V
## INDEMNIFICATION; LIMITATION OF LIABILITY; INSURANCE

5.1 Indemnification. Each Party shall indemnify, defend and hold harmless either Party and its officers, directors, employees, agents and representatives from and against any and all suits, sanctions, liabilities, legal proceedings, claims, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorneys' fees and expenses, for injury or death of persons or physical loss of or damage to property of Persons to the extent arising from either Party's (including its employees or agents) negligence, breach or willful misconduct in connection with the performance of Services under this Agreement. Each Party shall also indemnify, defend and hold harmless either Party and its officers, directors, employees, agents and representatives from and against any and all regulatory penalties or fines and reasonable expenses (including attorneys' fees and expenses) to the extent arising from the either Party's violation of

any law, regulation, or government approval in connection with the performance of this Agreement.

5.2 Limitation of Liability. Each Party's liability in connection with its performance of the Services hereunder, regardless of whether such liability arises in contract, tort or otherwise, shall not exceed the aggregate amount of the fees payable hereunder; provided that, the such limitation shall not apply to, and each Party shall be liable for, Losses arising under or caused in whole or in part by either Party's gross negligence, fraud or willful misconduct or the Party's third party indemnification obligations under Section 5.1. The Parties agree that for any loss implicating any of the liability or property insurance required to be carried by Seller under this Agreement, or otherwise carried by Buyer in relation to the Facility, the limitation of liability in this Section 5.2 shall correspond to and not reduce the coverage limits in all such primary and excess insurance policies. The Parties' liability shall be covered, at a minimum, to the full extent of the limits of their respective insurance coverages. Nothing in this Section 5.2 inures to the benefit of the Parties' insurers. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY, OR ANY OF ITS AFFILIATES, HAVE ANY LIABILITY HEREUNDER TO THE CLAIMING PARTY OR ITS AFFILIATES IN RESPECT OF ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF SERVICES HEREUNDER.

5.3 Insurance. Seller shall at its sole cost and expense procure, provide, and maintain, and shall require each subcontractor (regardless of tier) to provide and maintain, in effect during the performance of any Services under this Agreement, and with respect to subparagraphs (d) and (e) below, the period of time specified therein, insurance coverage with carriers reasonably satisfactory to Buyer, as follows (collectively, the "Required Policies")[1]:

(a) Workers' Compensation insurance in accordance with statutory limits, as required by the state in which the services are to be performed, including a waiver of subrogation favoring Buyer, and Employer's Liability insurance with limits of not less than [one million dollars ($1,000,000)] each employee for accident, [one million dollars ($1,000,000)] each employee for disease, and [one million dollars ($1,000,000)] policy limit for disease.

(b) Commercial General Liability insurance providing coverage for bodily injury, property damage, personal injury, advertising liability, blanket contractual liability, Seller's obligations under this Agreement, products and completed operations, and coverage for independent contractors with limits of not less than [one million dollars ($1,000,000)] for each occurrence. Such policy shall cover Buyer as an additional insured, include a severability of

[1] Note to the Form: Parties to negotiate the policy limits and deductions to reflect customary and market limits at the time of signing the Transition Services Agreement.

interest provision, and be primary and not contributory with respect to any insurance carried by Buyer.

(c) Commercial Automobile Liability insurance providing coverage for all owned, non-owned, and hired automobiles used by Seller in the performance of the Services with a combined single limit of not less than [one million dollars ($1,000,000)] for each occurrence of bodily injury and property damage.

(d) Errors & Omissions/Professional Liability insurance, including coverage for liability arising from intellectual property infringement, information technology and software development services, with limits of [one million dollars ($1,000,000)] per claim and in the aggregate. The policy must be kept in force during the life of the contract and for three years (either as a policy in force with "prior acts" coverage covering the Agreement's term, or under an extended reporting provision) after contract termination.

(e) Cyber Security Coverage including technology / professional liability insurance, intellectual property infringement, and data protection liability insurance. Seller shall procure and maintain coverage for cyber liabilities and financial loss resulting or arising from acts, errors, or omissions, in connection with data maintenance, hosting, software development and other information technology services provided under this agreement. Coverage shall include protection for liability arising from:

(i) intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets);
(ii) breaches of security;
(iii) violation or infringement of any right, privacy, breach of federal, state, or foreign security and/or privacy laws or regulations; and
(iv) data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on a third party.

The minimum limits shall be [three million dollars ($3,000,000)] for each claim and in the aggregate.

The Required Policies must address all of the foregoing without limitation if caused by an employee of Seller or an independent contractor working on behalf of Seller in performing Services under this Agreement. Policy must provide coverage for wrongful acts, claims, and lawsuits anywhere in the world. The Required Policies must be kept in force during the Term and for three years (either as a policy in force with "prior acts" coverage covering the Agreement's Term, or under an extended reporting provision) after contract termination.

All Required Policies shall provide not less than thirty (30) calendar day notice of cancellation to Buyer. The Required Policies shall not include any of the following: except for

Professional Liability Insurance, any claims-made insurance policies; any self-insured retention or deductible amount greater than [two hundred fifty thousand dollars ($250,000)] unless approved in writing by Buyer; any endorsement limiting coverage available to Buyer that is otherwise required by this Section 5.3; and any policy or endorsement language that (A) negates coverage to Buyer for Buyer's own negligence; (B) limits the duty to defend Buyer under the policy; (C) provides coverage to Buyer only if Seller is negligent, or (D) permits the recovery of defense costs from any additional insured. The insurance provided under this Agreement shall not contain any restrictions or limitations which are inconsistent with Buyer's rights under this Agreement.

Seller shall furnish Buyer proof of all Required Policies evidencing the required coverages prior to commencement of Services under this Agreement. Seller shall provide Buyer a new or renewed certificate of insurance upon any changes or modifications to coverage including any extension or renewal of required insurance coverage; provided that any changes or modifications to coverage shall be consistent with the requirements of this Agreement.

The insurance requirements set forth in this Section 5.3 are separate and independent from the indemnification and defense provisions of this Agreement. The insurance provisions do not limit the applicability, scope, or obligations of indemnification and defense obligations of this Agreement, and this Agreement's indemnification and defense obligations do not limit the insurance coverage requirements of this Agreement.

## ARTICLE VI
## RELATIONSHIP OF PARTIES

This Agreement is not intended to and shall not be construed as creating a joint venture, partnership, agency or other association within the meaning of the common law or under the laws of the state in which any Party is incorporated, organized, or conducting business. Except for the obligations arising from the authorized activities of Seller as described herein, no Party shall be responsible for the obligations or actions of any other Party, each Party being severally responsible only for its obligations and actions arising hereunder. It is the intent of the Parties that with respect to performing the Services, the Seller and its Affiliates are independent contractors, and shall provide the Services in accordance with the reasonable instructions provided by authorized representatives of Buyer, subject to the provisions of this Agreement.

## ARTICLE VII
## FORCE MAJEURE

7.1 Force Majeure Event. No Party shall be liable to any other Party for its failure or delay in performing its obligations hereunder (other than its obligation to pay money for Services rendered hereunder) due to any contingency beyond such Party's reasonable control (a "Force Majeure Event") including, without limitation, acts of God, fires, floods, wars, acts of war, sabotage, terrorism, accidents, labor disputes (whether or not such disputes are within the power of the Party to settle), shortages, governmental laws, ordinances, rules or regulations.

7.2 Notice of Force Majeure Event. Each Party affected by a Force Majeure Event will give notice to the other Party as promptly as practicable of the nature and probable duration of the Force Majeure Event as well as of the anticipated termination of such Force Majeure Event. The Party affected by the Force Majeure Event will use commercially reasonable efforts to remove the Force Majeure Event and, in the case of Seller, to resume the performance of the Services as soon as reasonably practicable after such removal.

## ARTICLE VIII
## CONFIDENTIALITY

This Agreement is subject to the terms and conditions of Section 14.19 of the PPA.

## ARTICLE IX
## MISCELLANEOUS

9.1 Operational Coordination. Buyer designates [_____] as Buyer's representative[s] for purposes of operational coordination under this Agreement. Seller designates [_____] as Seller's representative[s] for purposes of operational coordination under this Agreement. Either Party may change its designee for purposes of this Section 9.1 by providing notice thereof to the other Party in accordance with this Section.

9.2 Notices. All notices and other communications required or permitted to be given or delivered hereunder shall be in writing signed by or on behalf of the Party making the same, shall specify the Section under this Agreement pursuant to which it is given or made and shall be delivered personally, transmitted by facsimile with answerback confirmed or sent by recognized overnight courier service or United States mail, postage prepaid and return receipt requested, directed to the Party intended at the address or facsimile number set forth in Section 12.5 of the Option Agreement, or at such other address or facsimile number as may be designated by such Party by notice given to the other Party in the manner aforesaid, and shall be effective upon receipt. Such address may be changed from time to time by means of a notice given in the manner provided in this Section 9.2.

9.3 Waiver. The failure of a Party at any time or times to enforce or require performance of any provision hereof shall in no way operate as a waiver or affect the right of such Party at a later time to enforce the same. No waiver by a Party of any condition or the breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach, or a waiver of any other condition or of any breach of any other term, covenant, representation or warranty contained in this Agreement. Any waiver of an obligation, agreement or condition contained herein shall be valid and effective only if in writing and signed by the Party making such waiver.

9.4 Severability. In the event any provision of this Agreement is held to be invalid by a court or arbitrator of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision contained herein; provided, however, that any such invalidity does not

materially prejudice either Buyer or Seller in their respective rights and obligations contained in the valid provisions of this Agreement.

9.5 Dispute. 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 9.5 (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. 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. In the event a Dispute is not resolved pursuant to the procedures set forth herein by the expiration of the thirty (30) day period set forth above, then either Party may pursue any legal remedy available to it in accordance with the provisions of this Agreement. In the event of a dispute regarding payments due hereunder, each Party shall continue to perform its respective obligations hereunder pending the resolution of such dispute.

9.6 Governing Law; Venue. This Agreement shall be governed by, interpreted and enforced in accordance with laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the Dispute resolution process set forth above, the Parties must comply with California law governing claims against public entities and presentment of such claims. 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*. Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement.

9.7 No Third-Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective successors and assigns permitted hereby, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any Party to this Agreement, and no provision of this Agreement shall give any third persons any right of subrogation or action over and against any Party to this Agreement.

9.8 Counterparts. This Agreement may be executed in any number of original or facsimile counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement, and each of which shall be deemed an original, and this Agreement shall become binding when one or more such counterparts have been signed by each of the Parties and delivered to the other Parties.

9.9 Assignment; Delegation. No Party may assign any right, interest, or obligation granted it under this Agreement without the express written consent of the other Party. Subject to the foregoing, this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the Parties and their permitted successors and assigns.

9.10 Entire Agreement; Amendments. This Agreement (including Schedule 1 hereto) and the Option Agreement (a) constitute the entire agreement among the Parties with respect to the subject matter hereof and (b) supersede all prior statements, representations, discussions and understandings relating to such subject matter. This Agreement shall only be amended or modified by a written instrument signed by a duly authorized representative of each of the Parties.

9.11 Headings. The headings of Articles and Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect in any way the meaning or interpretation of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties have caused this Agreement to be executed and delivered as of the date first set forth above by their duly authorized representatives.

**SELLER**

NOTCH PEAK PROJECT, LLC

By:_____

Name:_____

Title:_____

**BUYER**

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By:_____

Name:_____

Title:_____

SCHEDULE 1
TO TRANSITION SERVICES AGREEMENT

SERVICES[2]

Following the Closing Date, during the Initial Term and, if applicable, the Extension Term, Seller shall perform (or shall cause its Affiliates to perform) the following Services:

1. Access, Information and Training. Seller shall provide Buyer and Buyer's representatives, agents, employees and personnel ("Buyer's Personnel") with access, information and training as may be reasonably required so that the transfer of the duties and responsibilities of Seller cause as little disruption as possible to the Facility.
2. System Monitoring. Seller shall conduct system monitoring or assist Buyer's Personnel with conducting system monitoring, including, as applicable, continued upkeep and operation of any operations center that monitors project metrics or hosts SCADA activities, retrieval and storage of performance data and remote or on-Premises monitoring and support.
3. Preventative and Scheduled Maintenance. Seller shall perform or assist Buyer's Personnel with performing maintenance duties for the Facility Assets, which may include, but are not limited to, the following duties:
    - Regular inspection, repair and functional testing of Facility components, including, as necessary, of photovoltaic modules, mounting systems, combiner boxes and fuse boxes, inverter shelters, power conversion station performers, switchgear and other components.
    - Regular inspection, repair and functional testing of inverters in compliance with, and to ensure continued coverage under, any applicable warranties.
    - Regular inspection and repair, adjustment or cleaning, in accordance with manufacturers' recommendations, of filters, cable connections, warning labels, paint and exterior, operators and handles, weather stripping, relays, transistors and other items.
    - Visual inspection of the Facility and the Premises and correction of undesirable conditions, including fencing, shading, vegetation, animal damage, erosion, corrosion and discolored panels.
    - Inspection and correction of loose electrical connections and ground connections.
    - Training regarding Seller's Quality Assurance Program (as defined in the Power Purchase Agreement between the Parties), and provision of and

[2] **NTD**: To be updated in connection with execution.

training regarding Seller's operation and maintenance plan and related records.

- Maintain records of service history and information and training regarding such maintenance.
- Maintenance and testing of sensors and meters.

4. Emergency Response. Seller shall provide or assist Buyer's Personnel with providing responses to emergency events that reduce or halt power production and with performing unscheduled repairs. Seller shall provide, and provide training regarding, any documents, plans or protocols Seller has developed in relation to such events.
5. Warranty Management. Seller shall verify and enforce or assist Buyer's Personnel with verifying and enforcing all warranties applicable to the Facility Assets.
6. Spare Parts Inventory Management. Seller shall maintain or assist Buyer's Personnel with maintaining spare parts inventories for the Facility and documentation related to the usage and location of spare parts. Seller shall assist Buyer's Personnel in determining appropriate quantities of inventory and with the procurement of goods and materials that Buyer will need for continued operating and maintenance of the Facility.
7. Performance Reporting. Seller shall continue to generate or assist Buyer's Personnel with generating appropriate reports from Facility data.
8. Compliance with Requirements. Seller shall comply with, assist Buyer's Personnel in complying with, and provide information and training regarding compliance with all applicable permits, Operative Documents, Assumed Contracts, warranties, and other requirements applicable to the Facility Assets.
9. Data Transfer. Seller shall transfer the data from the Computerized Maintenance Management System to Buyer.

B. **Excluded Services.**

*[Seller and Buyer shall mutually agree on any Excluded Services on or before the Closing Date.]*

C. **Fees for Services.**

*[Seller and Buyer shall mutually agree on fees for Services on or before the Closing Date.]*

**EXHIBIT 7.4(i)**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**SELLER GUARANTY**

[To come.]

**SCHEDULE 3.3**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**REAL PROPERTY MATTERS**

[All Real Property Contracts and Real Property Interests of Seller to be set forth in accordance with Section 3.3 shall be specified and briefly described in this Schedule]

**SCHEDULE 3.4**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

## SELLER'S CONSENTS

[All Consents of Seller which are necessary or incidental to the Facility shall be specified and briefly described in this Schedule]

**SCHEDULE 3.5**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**CERTAIN ASSETS**

[Any Assets that are not in good repair and operating condition, normal wear and tear excepted, and Excluded Assets.]

**SCHEDULE 3.6**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**TITLE TO FACILITY ASSETS**

[Any exceptions to Seller's representation regarding having good title to the Facility Asset, free and clear of all Liens, except for certain permitted liens.]

**SCHEDULE 3.7**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**ENVIRONMENTAL MATTERS**

[All environmental matters referred to in Section 3.7 shall be specified and briefly described in this Schedule]

**SCHEDULE 3.8**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**LIABILITIES**

[All liabilities referred to in Section 3.8 shall be specified and briefly described in this Schedule]

**SCHEDULE 3.9**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**TAX MATTERS**

[All tax matters referred to in Section 3.9 shall be specified and briefly described in this Schedule]

**SCHEDULE 3.10**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

## COMPLIANCE WITH LAWS

[All non-compliance with laws referred to in Section 3.10 shall be specified and briefly described in this Schedule]

**SCHEDULE 3.11**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**LITIGATION**

[All litigation proceedings referred to in Section 3.11 shall be specified and briefly described in this Schedule]

**SCHEDULE 3.12(a)**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**CONTRACTS**

**[**All Contract matters referred to in Section 3.12(a) of the Agreement shall be specified and briefly described in this Schedule, with any Contract not constituting an Assumed Contract identified by an asterisk (*)]

**SCHEDULE 3.12(b)**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

## EXCEPTIONS TO ASSUMED CONTRACTS

[All exceptions to the Assumed Contracts referred to in Section 3.12(a) and 3.12(b) of the Agreement shall be specified and briefly described in this Schedule.]

**SCHEDULE 3.13**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**INTELLECTUAL PROPERTY**

[All Intellectual Property Asset matters referred to in Section 3.13 with respect to the Facility shall be specified and briefly described in this Schedule]

**SCHEDULE 3.15**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**PERMITS**

[All Permit matters referred to in Section 3.15 of the Agreement shall be specified and briefly described in this Schedule, with any Permit not constituting a Transferred Permit identified by an asterisk (*)]

**SCHEDULE 3.17**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

**EMPLOYEE MATTERS**

[All Employee matters referred to in Section 3.17 shall be specified and briefly described in this Schedule]

**SCHEDULE 3.18**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

## GENERAL MATTERS

[All general representation matters referred to in Section 3.18 shall be specified and briefly described in this Schedule]

**SCHEDULE 4.3**
**to**
**OPTION AGREEMENT**
**dated as of April 16, 2026**
**by and between**
**NOTCH PEAK PROJECT, LLC**
**and**
**SCPPA**

## BUYER'S CONSENTS

[All Consents of Buyer which are necessary or incidental to the Closing shall be specified and briefly described in this Schedule]

# APPENDIX M

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## FORM OF LETTER OF CREDIT

DATE:

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

| | |
|---|---|
| BENEFICIARY:<br>Southern California Public Power Authority<br>1160 Nicole Court<br>Glendora, California 91740<br>Telephone: (626) 793-9364<br>Facsimile: (626) 793-9461 | APPLICANT: |
| ADVISING BANK: | AMOUNT: USD (FIGURES)<br>(AMOUNT IN WORDS) |
| DATE OF EXPIRY:<br><br>AT COUNTER OF ISSUING BANK | |

Ladies and Gentlemen:

We hereby issue our Irrevocable Unconditional, Standby Letter of Credit ("Letter of Credit") in favor of the beneficiary by order and for the account of the applicant, and on behalf of Notch Peak Project, LLC, which is available at sight for USD $[XX,XXX,XXX] by sight payment:

(a) upon presentation to us at our office at [*insert address*], of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II (collectively, the "Documents"); or

(b) _____ Upon both beneficiary's telephone or fax advice of demand to the attention of transaction services at telephone [_____] and/or fax number [_____] and presentation to us by fax to address [_____] of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II.

If you present a fax drawing under this Letter of Credit you do not need to present the original of any drawing documents, and if we receive any such original drawing documents, they will not be examined by us. In the event of a full or final drawing the original Letter of Credit must be

returned to us by overnight courier.

Funds may be drawn under this letter of credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us of your Documents in conformity with the foregoing, on the second Business Day after such presentation (unless such presentation occurs after [1:00 p.m. Eastern Standard Time] on the day of such presentation, in which event payment will be made on the third Business Day), but without any other delay whatsoever, irrevocably and without reserve or condition, we will make payment to your order in the account at the bank designated by you in the demand in immediately available funds. Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the Amount specified above.

"Business Day" means a day other than a Saturday, Sunday or any other day on which banking institutions in the State of New York are authorized or required by law to close.

Provided that the presentation of 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 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 valid written order issued by a court of competent jurisdiction that is legally binding upon us and 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 referred to above with care so as to ascertain that on their face they appear to comply with the terms of this Letter of Credit, and that if such demand(s) and Documents on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s).

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit and as otherwise provided in this Letter of Credit. Any amendment shall become effective only upon acceptance by your signature on a hard copy amendment. The expiration date shall also be amended as provided in the following paragraph.

This Letter of Credit shall expire on the earliest to occur of (1) the Expiration Date or (2) our receipt of written confirmation from the Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit. This Letter of Credit shall automatically renew, without amendment, for a term of one year (and the Expiration Date shall automatically be extended for such period) upon the Expiration Date unless we provide the Beneficiary with a written notice of non-renewal (each such notice a "Notice of Non-Renewal") in a customary form on our letterhead, by overnight courier, at least sixty (60) days prior to the then existing

Expiration Date. It is agreed that a Notice of Non-Renewal shall be deemed given without any further action by us with respect to any extension of the Expiration Date to any date occurring after [_____][2]. To the extent a Notice of Non-Renewal has been provided to the Beneficiary in accordance herewith, the Beneficiary is authorized to draw on us up to the stated amount of this Letter of Credit, by presentation to us, in the manner specified herein of (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II.

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.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date twenty (20) calendar days after the place for presentation reopens for business.

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 you, such drawing must be accompanied by the following signed certification:

"The undersigned does hereby certify that _[drawer]_ is the successor by operation of law to Southern California Public Power Authority, the Beneficiary named in [name of banks] Letter of Credit No._____ ."

THIS LETTER OF CREDIT IS TRANSFERABLE IN FULL, BUT NOT IN PART BY BENEFICIARY, AND MAY BE TRANSFERRED SUCCESSIVELY. WE SHALL NOT RECOGNIZE ANY TRANSFER OF THIS CREDIT UNTIL A TRANSFER APPLICATION IN THE FORM OF EXHIBIT III ATTACHED HERETO IS FILED WITH US, AND OUR TRANSFER CHARGES HAVE BEEN PAID BY THE APPLICANT. OUR TRANSFER FEE IS [____]. THE ORIGINAL LETTER OF CREDIT AND ANY ORIGINAL AMENDMENTS MUST ACCOMPANY THE TRANSFER APPLICATION. THE SIGNATURE AND THE TITLE OF THE PERSON SIGNING THE TRANSFER APPLICATION MUST BE VERIFIED BY YOUR BANK OR NOTARIZED BY A NOTARY PUBLIC.

Except so far as otherwise expressly stated herein, this Letter of Credit is governed by International Standby Practices 98 ("ISP98"). As to matters not governed by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the Borough of Manhattan in the State of New York. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of New York.

Please send all claims and drawings as per the terms and conditions herein at the following address:

---

[2] **NTD**: To be finalized at time of issuance.

[_____]

.

For queries if any contact our client services team at: [_____] or [_____]

| | |
|---|---|
| _____ | _____ |
| [_____] | [_____] |
| AUTHORIZED SIGNATURE | AUTHORIZED SIGNATURE |

**Exhibit I**
**Demand for Payment**

TO: [_____]
[_____]

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. _____ Dated _____, 20__

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 __

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
Name:
Title:

Date:

Attest: _____
Name:
Title:

**Exhibit II**
**Statement**

TO: [_____]
[_____]

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. _____ Dated _____, 20__

To Whom It May Concern:

Reference is hereby made to your Irrevocable and Unconditional, Standby Letter of Credit No. [_____] dated [_____] in the amount of $ [_____] established by you in our favor for the account of _____., on behalf of Notch Peak Project, LLC.

We hereby certify to you that $_____is payable to us [as provided in our agreement with Notch Peak Project, LLC and that we are entitled to draw on this Irrevocable and Unconditional, Standby Letter of Credit No. [_____] pursuant to the terms of such agreement.] [because you have provided us a Notice of Non-Renewal.]

DATED: _____ , 20 __

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
Name:
Title:

Date:

Attest: _____
Name:
Title:

**Exhibit III**
**Application**

## APPLICATION TO TRANSFER A STANDBY CREDIT

DATE: _____

TO
[_____]
[_____]

**STANDBY LETTER OF CREDIT REFERENCE NO. _____**

LADIES AND GENTLEMEN,

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

_____
(NAME OF TRANSFEREE)

_____
(ADDRESS)

REASON FOR TRANSFER OF STANDBY LETTER OF CREDIT:
_____

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE STANDBY LETTER OF CREDIT IN ITS ENTIRETY.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH STANDBY LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE AND THE TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS, OR OTHER AMENDMENTS AND WHETHER NOW EXISTING OR HEREAFTER MADE.

ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF CONSENT OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH STANDBY LETTER OF CREDIT IS RETURNED HEREWITH AND WE ASK YOU TO ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER.

AUTHORIZED SIGNATORIES

NAME OF BENEFICIARY: _____

BY: _____

PRINT NAME:_____

TITLE: _____

TELEPHONE NUMBER: _____ E-MAIL ADDRESS: _____

THE ABOVE SIGNATURE, WITH TITLE AS STATED, CONFORMS TO THAT ON FILE WITH US, AND IS AUTHORIZED FOR THE EXECUTION OF THIS DOCUMENT.

NAME OF BANK/ NOTARY: _____

BANK / NOTARY ADDRESS: _____

_____

BY: _____
AUTHORIZED SIGNATURE

NAME: _____

TITLE: _____
TELEPHONE NUMBER: _____ E-MAIL ADDRESS:
_____

# APPENDIX N

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## CERTIFICATE FOR COMMERCIAL OPERATION

In accordance with the terms of that certain Power Purchase Agreement dated as of [___], 2026 ("***Agreement***") by and between Southern California Public Power Authority ("***Buyer***") and Notch Peak Project, LLC ("***Seller***"), in order to determine achievement of Commercial Operation of the Facility, Seller shall demonstrate to Buyer that the Facility is operating and able to produce and deliver Facility Energy to Buyer in accordance with the terms of the Agreement by delivery of a Certificate of Commercial Operation (the "***Certificate***"), signed by an authorized representative of Seller as to all of the items below, and which shall include a certificate in the form attached hereto of an Independent Engineer, licensed in the State of Utah, regarding the Facility's ability to deliver Facility Energy and confirming the items set forth therein. Any term used but not defined in the Certificate shall have the meaning set forth in the Agreement. The Certificate shall be submitted by Seller, along with reasonable documentation as may be requested by Buyer, and certify as to the following:

1. Solar panels and all other equipment comprising the Facility have been installed in accordance with the manufacturer's specifications.

2. The electrical collection system related to the solar panels referenced in (1) above is complete, functional, and energized for the Facility.

3. Seller's collector substation is complete and capable of delivering an as-available product.

4. The Facility is operational and interconnected with the Point of Delivery and capable of delivering the Facility Energy.

5. Copies of any documentation provided by the manufacturer of the solar panels referenced in paragraph (1) with respect to the warranties provided in connection therewith have been provided to Buyer.

6. Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, and the Facility possesses all of the characteristics required by, and satisfies all of, the Requirements.

7. The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to be completed prior to full commercial operation. Testing shall include but not be limited to operating the Facility for a period of not less than seven (7) consecutive days and delivering Delivered Energy in an amount equal to at least ninety-five percent (95%) of the Contract Capacity during such period in accordance with the Requirements. The Facility shall demonstrate it has delivered the Facility Energy to the Point of Delivery at a rate, volume, and time of day in a manner

equivalent to a facility with similar specifications and under similar solar profiles during such period.

8. Seller has obtained all of the Permits required for the development, construction, operation and maintenance of the Facility (other than ministerial Permits that can reasonably be expected to be obtained in the ordinary course of business), including those identified in Appendix K of the PPA, and all such Permits are final and effective.

9. Seller has obtained the Operating Insurance.

10. Seller shall have entered into, and delivered to Buyer, an agreement providing for the operation and maintenance of the Facility with a Qualified Operator (which may be redacted for confidential or proprietary information), in form and substance reasonably satisfactory to Buyer, unless Seller provides the operation and maintenance of the Facility.

11. Seller provided the Performance Security in accordance with Section 5.6 of the Agreement.

12. Seller has fully performed and discharged any liabilities, indebtedness, guarantees or other obligations in compliance with the definition of "Special Purpose Entity."

13. Seller has delivered and Buyer has approved the final Transmission Line Loss Factor.

14. Buyer has received a bring-down of the Non-Consolidation Opinion.

15. Buyer has received a true and complete copy of the Interconnection Agreement.

16. Buyer has accepted (which acceptance shall not be unreasonably withheld, conditioned or delayed) Seller's proof of registration with NERC for all applicable Function Types in the NERC Compliance Registry in accordance with the currently effective NERC Rules of Procedure, including Seller's registration as both Generator Owner and Generator Operator.

17. Buyer has accepted Seller's mapping of NERC registered Function Types in accordance with the currently-effective WECC Entity Function Mapping procedures.

18. Buyer has received and found reasonably acceptable the applicable Q/A Program documentation in accordance with Appendix J.

Upon reasonable notice and during regular business hours, Buyer's representative(s) may inspect the Facility and observe the testing associated with achievement of Commercial Operation, provided that such representative(s) of Buyer shall at all times comply with Seller's written instructions regarding safety and security while on the Facility Site.

Signed,

_____

NAME:
TITLE:
DATE:

INDEPENDENT ENGINEER CERTIFICATE

In accordance with the terms of that certain Power Purchase Agreement dated as of [___], 2026 ("***Agreement***") by and between Southern California Public Power Authority ("***Buyer***") and Notch Peak Project, LLC ("***Seller***"), in order determine achievement of Commercial Operation of the Facility, I, _____, an Independent Engineer, licensed in the State of Utah, certify the following regarding the Facility's ability to deliver Delivered Energy:

1. Solar panels and all other equipment comprising the Facility have been installed in accordance with the manufacturer's specifications.

2. The electrical collection system related to the solar panels referenced in (1) above is complete, functional, and energized for the Facility.

3. Seller's collector substation is complete and capable of delivering an as-available product.

4. Copies of any documentation provided by the manufacturer of the solar panels referenced in paragraph (1) with respect to the warranties provided in connection therewith have been provided to Buyer.

5. The Facility is operational and interconnected with the Point of Delivery and capable of delivering the Facility Energy.

6. Construction of the Facility has been completed in accordance with Prudent Utility Practices.

7. The Transmission Line Loss Factor is [●]%, which is consistent with the percentage Seller submitted to Buyer and Buyer approved prior to the date hereof.

8. The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to be completed prior to full commercial operation. Testing shall include but not be limited to operating the Facility for a period of not less than seven (7) consecutive days and delivering Delivered Energy in an amount equal to at least ninety-five percent (95%) of the Contract Capacity during such period in accordance with the Requirements. The Facility shall demonstrate it has delivered the Facility Energy to the Point of Delivery at a rate, volume, and time of day in a manner equivalent to a facility with similar specifications and under similar solar profiles during such period.

[*Signature Page to Follow*]

Signed,

_____

Name:
Title:
Date:

# APPENDIX O

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## FORM OF CONSENT AND ESTOPPEL AGREEMENT[3]

## CONSENT AND ESTOPPEL AGREEMENT

This CONSENT AND ESTOPPEL AGREEMENT (this "Consent"), dated as of _____, 20__, by and among Southern California Public Power Authority ("Buyer"), [_____] (in its capacity as collateral agent for the Facility Lenders under the Financing Agreement, as defined below, "Collateral Agent") and Notch Peak Project, LLC, a Delaware limited liability company ("Seller"). Each of Buyer, Seller and Collateral Agent is referred to under this Agreement as a "Party" and together they are referred to as the "Parties"; provided, that in no event shall the term "Buyer" refer to any of the members of Buyer. Capitalized terms used but not defined herein shall have the meanings set forth in the PPA (as defined below).

## RECITALS[4]

A. [_____] ("Borrower"), an indirect owner of Seller, entered into a Financing Agreement with Collateral Agent, as administrative agent and collateral agent and certain other lenders party thereto, dated as of _____, 20__ (the "Financing Agreement"), under which Seller will finance the construction of an up to [_____] MW solar-powered electric generating facility (the "Facility" as further described in the PPA). Seller and Collateral Agent have also entered into a Guarantee and Security Agreement (the "Security Agreement") under which Seller collaterally assigned its interest under the PPA to Collateral Agent as collateral for the credit facilities under the Financing Agreement and a deed of trust or mortgage under which Seller has granted to Collateral Agent a lien on the Facility to be recorded in [_____] (the "Financing Deed of Trust"). Additionally, [_____] ("Pledgor") has entered into a Guarantee, Pledge and Security Agreement pursuant to which it has pledged to Collateral Agent all of the membership interests in Seller, to secure Borrower's obligations under the Financing Agreement (the "Pledge Agreement" and, together with the Security Agreement and Financing Deed of Trust, the "Lender Collateral Documents"). [On the "Term Conversion Date" (which for purposes of this Consent shall mean the date upon which the construction period security is released, the construction loan is converted to a term loan, the Lender Collateral Documents are terminated, and the remaining collateral security in the Project is as described by Collateral Agent in Section 4.10 hereof), the only remaining collateral security of the Collateral Agent securing the obligations of the Borrower under the Financing Agreement will be the membership interests in

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[3] ***NTD: Subject to lender comments, this Consent and Estoppel Agreement to be in substantially similar form as Appendix O.***

[4] ***NTD: Conforming changes to be made throughout this Consent (including the Recitals) to reflect the structure of the applicable financing arrangement and the final form of consent is subject to the actual financing structure.***

and any assets of the Pledgor and the Borrower, and there will be no remaining collateral security of the Collateral Agent in the Seller or its assets that secures the obligations of the Borrower under the Financing Agreement. A true and correct copy of each of the Lender Collateral Documents has been furnished to Buyer.][5]

B. Buyer and Seller entered into that certain Power Purchase Agreement, dated as of [___], 2024 (as may be amended, supplemented, or modified from time to time, the "PPA"), pursuant to which Seller will develop, finance, construct, own, and operate the Facility, and will, except as otherwise provided in the PPA, sell the Energy to Buyer.

C. Pursuant to Section 13.4 of the PPA, Seller is assigning, pursuant to the Security Agreement, to Collateral Agent Seller's interest under the PPA. In addition, this Consent is entered into in compliance with Section 14.6(d) of the PPA.

## AGREEMENT

1. Assignment and Agreement.

1.1 Consent to Assignment. Buyer hereby consents to the collateral assignment to Collateral Agent pursuant to the Security Agreement of Seller's rights to and under the PPA, pursuant to the Financing Deed of Trust of Seller's interests in the Facility and pursuant to the Pledge Agreement of Pledgor's membership interests in Seller (together, the "Assigned Interests") as security for Borrower's obligations under the Financing Agreement. Subject to the terms and conditions of this Consent, Buyer agrees that in exercising its remedies, Collateral Agent may exercise Seller's rights under the PPA.

1.2 Notices: Right to Cure by Collateral Agent. Upon the occurrence of a Default (as defined under the PPA) by Seller under the PPA, Buyer shall give concurrent notice of such Default to Seller and Collateral Agent. Buyer shall not terminate or suspend its performance under the PPA until Collateral Agent has been given, (a) if such Default is a monetary Default, thirty (30) days after the later of (i) the expiration of all cure periods available to Seller under the PPA and (ii) receipt of such notice to cure a monetary Default or, (b) if such Default is a nonmonetary Default, sixty (60) days after the later of (i) the expiration of all cure periods available to Seller under the PPA and (ii) receipt of such notice (or up to sixty (60) additional days, so long as Collateral Agent reasonably demonstrates to Buyer that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such Default); provided, that if the Collateral Agent is prohibited from curing any such Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Seller, then the time periods specified herein for curing a Default shall be extended for the period of such prohibition, so long as the Collateral Agent has diligently pursued removal of such process, stay or injunction, but in no event more than one hundred twenty (120) days. Failure of Buyer to provide such notice to Collateral Agent shall not constitute a breach of the PPA or this Consent by Buyer and Collateral Agent agrees that Buyer shall have no liability to Collateral Agent for such failure whatsoever; provided that no claim of

[5] ***NTD: It is anticipated that the Facility level liens would terminate on the Term Conversion Date. However, it is possible that they will not depending upon how the monetization of the anticipated tax credits from the Facility are structured. Conforming changes to be made to this Consent and Agreement to reflect the final financing structure.***

Default or termination of the PPA by Buyer shall be binding without such notice and the lapsing of the applicable periods set forth above. If Collateral Agent fails to cure a Default within the applicable period, Buyer shall have all its rights and remedies with respect to such Default as set forth in the PPA.

1.3 Subsequent Owner or Replacement Agreement.

(a) Subsequent Owner. Subject to the terms and conditions of this Consent, the Parties agree that the Collateral Agent shall, in accordance with Section 1.5, notify Buyer of the pendency of such foreclosure or transfer and, in addition, Collateral Agent shall subsequently notify Buyer following the occurrence of such foreclosure or transfer. If Collateral Agent notifies Buyer in writing that it has foreclosed on the Facility or the Assigned Interests pursuant to the Lender Collateral Documents, or taken a "deed in lieu of foreclosure", Collateral Agent or its permitted successor or assigns, or any other purchaser of the Assigned Interests shall be recognized as a party substituting for Seller under the PPA and the Option Agreement so long as Collateral Agent or its permitted successor or assigns, or any other purchaser of the Assigned Interests meets the qualifications for a Qualified Transferee and expressly assumes in writing Seller's obligations under the PPA and the Option Agreement and agrees to comply with the terms of the PPA and the Option Agreement in connection with such foreclosure or the "deed in lieu of foreclosure" (provided, that if the Collateral Agent or an Affiliate of the Collateral Agent would be deemed as the Subsequent Owner, then it shall not be obligated to meet the requirement set forth in clause (a)(ii)(B) of the definition of Qualified Transferee so long as the Collateral Agent or its applicable Affiliate transfers the Facility or the Assigned Interests to a Qualified Transferee within six (6) months following the foreclosure) (each such permitted and qualified successor or assign or other purchaser of the Assigned Interests, a "Subsequent Owner") and the terms and conditions of the PPA and the Option Agreement as in effect on such date of assignment or foreclosure shall continue to apply to such Subsequent Owner. For purposes of the definition of Qualified Transferee contained in the PPA, any Person that meets the definition of Qualified Operator or is identified on Exhibit E hereof or an Affiliate of such Person shall be a Qualified Operator, so long as such Person is not in active litigation adverse to Buyer or any Participating Member.

(b) Replacement Agreement. If the PPA is terminated or rejected in connection with a bankruptcy, insolvency, winding up or similar occurrence with respect to Seller, then, Collateral Agent or a Subsequent Owner shall certify in writing to Buyer, not more than ninety (90) days after the date of such termination or rejection, as applicable, occurs, that it meets the requirements of a Subsequent Owner and will perform the obligations of Seller as and to the extent required under the PPA. Following receipt of such certification and at the request of Collateral Agent, Buyer will execute and deliver to Collateral Agent or Subsequent Owner a new agreement for the balance of the remaining term under the original PPA containing the same conditions, agreements, terms, provisions and limitations as the original PPA.

1.4 Buyer Cure Rights under the Financing Agreement. Under the Financing Agreement, the Collateral Agent shall agree not to exercise remedies under the Financing Agreement or any related collateral documents that could preclude Buyer from exercising its purchase option pursuant to Section 1.5 below until Buyer has been given: (a) if such default thereunder is a monetary default, thirty (30) days after the expiration of all cure periods available to Seller under the Financing Agreement, or (b) if such default thereunder is a nonmonetary

default, sixty (60) days after the expiration of all cure periods available to Seller under the Financing Agreement, so long as, in the case of this clause (b), Buyer reasonably demonstrates that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such default; and the effect of any such cure by Buyer shall be as if Seller had cured the applicable default within the cure period afforded Seller under the Financing Agreement, including cessation of exercise of remedies by the Collateral Agent; provided, that Buyer shall not have any cure rights pursuant to this Section 1.4 to the extent that Seller's default under the Financing Agreement is caused by Buyer's payment default under the PPA. Upon any payment or cure by Buyer relating to such a default by Seller, the amounts expended by Buyer to provide such cure, including any defaulted payment and interest thereon at the Interest Rate, and all other payments made and expenses incurred by Buyer in providing such cure shall be applied either (i) in reduction of the price for the Delivered Energy payable by Buyer as provided under Section 6.1 and Appendix A of the PPA, provided that the reduction of the price for the Delivered Energy shall not result in an inability of Seller to pay required debt service in connection with the Facility Debt (as defined below), or (ii) in the event of the purchase of the Facility by Buyer under Section 1.5 hereof, the purchase price shall be reduced by such amounts expended to provide such cure, provided that the purchase price shall not be less than the Facility Debt (as defined below). For purposes of this Consent, "Facility Debt" shall have the meaning set forth in the PPA, except that (i) the reference to the obligations of "Seller" thereunder shall be deemed to refer to the obligations of "Borrower," as the counterparty under the Financing Agreement and (ii) any debt of Borrower to the lenders under the Financing Agreement shall be deemed "Facility Debt". Upon the request of the Buyer, the Collateral Agent can send a written notice of the amount of Facility Debt that is needed to be received by the Collateral Agent pursuant to the Financing Agreement.

1.5 Buyer's Purchase in Lieu of Foreclosure. In the event of any default by Seller under the Financing Agreement that has not been cured as provided hereunder or thereunder, prior to taking any action, whether judicial or non-judicial, to foreclose upon and sell the Facility or the Assigned Interests (in either case, a "Foreclosure Sale") pursuant to the Lender Collateral Documents, or prior to taking a deed in lieu of foreclosure, Collateral Agent shall, concurrent with any statutory notice required to be delivered to Seller, give notice in writing to Buyer not less than ninety (90) days prior to the date of such Foreclosure Sale or taking of a deed in lieu of foreclosure in the form of Exhibit A hereto containing the information specified therein (the "Foreclosure Notice").

(a) Upon receipt by Buyer of a Foreclosure Notice, Buyer shall have the right, at its option, to purchase the Facility from Seller in lieu of foreclosure as set forth in this Section 1.5. In the event that, within thirty (30) days following Buyer's receipt of such Foreclosure Notice, Buyer furnishes written notice to Collateral Agent that it will (concurrent with and subject to the closing of a bond financing by Buyer) exercise its option to purchase the Facility, which notice shall be in the form of, and containing the information specified in, Exhibit B hereto (the "Purchase Notice"), including setting forth the date of such purchase (which shall be within ninety (90) days following the date of Buyer's notice to Collateral Agent in the form of Exhibit B, which date may be reasonably extended by Buyer for up to an additional fifteen (15) days in order to close the bond financing), Buyer shall purchase the Facility from Seller as hereinafter provided. The purchase price of the Facility shall be paid by the Buyer to the account designated by Collateral Agent and shall be equal to the amount, measured as of the date of such payment, of the Facility Debt. In

consideration of such payment, Collateral Agent shall, upon the closing therefor, release of record all of the liens and security interests under the Lender Collateral Documents.

(b) If Buyer believes that the purchase of the Facility will not take place within such ninety (90) day period, and, prior to the end of such ninety (90) day period provides notice to Collateral Agent in the form of Exhibit C, then the Foreclosure Sale (or, as applicable, the taking of a deed in lieu of foreclosure) shall not be held and Buyer shall, within ten (10) days after the end of such ninety (90) day period, purchase from the Collateral Agent all of their right, title and interest in, to and under the Financing Agreement and the Lender Collateral Documents, free and clear of all Collateral Agent liens, claims and encumbrances. Upon such a purchase by Buyer, Collateral Agent agrees to cause the transfer, sale and assignment of all of the right, title and interest of the Collateral Agent in, to and under the Financing Agreement, related promissory notes, and the Lender Collateral Documents to be made to Buyer (or, if and to the extent designated by Buyer, to a member of Buyer that is a purchaser from Buyer of Energy produced by the Facility (a "Member")) upon the payment by Buyer or such Member to Collateral Agent of the amount of the Facility Debt measured as of the date of such purchase.

(c) If Buyer has not provided Collateral Agent a notice in the form of Exhibit C prior to the end of such ninety (90) day period after the Foreclosure Notice, then the Collateral Agent may effect the Foreclosure Sale or take a deed in lieu of foreclosure at any time after the end of such ninety (90) day period.

1.6 Foreclosure Sale. In the event a Foreclosure Sale under the Lender Collateral Documents shall take place, Collateral Agent may sell the Assigned Interests pursuant to such Foreclosure Sale to any Person, free of any rights of Buyer under this Section 1.6, and Seller waives, to the extent permitted by law, all rights of redemption, stay or appraisal; provided, however, Buyer or any Member shall have the right to bid at such Foreclosure Sale.

1.7 Third Party Beneficiary. No action of Buyer taken pursuant to the exercise of its rights as provided in this Consent shall be deemed to be a waiver of any right accruing to Buyer on account of the occurrence of any matter which constitutes a default or a breach of Seller's obligations under the Financing Agreement.

1.8 No Assignment. Buyer agrees that it shall not, without the prior written joint consent of Seller and Collateral Agent (such consent to not be unreasonably withheld, conditioned or delayed) sell, assign or transfer any of its rights under the PPA other than in accordance with Section 14.6 of the PPA. Collateral Agent shall be deemed to have consented to such sale, assignment or transfer should it fail to respond within (90) days after the date of the notice from Buyer.

1.9 Limitation of Liability.

(a) Seller agrees that it shall indemnify and hold Buyer harmless from any third-party claims, losses, liabilities, damages, costs or expenses (including, without limitation, any third-party direct, indirect or consequential claims, losses, liabilities, damages, costs or expenses, including legal fees) in connection with or arising out of any of the transactions related to the Financing Agreement or any of the Lender Collateral Documents, or this Consent.

(b) Collateral Agent or any Subsequent Owner shall expressly assume in writing Seller's obligations under the PPA and the Option Agreement and agree to comply with the terms of the PPA and the Option Agreement if Collateral Agent forecloses on the Facility or the Assigned Interests or takes a "deed in lieu of foreclosure", and shall not have any liability under the PPA unless and until such assumption. Collateral Agent agrees that, except to the extent expressly provided hereunder, in no event shall Buyer be liable to Collateral Agent or any Subsequent Owner for any claims, losses, expenses or damages whatsoever under the PPA other than liability Buyer may have to Seller under the PPA. In the event a Subsequent Owner elects to perform Seller's obligations under the PPA, Buyer's rights under the Option Agreement shall survive any Foreclosure Sale. A Subsequent Owner shall assume both the PPA and the Option Agreement, or neither, and may not assume only the PPA without assuming the Option Agreement.

1.10. Assignment of PPA by Collateral Agent. In connection with an exercise of remedies under the Financing Agreement or any related security documents, the Collateral Agent shall not assign the PPA without also assigning the Option Agreement therewith.

2. Payments under the PPA. Without limiting the rights of Buyer under the PPA, Buyer shall pay any amounts owed in the manner and when required under the PPA directly to the accounts specified below or otherwise designated by Collateral Agent to Buyer in writing. From and after such time as an entity qualifies as a Subsequent Owner, Buyer shall pay all such amounts owed directly to or at the written direction of such Subsequent Owner. Seller hereby directs Buyer, and Buyer agrees, to make all payments and amounts Buyer is obligated to pay to Seller under the PPA, which payments shall satisfy any such payment obligations of Buyer to Seller in full and complete satisfaction of Buyer's obligations to Seller under the PPA, to the following account:

Bank Name: _____
Account Number: _____
ABA Number: _____
Account Name: [_____]

Collateral Agent and Seller agree that any change in payment notification shall become effective within thirty (30) days after receipt by Buyer of written notice thereof in accordance with this Consent. Buyer shall have no liability to Seller or Collateral Agent (or their successors and assigns) for making payments due or to become due under the PPA to Lender or for failure to direct such payments to Collateral Agent rather than Seller.

3. Acknowledgements; Representations and Warranties.

(a) Seller and Collateral Agent acknowledge that Buyer has not made and hereby makes no representation or warranty, expressed or implied, that Seller has any right, title or interest in the collateral secured by the Lender Collateral Documents (the "Collateral") and Collateral Agent acknowledges that it has not relied upon any such representations of Buyer. Collateral Agent acknowledges that it is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Collateral.

(b) Except as otherwise expressly provided herein, Collateral Agent acknowledges that Buyer shall not have any contractual obligations to Collateral Agent, and

Collateral Agent acknowledges that it has not relied upon any representations of Buyer in connection with its lending arrangements with Seller, other than the representations of Buyer set forth in this Consent and the representations of Buyer set forth in the estoppel certificate that Buyer will deliver pursuant to this Consent.

(c) Except in the event of Buyer's breach of this Consent, Seller and Collateral Agent acknowledge that Buyer shall have no liability to Seller or Collateral Agent resulting from or related to this Consent, or for consenting to any future assignments of the Collateral or any interest of Seller or Collateral Agent therein.

(d) Seller and Collateral Agent each agree that Buyer shall at all times have (and Buyer hereby expressly reserves) the right to set off or deduct from payments due to Seller under the PPA amounts owing to Buyer by Seller under the PPA in accordance with Section 11.4 of the PPA.

(e) Each of Buyer, Seller and Collateral Agent represents and warrants that it is duly authorized to enter into and perform its obligations under this Consent.

(f) Seller represents and warrants to Buyer that the rights of Buyer to exercise its cure rights and other rights and remedies hereunder, including to purchase the Facility in accordance with the provisions of Section 1.5 of this Consent, do not and will not conflict with the Financing Agreement, and are permitted by the Financing Agreement, the Lender Collateral Documents, and any related agreements and documents securing Seller's performance under the Financing Agreement.

(g) Buyer agrees that any foreclosure by Collateral Agent on the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement shall not constitute a breach under the PPA if the Facility is operated and maintained by a Qualified Operator (as defined in the PPA) following any such foreclosure. Collateral Agent shall obtain Buyer's consent (such consent not to be unreasonably withheld) prior to any transfer by Collateral Agent of the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement to an entity other than a Qualified Transferee (provided, that if the Collateral Agent or an Affiliate of the Collateral Agent is the Subsequent Owner, then it shall not be obligated to meet the requirement set forth in clause (a)(ii)(B) of the definition of Qualified Transferee so long as the Collateral Agent or its applicable Affiliate transfers the Facility or the Assigned Interests to a Qualified Transferee within six (6) months following any foreclosure).

4. Miscellaneous.

4.1 Governing Law; Submission to Jurisdiction.

(a) This Consent shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

(b) All litigation arising out of, or relating to this Consent, 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.

4.2 No Amendment of PPA. This Consent (in the form as attached to the PPA as of the Effective Date) shall not be deemed to be an amendment to the PPA.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

4.4 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Buyer and Collateral Agent and after the initial funding by any Tax Equity Investor, such Tax Equity Investor.

4.5 Successors and Assigns. This Consent shall bind and benefit Buyer, Seller and Collateral Agent, and their respective successors and permitted assigns.

4.6 Attorney's Fees. Seller shall reimburse Buyer for all actual and documented reasonable costs and expenses incurred by Buyer in connection with the facilitation of Seller's collateral assignment or pledge of the PPA, or any other action taken in connection with the transactions contemplated in this Consent, or otherwise pursuant to any request made by Seller or any Collateral Agent.

4.7 Representation by Counsel. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Consent.

4.8 Estoppel Certificate. Buyer agrees to deliver to the Tax Equity Investors and the Collateral Agent a customary estoppel certificate substantially in the form of Exhibit D from time to time, including on the date of delivery of this Consent, in connection with the fundings by the Tax Equity Investors and in connection with the achievement of Commercial Operation of the Facility following receipt of a written request therefor from Seller.

4.9 Notices. Any communications between the Parties or notices provided herein to be given shall be given to the following addresses:

If to Seller:

Notch Peak Project, LLC
c/o [_____]

If to Buyer:

Southern California. Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Facsimile: (626) 793-9461
Telephone: (626) 793-9364
Attention: Executive Director

If to Collateral Agent:

[_____]

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by prepaid telegram or by facsimile. Any Party may change its address for notice hereunder by giving written notice of such change to the other Parties.

4.10 [Termination of Collateral Documents and Consent. Seller and Collateral Agent agree that upon the termination of the Lender Collateral Documents on the Term Conversion Date (as defined in the Recitals), the only remaining collateral security of the Collateral Agent securing the obligations of the Borrower under the Financing Agreement will be the membership interests in and any assets of the Pledgor and the Borrower, and there will be no remaining collateral security of the Collateral Agent in the Seller or its assets that secures the obligations of the Borrower under the Financing Agreement. Seller agrees to deliver notice of the occurrence of the Term Conversion Date to Buyer (with a copy to Collateral Agent) promptly but in no event more than 10 days after such Term Conversion Date. The Parties agree that, as of such date, any rights, duties or obligations arising hereunder shall terminate and no longer be applicable; provided, that Sections 1.9(a), 3, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.8, 4.9, and 4.10 and the definition of "Facility Debt" in Section 1.4 shall survive the termination of this Consent.][6]

4.11 [Tax Equity Investor Accession. Each of Buyer, Collateral Agent, Seller and the Tax Equity Investors hereby agree as follows:

(a) Effective as of (i) the date of the initial funding by any Tax Equity Investor, (ii) the execution by the Tax Equity Investor of an accession agreement to this Consent reasonably acceptable to the other Parties hereto and (iii) the earlier to occur of (1) the date that the obligations under the Financing Agreement are repaid in full; and (2) the Term Conversion Date:

I. The rights of the Collateral Agent under Section 1 hereof and the payment direction in Section 2 hereof will terminate.

II. Buyer will not terminate the PPA or suspend performance of its services under the PPA on account of any Default (as defined under the PPA) of Seller thereunder, without written notice to the Tax Equity Investors and first providing to the Tax Equity Investors (i) thirty (30) days from the date notice of Default is delivered to the Tax Equity Investors to cure such Default if such Default is the failure to pay amounts to Buyer which are due and payable by Seller under the PPA, or (ii) one forty-five (45) days from receipt of such notice, to cure such Default if the Default cannot be cured by the payment of money to Buyer.

(b) The address of the Tax Equity Investors for purposes of all notices and other communications shall be as set forth in the applicable accession agreement.]

*[Signature page follows]*

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[6] ***NTD: These provisions to be included if applicable.***

IN WITNESS WHEREOF, the Parties have caused this Consent and Estoppel Agreement to be duly executed and delivered as of the date first above written.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
[_____]
President

Date: _____

Attest: _____
[_____]
Assistant Secretary

Notch Peak Project, LLC, a Delaware limited liability company

By: _____
Name: [_____]
Title: [_____]

[Collateral Agent]

By: _____
Name: [_____]
Title: [_____]

**EXHIBIT A**
**to Consent and Estoppel Agreement**

**FORM OF FORECLOSURE NOTICE**
**[Letterhead of Collateral Agent]**

[Insert date]

Via Certified Mail, Return Receipt Requested

Southern California Public Power Authority
1160 Nicole Court
Glendora, CA 91740
Attn: Executive Director

Re: **[]**

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent") dated as of _____, 20__, among Southern California Public Power Authority ("Buyer"), _____, as collateral agent ("Collateral Agent") and Notch Peak Project, LLC ("Seller"). This is a Foreclosure Notice, as defined in the Consent. Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

As of the date hereof, the following amounts are due and owing by Seller under the Financing Agreement:

Principal amount of loans:
Accrued Interest:
Reimbursable Amounts
Fees:

As of the date hereof, interest is accruing at the rate of ____% per annum *[Insert if applicable*: and fees are accruing at the rate of ____% per annum]. This interest rate will apply until *[insert date which is end of current interest period]*, from which time the interest rate may be higher or lower. A default rate of interest equal to [2][7]% above the otherwise applicable rate *[does/does not]* currently apply *[if does not currently apply, add*: but may be applied at any time]. *[if applicable, state*: The principal amount of loans shown above does not reflect the entire loan commitment under the Financing Agreement. Additional loans may be made, with or without the Seller's consent, and such additional loans will accrue interest as provided in the Financing Agreement.]

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[7] **NTD**: Subject to applicable Financing Agreement.

An Event of Default, as defined in the Financing Agreement, has occurred and is continuing. The Collateral Agent anticipates that it may foreclose upon the Assigned Interests or take a deed in lieu of foreclosure on a date estimated to be *[insert day no less than ninety (90) days from the date of notice]*. Such date may be modified as permitted by law, but will in no event be prior to ninety (90) days after the date hereof.

Very truly yours,

[_____]

**EXHIBIT B**
**to Consent and Estoppel Agreement**

**FORM OF PURCHASE NOTICE**

**[Letterhead of SCPPA]**

[Insert date]

Via Certified Mail, Return Receipt Requested

[_____]
[Address]
[City, State ZIP]
Attn: [_____]

Re:

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent"), dated as of _____, 20__, among Southern California Public Power Authority ("Buyer"), _____, as collateral agent ("Collateral Agent") and Notch Peak Project, LLC ("Seller"). This is a Purchase Notice, as defined in the Consent. Capitalized terms used and not defined herein have the respective meanings given in the Consent.

We have received your foreclosure Notice, dated [insert date of Foreclosure Notice]. By this Purchase Notice, we hereby notify Collateral Agent that we will exercise our option and purchase the Facility pursuant to our rights under Section 1.5(a) of the Consent no later than ninety (90) days from the date of the Foreclosure Notice, and upon consummation of such purchase, pay to Collateral Agent, for the account of the Collateral Agent, the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
[_____]
President

Date: _____

Attest: _____
[_____]
Assistant Secretary

**EXHIBIT C**
**to Consent and Estoppel Agreement**

**FORM OF PURCHASE NOTICE**

**[Letterhead of SCPPA]**

*[Insert date]*

Via Certified Mail, Return Receipt Requested

[_____]
[Address]
[City, State ZIP]
Attn: [_____]

Re:

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent"), dated as of _____, 20__, among Southern California Public Power Authority ("Buyer"), _____, as collateral agent ("Collateral Agent") and Notch Peak Project, LLC ("Seller"). Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

We have received your Foreclosure Notice, dated ***[insert date of Foreclosure Notice]***. By this notice, we hereby notify Collateral Agent that we believe that the purchase of the Facility pursuant to Section 1.5(b) of the Consent will not take place within the ninety (90) day period following our receipt of such Foreclosure Notice. We will, within ten (10) days after the end of such ninety (90) day period, purchase from the Collateral Agent all of their right, title and interest in, to and under the Financing Agreement, related promissory notes, and Lender Collateral Documents, for a price equal to the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
[_____]
President

Date: _____

Attest: _____
[_____]
Assistant Secretary

**EXHIBIT D**
**to Consent and Estoppel Agreement**

[FORM OF] PPA ESTOPPEL CERTIFICATE

[Date][8]

Reference is made to that certain Power Purchase Agreement (the "Power Purchase Agreement") dated as of [___], 2026 (the "PPA"), by and between the Southern California Public Power Authority, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) ("Buyer"; provided, that in no event shall the term "Buyer" refer to any of the members of Buyer, and the term "Buyer's knowledge" as used herein shall refer only to the knowledge of persons at SCPPA, and not to the knowledge of anyone at any of the members of Buyer) and Notch Peak Project, LLC, a Delaware limited liability company ("Seller"). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the PPA, as amended, attached as Exhibit A, constitutes a true and complete copy of the PPA.

2. The PPA is in full force and effect and has not been modified or amended in any way [since [_____ __, 202_]], and constitutes the only agreement between Buyer and Seller other than that certain Consent and Estoppel Agreement dated as of [_____, 20__] and that certain Option Agreement dated as of [___], 2026.

3. Buyer has not transferred or assigned its interest in the PPA.

4. Buyer is not in default under the PPA nor has Buyer breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the PPA or that would give Seller the right to terminate the PPA. To Buyer's knowledge, Seller is not in default under the PPA nor, to Buyer's knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the PPA or that would allow Buyer to terminate the PPA.

5. All representations made by Buyer in the PPA were true and correct as of the effective date of the PPA and continue to be true and correct.

6. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Force Majeure under the PPA has occurred and is continuing.

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[8] To be delivered on the date of delivery of the Consent and, upon the initial funding and upon the final funding under the Tax Equity transaction commensurate with COD.

7. Seller has not claimed any amounts under the indemnification obligation of Buyer set forth in the PPA.

8. To Buyer's knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the PPA. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA.

9. All payments due and owing[, except for those under dispute as described in Schedule I hereto][9], under the PPA by Buyer have been paid in full through the period ending on the date hereof.

10. [The Commercial Operation Date of the Facility occurred on [____], 202[__].

11. The Contract Capacity of the Project as of the Commercial Operation Date is [ ] MW.] [10]

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

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____
Name:
Title:

[9] To include if applicable.

[10] Bracketed language in 10 and 11 to be included in the Estoppel Certificate delivered at the final funding under the Tax Equity Transaction commensurate with COD.

**[Schedule I**

SCHEDULE I TO [FORM OF] PPA ESTOPPEL CERTIFICATE][11]

[11] To include if applicable.

**EXHIBIT E**
**to Consent and Estoppel Agreement**

[*Seller to provide*]
Qualified Operators

[_____]

provided, however, that no Person listed above shall be a Qualified Operator if at the relevant time such Person is in active litigation adverse to Buyer or any Participating Member. Moreover, this list is not exclusive and, subject to the foregoing proviso, other entities that meet the definition of Qualified Operator in the PPA shall be deemed to be Qualified Operators hereunder.

# APPENDIX P

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## BUYER'S SYSTEM PROTECTION DESIGN

The Facility shall be equipped with a distributed control system ("***DCS***") that will be able to throttle, ramp, turn-on, turn-off, and telemeter the total MW output. The DCS will use the DNP 3.0 and International Electrotechnical Commission ("***IEC***") 61850 communication protocols to interface with LADWP's SCADA Remote Terminal Unit ("***RTU***"). All control, metering, and relay systems shall be provided with DNP 3.0 and IEC 61850, as may be updated from time to time.

Seller shall provide weather stations including data storage with automatic archiving of data files necessary to validate irradiance calculations at the Facility Site. Data storage capacity shall be sufficient to store 360 days of weather data.

Inverter/DCS Performance Criteria

A. Distributed Control System – The Facility Site shall have one master DCS at the 34.5 kV level controlling the inverters. The master DCS shall provide the capability of controlling the entire Facility's output, and shall provide to the operators the ability to control the active power output of the Facility through a single setpoint. The DCS shall allow LADWP's ECC to issue commands (single setpoint) for the options listed below.

B. Normal Startup – The master DCS shall provide the capability of starting the entire Facility to partial or full output ("***Normal Startup***"), and shall provide to the operators the ability to control Normal Startup of the entire Facility through a single command.

C. Normal Shutdown – The master DCS shall provide the capability of stopping the entire Facility from partial or full output ("***Normal Shutdown***"), and shall provide to the operators the ability to control Normal Shutdown of the entire Facility through a single command.

D. Emergency Stop – The DCS shall be capable of operating in two stop modes (each, an "***Emergency Stop***"), as necessary (automatic Emergency Stop and directed Emergency Stop). In automatic Emergency Stop mode, the master DCS shall meet any shutdown requirements specified in applicable NERC Reliability Standards, including as of the Effective Date NERC Reliability Standard PRC-024, and shall be capable of shutting down in full compliance with UL1741, and with applicable NERC Reliability Standards, in either mode as necessary for LADWP operations. In directed Emergency Stop mode, the master DCS shall provide the capability of stopping the entire Facility from partial or full output through a single command.

E. Black Start – The master DCS's capability of starting the entire Facility from a Black Start condition, even when sufficient solar irradiance is available to the solar collectors, is NOT

required. However, the Facility shall maintain communication and control power and capability with LADWP's ECC whether solar irradiance is available or not.

F. Solar Curtailment – The master DCS shall provide the capability to curtail solar photovoltaic power generation to a specified percentage of the nominal power rating. Such curtailment of a Participating Member shall be effected by the control of the solar photovoltaic inverters of such Participating Member.

G. Voltage Ride Through – All systems supplied shall meet the Low Voltage Fault Ride Through ("***LVRT***") requirements and any over or under voltage capabilities specified in the applicable NERC Reliability Standards, including as of the Effective Date NERC Reliability Standard PRC-024, and shall be capable of operating in full compliance with UL1741, and with applicable NERC Reliability Standards applicable to LVRT requirements, in either mode as necessary for LADWP operations.

H. Fault Ride Through - All systems supplied under this Agreement shall meet any fault ride through requirements specified in applicable NERC Reliability Standards, including as of the Effective Date NERC Reliability Standard PRC-024, and shall be capable of operating in full compliance with UL1741, and with applicable NERC Reliability Standards relating to fault ride through requirements, in either mode as necessary for LADWP operations.

I. Frequency Ride Through - All systems supplied shall meet the over and under frequency capabilities specified in applicable NERC Reliability Standards, including as of the Effective Date NERC Reliability Standard PRC-024, and shall be capable of operating in full compliance with UL1741, and with applicable NERC Reliability Standards relating to over and under frequency capabilities, in either mode as necessary for LADWP operations.

J. Reactive Power - The inverters shall have the capability to supply and absorb reactive power over the complete real power range. The DCS shall be able to control inverter reactive power dispatch through a single setpoint in each of the following three modes: Power Factor Control Mode, Voltage Control Mode, and Reactive Power Control Mode. In Power Factor Control Mode, the DCS shall provide the operators the ability to control the Facility's reactive power dispatch within the power factor range of 0.95 lead/lag at the Point of Interconnection (as specified in the Generator Interconnection Agreement). In Reactive Power Control mode, the DCS shall provide the operators the ability to control the Facility's reactive power dispatch at the Point of Interconnection independently of active power production. In Voltage Control Mode, the DCS shall provide the operators the ability to control the voltage at the Point of Interconnection within a specified range by automatically controlling reactive power dispatch dependent on active power production.

# APPENDIX Q

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

## BUSINESS POLICIES FORMS

City of Los Angeles
Department of Public Works
Bureau of Contract Administration
Office of Contract Compliance
1149 S. Broadway, Suite 300, Los Angeles, CA 90015
Phone: (213) 847-2625 E-mail: bca.eeoe@lacity.org

# EQUAL BENEFITS ORDINANCE COMPLIANCE AFFIDAVIT

Prime contractors must certify compliance with Los Angeles Administrative Code (LAAC) Section 10.8.2.1 et seq. prior to the execution of a City agreement subject to the Equal Benefits Ordinance (EBO).

## 1. SECTION 1. CONTACT INFORMATION

Company Name: _____

Company Address: _____

City:_____State:_____Zip: _____

Contact Person:_____Phone:_____E-mail: _____

Approximate Number of Employees in the United States: _____

Approximate Number of Employees in the City of Los Angeles: _____

## 2. SECTION 2. EBO REQUIREMENTS

The EBO requires City Contractors who provide benefits to employees with spouses to provide the same benefits to employees with domestic partners. Domestic Partner means any two adults, of the same or different sex, who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration, or with an internal registry maintained by the employer of at least one of the domestic partners.

Unless otherwise exempt, the contractor is subject to and shall comply with the EBO as follows:

A. The contractor's operations located within the City limits, regardless of whether there are employees at those locations performing work on the City Contract; and
B. The contractor's operations located outside of the City limits if the property is owned by the City or the City has a right to occupy the property, and if the contractor's presence at or on the property is connected to a Contract with the City; and
C. The Contractor's employees located elsewhere in the United States, but outside of the City Limits, if those employees are performing work on the City Contract.

A Contractor must post a copy of the following statement in conspicuous places at its place of business available to employees and applicants for employment:

"During the performance of a Contract with the City of Los Angeles, the Contractor will provide equal benefits to its employees with spouses and its employees with domestic partners."

## 3. SECTION 3. COMPLIANCE OPTIONS

I have read and understand the provisions of the Equal Benefits Ordinance and have determined that this company will comply as indicated below:

☐……. I have no employees.

☐……. I provide no benefits.

☐……. I provide benefits to employees only. Employees are prohibited from enrolling their spouse or domestic partner.

☐……. I provide equal benefits as required by the City of Los Angeles EBO.

☐……. I provide employees with a "Cash Equivalent." Note: The "Cash Equivalent" is the amount of money equivalent to what your company pays for spousal benefits that are unavailable for domestic partners, or vice versa.

☐……. All or some employees are covered by a collective bargaining agreement (CBA) or union trust fund. Consequently, I will provide Equal Benefits to all non-union represented employees, subject to the EBO, and will propose to the affected unions that they incorporate the requirements of the EBO into their CBA upon amendment, extension, or other modification of the CBA.

☐……. Health benefits currently provided do not comply with the EBO. However, I will make the necessary changes to provide Equal Benefits upon my next Open Enrollment period which begins on (Date) _____.

☐……. Our current company policies, i.e., family leave, bereavement leave, etc., do not comply with the provisions of the EBO. However, I will make the necessary modifications within three (3) months from the date of this affidavit.

## 4. SECTION 4. DECLARATION UNDER PENALTY OF PERJURY

I understand that I am required to permit the City of Los Angeles access to and upon request, must provide certified copies of all company records pertaining to benefits, policies and practices for the purpose of investigation or to ascertain compliance with the Equal Benefits Ordinance. I will notify the City's Designated Administrative Agency if any changes are made that will affect our compliance with the Equal Benefits Ordinance. Furthermore, I understand that failure to comply with LAAC Section 10.8.2.1 et seq., Equal Benefits Ordinance may be deemed a material breach of any City contract by the Awarding Authority. The Awarding Authority may cancel, terminate or suspend in whole or in part, the contract; monies due or to become due under a contract may be retained by the City until compliance is achieved. The City may also pursue any and all other remedies at law or in equity for any breach. The City may use the failure to comply with the Equal Benefits Ordinance as evidence against the Contractor in actions taken pursuant to the provisions of the LAAC Section 10.40, et seq., Contractor Responsibility Ordinance.

_____ will comply with the Equal Benefits Ordinance requirements
Company Name
as indicated above prior to executing a contract with the City of Los Angeles and will comply for the entire duration of the contract(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this_____day of_____, in the year 20____, at_____, _____
(City) (State)

| | |
|---|---|
| Signature | Mailing Address |
| Name of Signatory (please print) | City, State, Zip Code |
| Title | EIN/TIN |

**City of Los Angeles**
**Department of Water and Power**

# CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS

The Undersigned hereby agrees that_____will:
Name of Business

1. Fully comply with all applicable State and Federal employment reporting requirements for its employees.

2. Fully comply with and implement all lawfully served Wages and Earnings Assignment Orders and Notices of Assignment.

3. Certify that the principal owner(s) of the business are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally. "Principal owner" means any person who owns an interest of 10 percent or more of the business or of a subcontractor assigned to City work. If there are no principal owners, please so indicate with an X here: ____(no principal owners)

4. Certify that the business will maintain compliance with Child Support Obligations Ordinance provisions.

I declare under penalty of perjury that the foregoing is true and was executed at:

_____
City/County/State

_____
Date

☐ **Please check if company has already submitted to DWP certification relative to Child Support Obligations Ordinance.**

_____
Name of Business Address

_____
Signature of Authorized Officer or Representative Print Name

_____
Title Telephone Number

Rev. April 2025

# IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT

(California Public Contract Code Sections 2200-2208)

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits proposers engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars ($1,000,000) or more (PCC § 2203(a)). A proposer who "engages in investment activities in Iran" is defined as either:

1. A proposer providing goods or services of twenty million dollars ($20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; **or**

2. A proposer that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The proposer shall certify that at the time of submitting a proposal for new contract or renewal of an existing contract, he or she is **not** identified on the DGS list of ineligible businesses or persons and that the proposer is **not** engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

**California law establishes penalties for providing false certifications, including civil penalties equal to the greater of $250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).**

To comply with the Iran Contracting Act of 2010, the proposer shall complete and sign **ONE** of the options shown below.

**OPTION #1: CERTIFICATION**

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the proposer or financial institution identified below, and that the proposer or financial institution identified below is **not** on the current DGS list of persons engaged in investment activities in Iran and is **not** a financial institution extending twenty million dollars ($20,000,000) or more in credit to another person or vendor, for 45 days or more, if that other person or vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current DSG list of persons engaged in investment activities in Iran.

Name of Proposer/Financial Institution (Printed): _____

Signed by:_____(Authorized Signature)

_____(Printed Name)

_____(Title of Person Signing)

**OPTION #2: EXEMPTION**

Pursuant to PCC § 2203(c) and (d), a public entity may permit a proposer or financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into, or renew, a contract for goods and services. If the proposer or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the proposer or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

Name of Proposer/Financial Institution (Printed): _____

Signed by:_____(Authorized Signature)

_____(Printed Name)

_____(Title of Person Signing)

## CITY OF LOS ANGELES
## PLEDGE OF COMPLIANCE WITH CONTRACTOR RESPONSIBILITY ORDINANCE

Los Angeles Administrative Code (LAAC) Section 10.40 et seq. (Contractor Responsibility Ordinance) provides that, unless specifically exempt, City contractors working under service contracts of at least $25,000 and three months, contracts for services and for purchasing goods and products that involve a value in excess of twenty-five thousand dollars ($25,000) and a term in excess of three months are covered by this Article; and construction contracts of any amount; public lessees; public licensees; and certain recipients of City financial assistance or City grant funds, shall comply with all applicable provisions of the Ordinance. Upon award of a City contract, public lease, public license, financial assistance or grant, the contractor, public lessee, public licensee, City financial assistance recipient, or grant recipient, and any of its subcontractor(s), shall submit this Pledge of Compliance to the awarding authority.

The contractor agrees to comply with the Contractor Responsibility Ordinance and the following provisions:

(a) To comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.

(b) To notify the awarding authority within 30 calendar days after receiving notification that any governmental agency has initiated an investigation which may result in a finding that the contractor did not comply with any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.

(c) To notify the awarding authority within 30 calendar days of all findings by a governmental agency or court of competent jurisdiction that the contractor has violated any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.

(d) If applicable, to provide the awarding authority, within 30 calendar days, updated responses to the Responsibility Questionnaire if any change occurs which would change any response contained within the Responsibility Questionnaire and such change would affect the contractor's fitness and ability to continue the contract.

(e) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.

(f) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, sublicensee that perform or assist in performing services on the leased or licensed premises) submit a Pledge of Compliance.

(g) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with paragraphs (b) and (c).

**Failure to complete and submit this form to the Awarding Authority may result in withholding of payments by the City Controller, or contract termination.**

Company Name, Address and Phone Number

Signature of Officer or Authorized Representative Date

Print Name and Title of Officer or Authorized Representative

Awarding City Department Contract Number

**NOTICE: Responses to this Questionnaire will not be made available to the public for review.**

## CITY OF LOS ANGELES RESPONSIBILITY QUESTIONNAIRE

**RESPONSES TO THE QUESTIONS CONTAINED IN THIS QUESTIONNAIRE MUST BE SUBMITTED ON THIS FORM. In responding to the Questionnaire, neither the City form, nor any of the questions contained therein, may be retyped, recreated, modified, altered, or changed in any way, in whole or in part. Bidders or Proposers that submit responses on a form that has been retyped, recreated, modified, altered, or changed in any way shall be deemed non-responsive.**

The signatory of this Questionnaire guarantees the truth and accuracy of all statements and answers to the questions herein. Failure to complete and return this questionnaire, any false statements, or failure to answer (a) question(s) when required, may render the bid/proposal non-responsive. All responses must be typewritten or printed in ink. Where an explanation is required or where additional space is needed to explain an answer, use the Responsibility Questionnaire Attachments. Submit the completed form and all attachments to the awarding authority. Retain a copy of this completed form for future reference. Contractors must submit updated information to the awarding authority if changes have occurred that would render any of the responses inaccurate in any way. Updates must be submitted to the awarding authority within 30 days of the change(s).

### A. INFORMATION

_____

Bid Number and Project Title

BIDDER/CONTRACTOR INFORMATION

_____

Bidder/Proposer Business Name Contractor's License Number

_____

Street Address City State Zip

_____

Contact Person, Title Phone Fax

### CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury under the laws of the State of California that I have read and understand the questions contained in this questionnaire and the responses contained herein and on all Attachments. I further certify that I have provided full and complete answers to each question, and that all information provided in response to this Questionnaire is true and accurate to the best of my knowledge and belief.

☐ **The Questionnaire being submitted is:** *(check one)*

☐ An initial submission of a completed Questionnaire.

☐ An update of a prior Questionnaire dated_____/_____/_____. A copy of the prior Questionnaire **and** newly updated information are attached.

_____

Print Name, Title Signature Date

**5. TOTAL NUMBER OF PAGES SUBMITTED, INCLUDING ALL ATTACHMENTS: _____**

## B. BUSINESS ORGANIZATION/STRUCTURE

Indicate the organizational structure of your firm. "Firm" includes a sole proprietorship, corporation, joint venture, consortium, association, or any combination thereof.

☐ **Corporation:** Date incorporated: ____/____/____ State of incorporation: _____
List the corporation's current officers.

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

□ Check the box only if your firm is a publicly traded corporation.
List those who own 5% or more of the corporation's stocks. Use Attachment A if more space is needed. Publicly traded corporations need not list the owners of 5% or more of the corporation's stocks.

_____ _____

_____ _____

☐ **Limited Liability Company:** Date of formation: ____/____/____ State of formation: _____
List members who own 5% or more of the company. Use Attachment A if more space is needed.

_____ _____

_____ _____

☐ **Partnership:** Date formed: ____/____/____ State of formation: _____
List all partners in your firm. Use Attachment A if more space is needed.

_____ _____

_____ _____

☐ **Sole Proprietorship:** Date started: ____/____/____
List any firm(s) that you have been associated with as an owner, partner, or officer for the last five years. Use Attachment A if more space is needed. Do not include ownership of stock in a publicly traded company in your response to this question.

_____ _____

_____ _____

☐ **Joint Venture:** Date formed: ____/____/____
List: (1) each firm that is a member of the joint venture and (2) the percentage of ownership the firm will have in the joint venture. Use Attachment A if more space is needed. **Each member of the Joint Venture must complete a separate Questionnaire for the Joint Venture's submission to be considered as responsive to the invitation.**

_____ _____

_____ _____

## C. OWNERSHIP AND NAME CHANGES

1. Is your firm a subsidiary, parent, holding company, or affiliate of another firm?

   □ **Yes** □ **No**

   If **Yes**, explain on Attachment A the relationship between your firm and the associated firms. Include information about an affiliated firm only if one firm owns 50% or more of another firm, or if an owner, partner or officer of your firm holds a similar position in another firm.

2. Has any of the firm's owners, partners, or officers operated a similar business in the past five years?
   □ **Yes** □ **No**

   If **Yes**, list on Attachment A the names and addresses of all such businesses, and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds a similar position in another firm.

3. Has the firm changed names in the past five years?
   □ **Yes** □ **No**

   If **Yes**, list on Attachment A all prior names, addresses, and the dates they were used. Explain the reason for each name change in the last five years.

4. Are any of your firm's licenses held in the name of a corporation or partnership?
   □ **Yes** □ **No**

   If Yes, list on Attachment A the name of the corporation or partnership that actually holds the license.

**Bidders/Contractors must continue on to Section D and answer all remaining questions contained in this Questionnaire.**

## D. FINANCIAL RESOURCES AND RESPONSIBILITY

5. Is your firm now, or has it ever been at any time in the last five years, the debtor in a bankruptcy case?
   □ **Yes** □ **No**

   If **Yes**, explain on Attachment B the circumstances surrounding each instance.

6. Is your company in the process of, or in negotiations toward, being sold?
   □ **Yes** □ **No**

   If **Yes**, explain the circumstances on Attachment B.

## E. PERFORMANCE HISTORY

7. How many years has your firm been in business?_____Years.

8. Has your firm ever held any contracts with the City of Los Angeles or any of its departments?
   □ **Yes** □ **No**

   If, **Yes,** list on an Attachment B all contracts your firm has had with the City of Los Angeles for the last 10 years. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

9. List on Attachment B all contracts your firm has had with any private or governmental entity (other than the City of Los Angeles) over the last five years that are similar to the work to be performed on the contract for which you are bidding or proposing. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

   ☐ Check the box if you have not had any similar contracts in the last five years

10. In the past five years, has a governmental or private entity or individual terminated your firm's contract prior to completion of the contract?
    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance.

11. In the past five years, has your firm used any subcontractor to perform work on a government contract when you knew that the subcontractor had been debarred by a governmental entity?

    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance.

12. In the past five years, has your firm been debarred or determined to be a non-responsible bidder or contractor?

    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance.

**F. DISPUTES**

13. In the past five years, has your firm been the defendant in court on a matter related to any of the following issues? For parts (a) and (b) below, check **Yes** even if the matter proceeded to arbitration without court litigation. For part (c), check **Yes** only if the matter proceeded to court litigation. If you answer **Yes** to any of the questions below, explain the circumstances surrounding each instance on Attachment B. You must include the following in your response: the name of the plaintiffs in each court case, the specific causes of action in each case; the date each case was filed; and the disposition/current status of each case.

    (a) Payment to subcontractors?
    □ **Yes** □ **No**

    (b) Work performance on a contract?
    □ **Yes** □ **No**

    (c) Employment-related litigation brought by an employee?
    □ **Yes** □ **No**

14. Does your firm have any outstanding judgements pending against it?
    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance.

15. In the past five years, has your firm been assessed liquidated damages on a contract?
    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance and identify all such projects, the amount assessed and paid, and the name and address of the project owner.

## G. COMPLIANCE

16. In the past five years, has your firm or any of its owners, partners or officers, ever been investigated, cited, assessed any penalties, or been found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed on Attachment C (Page 9)? For this question, the term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation.

    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance, including the entity that was involved, the dates of such instances, and the outcome.

17. If a license is required to perform any services provided by your firm, in the past five years, has your firm, or any person employed by your firm, been investigated, cited, assessed any penalties, subject to any disciplinary action by a licensing agency, or found to have violated any licensing laws?

    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

18. In the past five years, has your firm, any of its owners, partners, or officers, ever been penalized or given a letter of warning by the City of Los Angeles for failing to obtain authorization from the City for the substitution of a Minority-owned (MBE), Women-owned (WBE), or Other (OBE) business enterprise?

    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

## H. BUSINESS INTEGRITY

19. For questions (a), (b), and (c) below, check **Yes** if the situation applies to your firm. For these questions, the term "firm" includes any owners, partners, or officers in the firm. The term "owner" does not include owners of stock in your firm if the firm is a publicly traded corporation. If you check **Yes** to any of the questions below, explain on Attachment B the circumstances surrounding each instance.

    (a) Is a governmental entity or public utility currently investigating your firm for making (a) false claim(s) or material misrepresentation(s)?

    □ **Yes** □ **No**

    (b) In the past five years, has a governmental entity or public utility alleged or determined that your firm made (a) false claim(s) or material misrepresentation(s)?

    □ **Yes** □ **No**

    (c) In the past five years, has your firm been convicted or found liable in a civil suit for, making (a) false claim(s) or material misrepresentation(s) to any governmental entity or public utility?

    □ **Yes** □ **No**

20. In the past five years, has your firm or any of its owners or officers been convicted of a crime involving the bidding of a government contract, the awarding of a government contract, the performance of a government contract, or the crime of fraud, theft, embezzlement, perjury, bribery? For this question, the term "owner" does not include those who own stock in a publicly traded corporation.

    □ **Yes** □ **No**

    If **Yes**, explain on Attachment B the circumstances surrounding each instance.

## ATTACHMENT A FOR SECTIONS A THROUGH C

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

**Page**

## ATTACHMENT B FOR SECTIONS D THROUGH H

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

**Page**

## ATTACHMENT C: GOVERNMENTAL ENTITIES FOR QUESTION NO. 16

Check **Yes** in response to Question No. 16 if your firm or any of its owners, partners or officers, have ever been cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed below (or any of its subdivisions), including but not limited to those examples specified below. The term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation. If you answered **Yes**, provide an explanation on Attachment B of the circumstances surrounding each instance, including the entity involved, the dates of such instances, and the outcome.

### FEDERAL ENTITIES

**Federal Department of Labor**
- American with Disabilities Act
- Immigration Reform and Control Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Davis-Bacon and laws covering wage requirements for federal government contract workers
- Migrant and Seasonal Agricultural Workers Protection Act
- Immigration and Naturalization Act
- Occupational Safety and Health Act
- anti-discrimination provisions applicable to government contractors and subcontractors
- whistleblower protection laws

**Federal Department of Justice**
- Civil Rights Act
- American with Disabilities Act
- Immigration Reform and Control Act of 1986
- bankruptcy fraud and abuse

**Federal Department of Housing and Urban Development (HUD)**
- anti-discrimination provisions in federally subsidized/assisted/sponsored housing programs
- prevailing wage requirements applicable to HUD related programs

**Federal Environmental Protection Agency**
- Environmental Protection Act

**National Labor Relations Board**
- National Labor Relations Act

**Federal Equal Employment Opportunity Commission**
- Civil Rights Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Rehabilitation Act
- Americans with Disabilities Act

### STATE ENTITIES

**California's Department of Industrial Relations**
- wage and labor standards, and licensing and registration
- occupational safety and health standards
- workers' compensation self insurance plans
- Workers' Compensation Act
- wage, hour, and working standards for apprentices
- any provision of the California Labor Code

**California's Department of Fair Employment and Housing**
- California Fair Employment and Housing Act
- Unruh Civil Rights Act
- Ralph Civil Rights Act

**California Department of Consumer Affairs**
- licensing, registration, and certification requirements
- occupational licensing requirements administered and/or enforced by any of the Department's boards, including the Contractors' State Licensing Board

**California's Department of Justice**

### LOCAL ENTITIES

**City of Los Angeles** or any of its subdivisions for violations of any law, ordinance, code, rule, or regulation administered and/or enforced by the City, including any letters of warning or sanctions issued by the City of Los Angeles for an unauthorized substitution of subcontractors, or unauthorized reductions in dollar amounts subcontracted.

### OTHERS

**Any other federal, state, local governmental entity** for violation of any other federal, state, or local law or regulation relating to wages, labor, or other terms and conditions of employment.

**CITY OF LOS ANGELES**
**Department of General Services**
**Office of the Purchasing Agent**
**(213) 928-9525**

# CONTRACTOR CODE OF CONDUCT

The City of Los Angeles has long supported the premise that employers should fairly compensate employees, that the health and safety of workers should be protected, and that no form of discrimination or abuse should be tolerated. Experience indicates that laws and regulations designed to safeguard basic tenets of ethical business practices are disregarded in some workplaces, commonly referred to as "sweatshops."

In its role as a market participant that procures equipment, goods, materials and supplies, the City seeks to protect its interests by assuring that the integrity of the City's procurement process is not undermined by contractors who engage in sweatshop practices and other employment practices abhorrent to the City. When the City inadvertently contracts with these contractors, the City's ethical contractors are placed at a distinct competitive disadvantage. Many times ethical contractors are underbid by unscrupulous contractors in competition for City contracts. These ethical contractors may be dissuaded from participating in future procurement contracts.

The City's proprietary contracting interests are served byFA doing business with contractors who make a good faith effort to ensure that they and their subcontractors shun sweatshop practices and adhere to workplace and wage laws. Seeking to protect these municipal interests, the City requires that all contractors subject to the Sweat-free Procurement Ordinance certify that they and, to the best of their knowledge, their subcontractors will comply with the City's Contractor Code of Conduct and to promise the following:

(a) To comply with all applicable wage, health, labor, environmental and safety laws, legal guarantees of freedom of association, building and fire codes, and laws and ordinances relating to workplace and employment discrimination.

(b) To comply with all human and labor rights and labor obligations that are imposed by treaty or law on the country in which the equipment, supplies, goods or materials are made or assembled, including but not limited to abusive forms of child labor, slave labor, convict or forced labor, or sweatshop labor.

(c) To take good faith measures to ensure, to the best of the contractor's knowledge, that the contractor's subcontractors also comply with the City's Contractor Code of Conduct.

(d) To pay employees working on contracts for garments, uniforms, foot apparel, and related accessories a procurement living wage, meaning for domestic manufacturers a base hourly wage adjusted annually to the amount required to produce, for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services most recent poverty guideline for a family of three plus an additional 20 percent of the wage level paid either as hourly wages or health benefits. For manufacturing operations in countries other than the United States, a procurement living wage which is comparable to the wage for domestic manufacturers as defined above, adjusted to reflect the country's level of economic development by using the World Bank's Gross National Income Per Capita Purchasing Power index.

## CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury under the laws of the State of California that I have read and understood the City's Contractor Code of Conduct and agree to comply with its requirements.

_____

Signature of Officer or Authorized Representative Date

_____

Print Name and Title of Authorized Representative

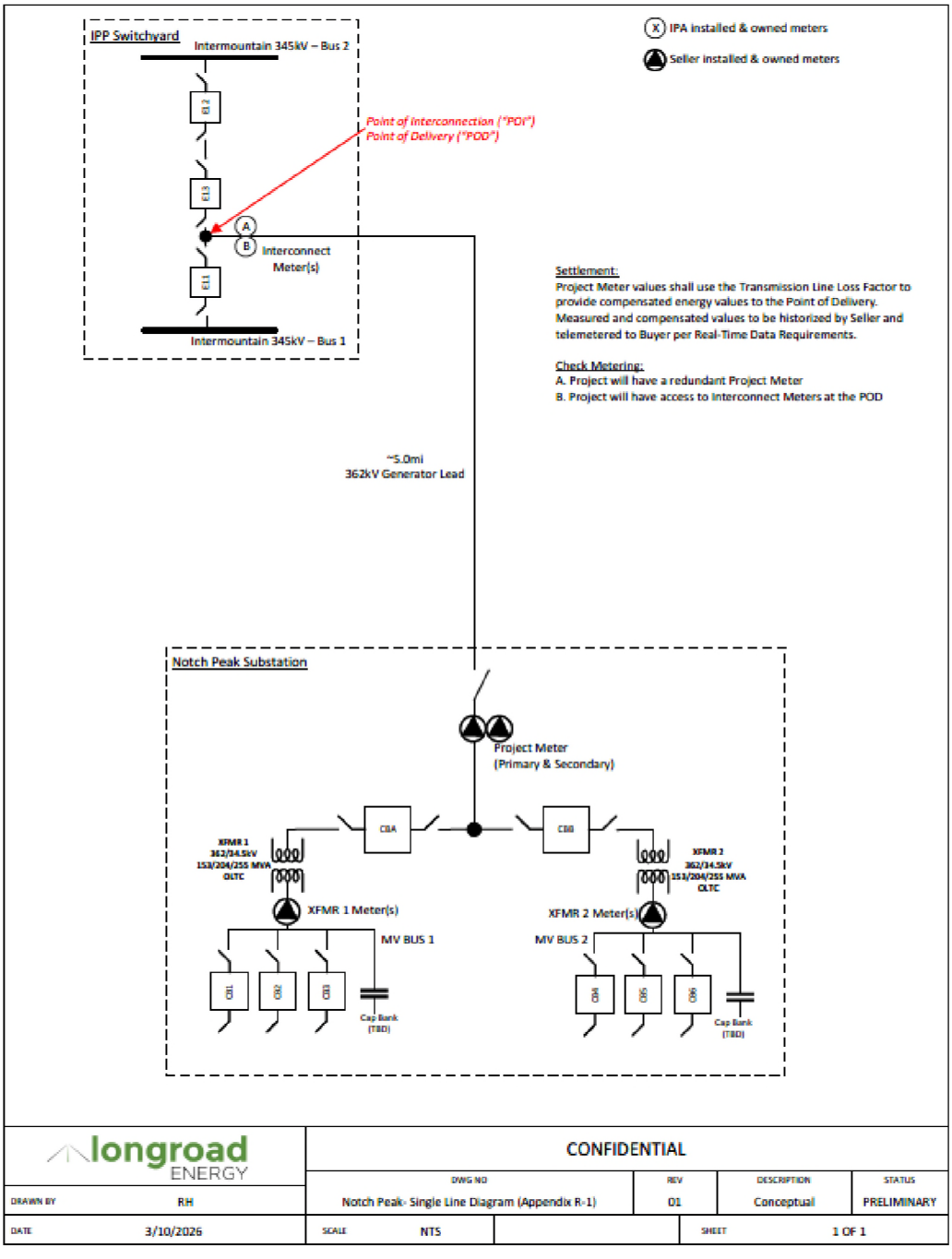
_____

Print Company Name, Address and Phone Number

# APPENDIX R-1

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## SINGLE LINE DIAGRAM




| longroad ENERGY | CONFIDENTIAL | | | |
|---|---|---|---|---|
| | DWG NO | REV | DESCRIPTION | STATUS |
| DRAWN BY RH | Notch Peak- Single Line Diagram (Appendix R-1) | 01 | Conceptual | PRELIMINARY |
| DATE 3/10/2026 | SCALE NTS | | SHEET 1 OF 1 | |

# APPENDIX S

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## PMU REQUIREMENTS

### I. LADWP Compliance Responsibilities

As Planning Coordinator and Transmission Operator registered with NERC, LADWP shall demonstrate compliance with NERC Reliability Standard MOD-033-2, and any successor NERC Reliability Standard. As Seller's Planning Coordinator, LADWP does not expect Seller to submit any compliance documentation for MOD-033-2 to NERC or WECC, however, Seller shall cooperate to enable LADWP to demonstrate compliance with MOD-033-2. In particular, as Seller's Planning Coordinator, LADWP requires the phasor measurement unit ("***PMU***") data specified below in order to continue planning for the Project Site and to perform data validation in accordance with NERC Reliability Standard MOD-033-2 requirement R1, as such requirement may be amended from time to time subject to FERC approval.

### II. Compliance under Agreement

LADWP's Transmission Analysis and Regional Planning ("***Transmission Planning***") has deemed necessary the collection of PMU data, both from sources at LADWP sites and at sites of projects for which LADWP has power purchase agreements, to adequately perform data validation per NERC Reliability Standard MOD-033-2 requirement R1, as such requirement may be amended from time to time subject to FERC approval. LADWP's Transmission Planning has identified the Project Site as a site required to have PMU data.

#### a. PMU Location

To ensure the availability of needed PMU data for LADWP's Transmission Planning to perform adequate data validation per NERC Reliability Standard MOD-033-2 requirement R1, as such requirement may be amended from time to time subject to FERC approval, Seller shall take the necessary steps to ensure that adequate PMU data is available for the location specified by LADWP's Transmission Planning. This includes the installation of PMU equipment if there is no PMU currently installed at the specified location. This also includes modifying existing PMUs to satisfy LADWP's Transmission Planning's validation requirements. If adequate PMU data exists for the location specified by LADWP's Transmission Planning, then Seller does not need to install additional PMUs.

#### b. PMU Technical Requirements

The provided PMU data shall, at minimum, be time-synchronized and include 30 samples per second of the positive sequence data (including voltage, real and reactive power flow, frequency, phase angle).

#### c. Communications

Seller shall coordinate with LADWP to ensure the needed communications infrastructure exists to continuously provide PMU data to LADWP's designated server. So long as PMU communications with LADWP functions correctly, Seller shall not be required to archive PMU data on-site. Rather, Seller shall continuously provide PMU data to LADWP's designated server. However, if the PMU fails to send data to LADWP's designated server, Seller shall archive the PMU data for the duration of the failure and provide the data to LADWP.

**d. Maintenance Requirements**

Seller shall perform the necessary maintenance, within reason, to ensure that PMU data is continuously provided to LADWP. In the event of a failure of PMU recording or communications capability, Seller shall complete the following steps:

1. Within 1 Business Day following discovery of failure, notify LADWP's Transmission Planning of the failure.

2. Within 4 Business Days following discovery of failure:

    a. Provide LADWP's Transmission Planning with a corrective action plan ("***CAP***") to restore the PMU's recording and communications capability within the timeframes for proposed CAP completion determined in items (i)-(v) below:

        i. For CAPs consisting of PMU replacement for which a spare is available: within 7 Business Days following discovery of failure;

        ii. For CAPs consisting of PMU replacement for which a spare is not available: within 10 Business Days of discovery of failure;

        iii. For CAPs consisting of CVT replacement: within 10 calendar days following discovery of failure;

        iv. For CAPs addressing communications failure: within 5 Business Days following discovery of failure;

        v. For CAPs addressing other issues not addressed above: within 10 Business Days following discovery of failure.

3. Within the timeframe for initial proposed CAP completion date determined in Step 2.a.:

    a. Restore the PMU's recording and communications capability.

b. If, within reasonable effort, it is not possible to restore the PMU's recording and communications capability within the timeframe specified above, then Seller shall provide an updated CAP within 3 Business Days following the initial proposed CAP completion date and obtain LADWP's agreement on the updated plan.

**e. Compliance Documentation**

Seller shall maintain the necessary information to provide, upon request by LADWP, the following:

1. Confirmation of whether the PMU equipment has been running and providing data for the timeframe in question.
2. If there have been outages, a list of the outage dates within the timeframe in question, as well as: cause of outages, duration of outages, and corrective actions taken.

**f. Financial Liability for a Compliance Violation**

Seller shall be financially liable for any failure to provide regulatory data, per Prudent Utility Practices, to the extent such failure (i) causes LADWP to pay penalties to FERC, NERC, or WECC and (ii) was due to Seller's act or omission.

**g. LADWP Points of Contact**

Transmission Planning and Contacts

Manager

Sunaja Lakshman

(213) 367-3281

Sunaja.Lakshman@LADWP.com

Regulatory, Standards and Compliance Group

Assistant Supervisor
Sangeetha Losari
(213) 367-2315
Sangeetha.losari@ladwp.com

**APPENDIX T**
**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

**PRELIMINARY DRAFT FORM OF INVOICE**

In accordance with Section 11.1(g), below are non-binding preliminary draft forms of invoices to be used by the Parties for monthly financial settlements under Article 11 and the Parties shall finalize a single final form for use in accordance with Section 11.1(g). Invoices will be materially similar to the attachment, but all information in the form invoices below is preliminary and indicative and for form only. Other provisions of the Agreement shall control in the event of any conflict or inconsistency with this preliminary draft form of invoice.

*Note: Invoices will be materially similar to this Appendix T.*

# Notch Peak Solar Project
## 12/ 2026 - Energy Invoice

From:
**Notch Peak Project, LLC**
C/O (Blank)
(Address)
(Address)

To:
Attn: Accounting Division - Accounts Payable Section - Supervisor of Accounts Payable
P.O. Box 51211
Room 424 JFB
Los Angeles, CA 90051-5511
Attn: Accounting Division - Accounts Payable Section - Supervisor of Accounts Payable

**Invoice Information:**

| | |
|---|---|
| Invoice Number: | *1* |
| Invoice issue Date: | *1-Dec-26* |
| Billing Period Begin: | *1-Nov-26* |
| Billing Period End: | *30-Nov-26* |
| Payment Due Date: | *30-Jan-27* |
| COD Date: | *8-Dec-26* |
| Generating Facility: | Notch Peak Solar (Address) |
| LADWP Contracts: | Notch Peak Solar[, PSA, LADWP No. BP 24-002]<br>Notch Peak Solar[, AA, LADWP No. BP 24-003] |

**Current Month Billing Calculation**

| DESRI Charge Code | Description | Energy (MWh) | Rate ($/MWh) | Amount ($) |
|---|---|---|---|---|
| 100 | **GROSS** Energy Generated | 0 | | |
| | Energy Loss (ancillary/line loss etc.) | 0 | | |
| | **NET** Delivered Energy | -1 | $ 50.85 | $ (50.85) |
| | Test Energy | 0 | $ 25.43 | $ - |
| 102 | Energy Curtailed | *0* | $ - | $ - |
| **Total Due:** | | | | **$ (50.85)** |

| **Delivered Energy (MWh)** | |
|---|---|
| Current Month | -1 |
| Year-to-Date | 172,569 |

| **Curtailed Energy (MWh)** | |
|---|---|
| Current Month | - |
| Year-to-Date | 7,703 |

| Energy Participant's Breakdown: | |
|---|---|
| Glendale: | (Fill IN)% |
| LADWP: | (Fill IN)% |
| SCPPA (Total) | 100.00% |

**Payments Information:**
Due 60 days after receipt of invoice by wire transfer to the following account:

| | |
|---|---|
| Bank: | (Fill IN) |
| ABA Number: | (Fill IN) |
| Account Number: | (Fill IN) |
| Account Name: | Notch Peak Project, LLC |

| | |
|---|---|
| Notch Peak Project Contact: | (Fill IN) |
| Title: | (Fill IN) |
| Email: | (Fill IN) |
| Phone: | (Fill IN) |

# II Project

## Attestation

| RECs Delivered (MWh) | |
|---|---|
| Jan-26 | 35,539 |
| Feb-26 | 37,677 |
| Mar-26 | 42,792 |
| Apr-26 | 56,561 |
| May-26 | |
| Jun-26 | |
| Jul-26 | |
| Aug-26 | |
| Sep-26 | |
| Oct-26 | |
| Nov-26 | |
| Dec-26 | |
| Year-to-Date | 172,569 |

**mental Attribute Attestation and Bill of Sale**

"Seller" (Notch Peak Project, LLC) hereby confirms to comply with Article VIII - Environmental Attributes; EPS and RPS Compliance of the Power Purchase Agreement (PPA) and delivers to the "Buyer" (Southern California Public Power Authority) the Environmental Attributes. The "Seller" also confirms that the "Seller" has uploaded Environmental Attributes to WREGIS System (***"WREGIS Certificates"***) as shown below:

| **Facility Information:** | |
|---|---|
| Facility Name: | Notch Peak Solar |
| Generation Type: | Solar |
| GPS Coordinates: | (Fill in) |
| Capacity (MW): | 300 |
| Commercial Operation Date: | 8-Dec-26 |
| CEC Reg. No. | (Fill in) |
| Q.F. ID No. | (Fill in) |
| Dates: | REC (in MWh) Transferred or To-Be-Transferred |
| Period | REC (in MWh) |
| Jan-26 | 35,539 |
| Feb-26 | 37,677 |
| Mar-26 | 42,792 |
| Apr-26 | 56,561 |
| May-26 | - |
| Jun-26 | - |
| Jul-26 | - |
| Aug-26 | - |
| Sep-26 | - |
| Oct-26 | - |
| Nov-26 | - |
| Dec-26 | - |
| **TOTAL for 2026** | **172,569** |
| | |

** REC is calculated per "Gross Energy", generated at plant's bus-bar.
REC = Renewable Energy Credit as defined in the Power Purchase Agreement.

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 all of the 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 of delivery to the grid have been generated and sold by the Facility.

This serves as a bill of sale,

Contact Person: (FILL IN) Tel:

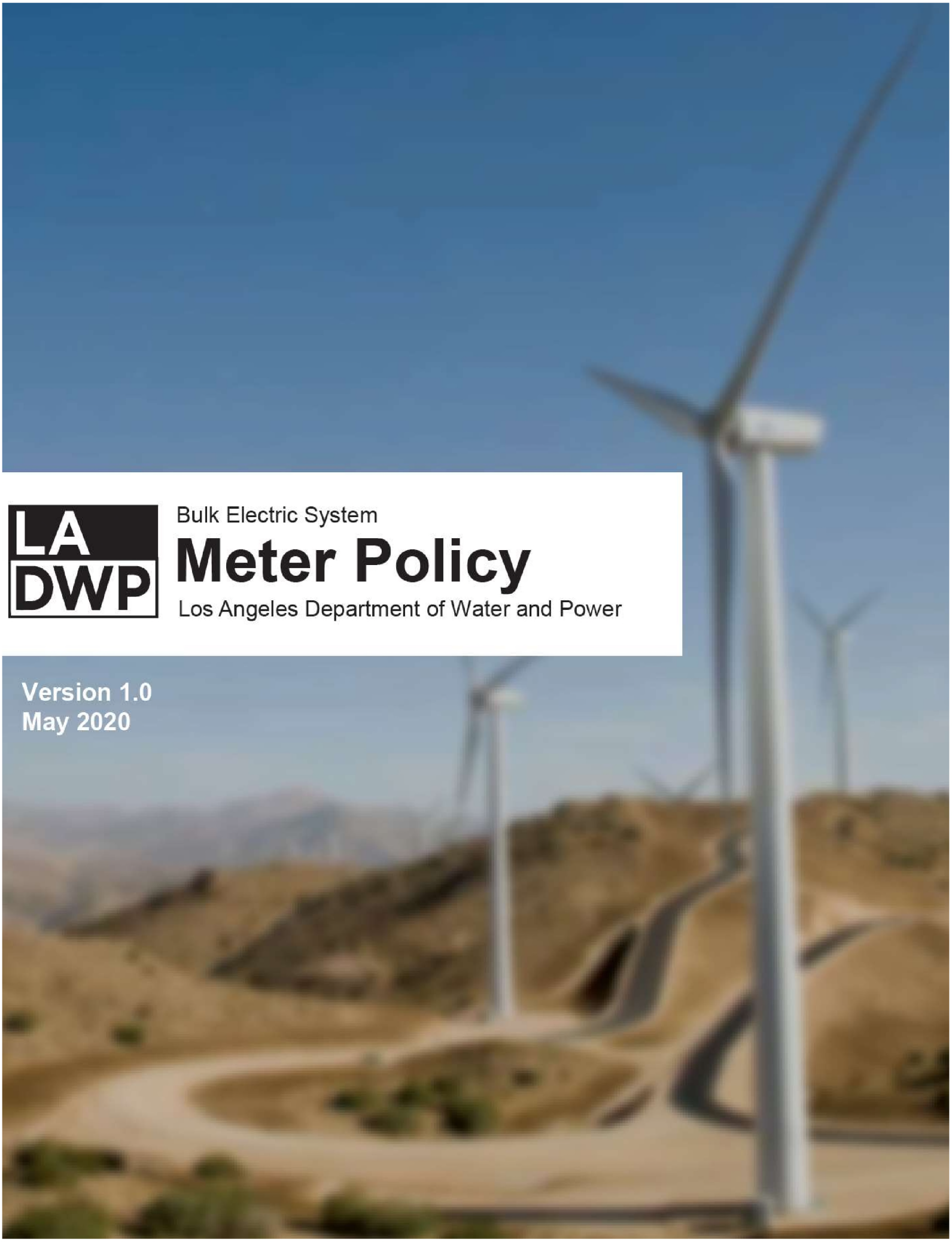
| ReadTimeHour | Date | Month | TotalKWhReceived |
|---|---|---|---|
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**APPENDIX U**

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

**LADWP METERING POLICY**

[See attached.]



Bulk Electric System

# Meter Policy

Los Angeles Department of Water and Power

**Version 1.0**
**May 2020**

**LADWP Bulk Electric System Meter Policy**

**Signature Sheet**

**May 2020**

This Document Is Hereby Approved By:

Martin L. Adams
General Manager and Chief Engineer

Reiko A. Kerr — 4/8/2020 — Date

Senior Assistant General Manager – Power System Engineering, Planning, and Technical Services

Andrew C. Kendall — 6/9/2020 — Date

Senior Assistant General Manager – Power System Construction, Maintenance, and Operations

Louis C. Ting — 5/4/2020 — Date

Power Planning, Development and Engineering Division

Paul R. Schultz — 5/4/20 — Date

Power External Energy Resources Division

Robert P. Gonzalez — 04.20 — Date

Power Construction and Maintenance Division

Simon Zewdu — 05/11/2020 — Date

Power System Regulatory Compliance and Specifications Division

Christopher J. Lynn — 5/4/2020 — Date

Energy Control and Grid Reliability Division

Tyrone G. Jeffery — 5/11/2020 — Date

Power Supply Operations Division

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## I. Revision History

| Effective Date | Version Number | Revised By | Revision History |
|---|---|---|---|
| 06/01/2020 | 1.0 | MDM Committee<br>Oscar Herrera - LADWP<br>Tyler Breiner - Advisian | |
| | | | |
| | | | |
| | | | |

## II. Definitions

| Term | Definition |
|---|---|
| Accumulator | Digital counter for collecting meter kWh or MWh digital pulses at a predetermined pulse rate that equals kW·hour or MW·hour, normally referred to as a "SCADA hourly pulse counter." |
| American National Standards Institute (ANSI) | The American National Standards Institute (ANSI) is a private, not-for-profit organization dedicated to supporting the U.S. voluntary standards and conformity assessment system and strengthening its impact, both domestically and internationally. |
| Area Control Error (ACE) | The instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into account the effects of Frequency Bias, correction for meter error, and Automatic Time Error Correction (ATEC), if operating in ATEC mode. |
| Automated Dispatching System (ADS) | The CAISO systems application to communicate Dispatch Instructions to Scheduling Coordinators. |
| Automatic Generation Control (AGC) | Equipment that automatically adjusts generation in a Balancing Authority Area from a central location to maintain the Balancing Authority's interchange schedule plus Frequency Bias. AGC may also accommodate automatic inadvertent payback and time error correction. |
| Balancing Authority (BA) | The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports Interconnection frequency in real-time. |
| Balancing Authority Area (BAA) | The collection of generation, transmission, and loads within the metered interchange boundaries of the Balancing Authority. The Balancing Authority maintains a load-resource balance within this area. |

| | |
|---|---|
| Backup Automatic Generation Control (BAGC) | LADWP's backup to its Supervisory Control And Data Acquisition is the Backup Automatic Generation Control Program. |
| Business Day | Business Day means any day other than Saturday, Sunday, or a legal public holiday as designated in Section 6103 of Title 5, U.S. Code. |
| Bulk Electric System (BES) | As defined by NERC, the Bulk Electric System, or BES, is:<br>(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and<br>(B) electric energy from generation facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy. (Note that the terms "Bulk-Power System" or "Bulk Power System" shall have the same meaning. |
| California Independent System Operator (CAISO) | The California Independent System Operator is a non-profit Independent System Operator, BA, and BAA, serving California. It oversees the operation of California's bulk electric power system, transmission lines, and electricity market generated and transmitted by its member utilities. The CAISO is also the Market Operator for the Energy Imbalance Market. |
| Critical Infrastructure Protection (CIP) | NERC standards designed to secure the electronic assets required for operating the Bulk Electric System. |
| Current Transformer (CT) | A current transformer is an instrument transformer, used along with measuring or protective devices, in which the secondary current is proportional to the primary current. |
| Electrical Engineering Design Standard (EEDS) | The Electrical Engineering Design Standard is LADWP's design standard for electrical equipment installations. |
| Energy Imbalance Market (EIM) | The California ISO's Western Energy Imbalance Market (EIM) is a real-time bulk power trading market. The EIM's advanced market systems automatically find the lowest-cost energy to serve real-time customer demand across a wide geographic area. BA's and other entities participating in the EIM will maintain control over their assets and remain responsible for balancing requirements while sharing in the cost benefits the market produces for participants. |
| Institute of Electrical and Electronics Engineers (IEEE) | IEEE is the world's largest technical professional society. It is designed to serve professionals involved in all aspects of the electrical, electronic, and computing fields and related areas of science and technology. |
| In-Basin Thermal Generation | LADWP-owned thermal generation that is located south of the San Gabriel Mountain Range. Plants that meet this criterion are Haynes Generating Station, Harbor Generating Station, Valley Generating Station, and Scattergood Generating Station. |

| | |
|---|---|
| Local Regulatory Authority (LRA) | As described in the CAISO Tariff, a Local Regulatory Authority is: "[t]he state or local governmental authority, or the board of directors of an electric cooperative, responsible for the regulation or oversight of a utility." CAISO Tariff, Appendix A (Master Definition Supplement). |
| Meter Interrogation | A process by which interval, register, and event data is retrieved directly from the meters and utilizes a standardized communication method. |
| Metering Points | A Metering Point is a location where metering (physical or contractual) is physically or financially settled. Such points include (but not limited to):<br>• Generation Metering Points<br>• Interchange Metering Points<br>• Jointly-Owned Generating Unit Metering Points<br>• 3rd Party Generating Unit Metering Points<br>• Jointly-Owned Transmission Metering Points |
| Meter System | Measuring equipment that is composed of the Meter, Potential Transformer, Current Transformer, and other sensors. |
| Meter System Equipment | May refer to any individual or grouping of components that comprise the Meter System. |
| Meter Data Management System (MDMS) | A system that aggregates multiple sources of information, which is kept in a central repository and serves as a clearinghouse of LADWP's Meter Data. Such a system has validation rules, Verify, Estimate, Edit (VEE) functionality, and connectivity to internal and external systems (e.g. the California Independent System Operator) for operation in the Energy Imbalance Market. |
| Meter Data Management (MDM) Committee | The committee responsible for the meter data value chain in LADWP. This includes the development and approval of the LADWP Bulk Electric System Meter Policy. |
| National Electric Safety Code (NESC) | The National Electrical Safety Code sets the ground rules and guidelines for the practical safeguarding of utility workers and the public during the installation, operation, and maintenance of electric supply, communication lines, and associated equipment. |
| North American Electric Reliability Corporation (NERC) | NERC was designated as the Electric Reliability Organization (ERO) by the Federal Energy Regulatory Commission (FERC). NERCs mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid. NERC develops and enforces Reliability Standards, annually assesses seasonal and long-term reliability, monitors the bulk power system through system awareness, and educates, trains, and certifies industry personnel. |
| Remote Terminal Unit (RTU) | A processor-controlled electronic device that interfaces station equipment to a centralized control system or SCADA. |

| | |
|---|---|
| Potential Transformer (PT) | A potential transformer is an instrument transformer, used along with measuring or protective devices, in which the secondary voltage is proportional to the primary voltage. |
| Pseudo-Tie | A time-varying energy transfer that is updated in Real-Time and included in the Actual Net Interchange, as defined by NERC, in the same manner as a Tie Line in the affected Balancing Authorities' control ACE equations (or alternate control processes). Pseudo-ties typically require firm transmission service reservation. |
| Scheduling Coordinator Metering Entity (SCME) | A generator, eligible customer, or end-user, which is not a CAISO Metered Entity, responsible for obtaining, processing, and submitting Settlement Quality Meter Data. LADWP is an SCME. |
| Settlement Quality Meter Data (SQMD) | Meter data sourced from a Revenue Quality Meter that is gathered, edited, validated, and stored in a settlement-ready format, for settlement and auditing purposes. |
| Settlement Quality Meter Data Plan | A Settlement Quality Meter Plan is defined in the CAISO Tariff Section 10.3.7.1, which requires "Scheduling Coordinators [to] submit an SQMD Plan to ensure that the Scheduling Coordinator will submit and maintain the integrity of Meter Data submitted to the CAISO for that Scheduling Coordinator Metered Entity." |
| Supervisory Control and Data Acquisition (SCADA) | The SCADA system is the enterprise system for data acquisition, monitoring, and controlling of the Power System's Generation, Transmission and Distribution assets. The system consists of critical applications and remote units that load dispatchers use to monitor the bulk power and the distribution system for alarms, limits, and other potential issues to ensure the reliable and safe operation of the power system.<br>The SCADA system is composed of:<br>• The SCADA/EMS applications suites in the control center.<br>• Remote Terminal Units for Data Acquisition from stations and field devices.<br>• The communication infrastructure |
| Western Electric Coordinating Council (WECC) | Designated by the North American Electric Reliability Corporation to be the Regional Reliability Organization and serves as the compliance monitor for utilities in the Western Interconnection. |

## III. Purpose

a) This Los Angeles Department of Water and Power (LADWP) Bulk Electric System Meter Policy (Policy) establishes standards for LADWP's Balancing Authority Area (BAA) for Revenue Meters (Intertie, Generation, and Load) and Meter Systems equipment.

b) In accordance with LADWP Station Design Standards, LADWP adheres to and complies with NERC and WECC Reliability Standards as they apply to LADWP's NERC registered functions. LADWP adheres to relevant standards for maintaining accurate data for AGC and ACE systems.

c) This Policy addresses requirements for LADWP's planned participation in the CAISO EIM starting in April 2021. Participating in the CAISO EIM requires adherence to certain standards and requirements either regulated by CAISO directly or when applicable, by a Local Regulatory Authority (also referred to as the LRA), as defined in the CAISO Tariff.

d) LADWP's Local Regulatory Authority is the Board of Water and Power Commissioners. Pursuant to Los Angeles City Charter Sections 672 and 675, the Board manages and controls the Power Assets and has the power and duty to make and enforce all necessary rules and regulations governing the construction, maintenance, operation, connection to and use of the Power Assets. Additionally, the Board has the power and duty to acquire, provide for, construct, extend, maintain and operate all improvements, utilities, structures, facilities, and services as it may deem necessary or convenient for LADWP's purposes. The Board also can delegate its authority to the General Manager or his/her designee.

e) This Policy conforms with Section 10 of the CAISO Tariff. LADWP is registered as an SCME with the CAISO.

## IV. Scope

a) This Policy applies to Meter Systems for registered resources in LADWP's BAA. New or replacement Meter Systems are required to adhere to the provisions of this Policy to the maximum extent possible.

    i. A list of registered resources that LADWP registered with the CAISO to participate in its Energy Imbalance Market is provided in Attachment A.

b) This Policy does not necessarily require immediate updates to existing Metering System conditions and configurations that already have an approved Settlement Quality Meter Data Plan. However, as opportunities permit, LADWP will modify existing Metering Systems to comply with this Policy, but shall not conflict with LADWP Station Design Standards. Considerations will be given to the availability of resources, equipment, capital project prioritization, physical locations, availability of meter ports, and other project management constructs.

c) For the purpose of this Policy, LADWP's Pseudo-Tied Generation is treated as LADWP generation and will adhere to the provisions of this Policy.

d) The Manager of Energy Reconciliation will be responsible for administering the Bulk Electric System Meter Policy.

## V. Revenue Quality Requirements

a) Meter installations must meet the following general standard:

   i. Must be revenue quality with a 0.2 Accuracy Class, (having an accuracy rating of ± two-tenths percent (±0.2%) accuracy) or better.

   ii. Must be capable of storing data (in internal meter registers) that can be accessed using Meter Interrogation by various communication methods.

      1. Local interrogation as a data collection method shall be accessible.

   iii. Must maintain billing data and associate timestamps during the loss of auxiliary power to the meter for no less than to 30 days

   iv. If documentation is not readily available to demonstrate the accuracy rating, then testing pursuant to Section VIII will be conducted to substantiate accuracy.

b) Meters that conform with the CAISO Approved Meters List (Attachment B) are deemed compliant with Section V.a.

c) Potential Transformers must have an accuracy rating of ± three-tenths percent (±0.3%) or better.

   i. If documentation is not readily available to demonstrate the accuracy rating, then testing pursuant to Section VIII will be conducted to substantiate accuracy.

d) Current Transformers must have an accuracy rating of ± three-tenths (±0.3%) or better.

   i. If documentation is not readily available to demonstrate the accuracy rating, then testing pursuant to Section VIII will be conducted to substantiate accuracy.

e) Generator auxiliary load metering must have an overall accuracy of ± three percent (±3%) or better.

   i. If documentation is not readily available to demonstrate the accuracy rating, then testing pursuant to Section VIII will be conducted to substantiate accuracy.

f) Existing Metering Systems, which do not meet the accuracy class/ratings stated in Section V, have a temporary correction factor applied. Correction factors are a temporary patch fix.

   i. Existing Metering System equipment that falls into this criterion shall be replaced.

   ii. A plan to replace the meter must be developed 90 days from issue discovery. The meter must be replaced within a reasonable timeframe.

## VI. Meter System Requirements

a) Only one Revenue Quality Meter shall be designated as the Primary Revenue Meter of data for all billing, power accounting, and scheduling.

b) Contractual, operational, and settlement metering constructs shall be from a physical, meterable location.

   i. Any aggregation, disaggregation, special metering configurations, or calculated points must have its source data originate from a Revenue Quality Meter. Such arrangements must be documented and tracked by LADWP personnel.

c) For Interchange Metering Points, and Jointly-Owned Transmission Meter Points, a Backup Metering System meeting the requirements of this Policy shall be available.

   i. A backup meter will only be utilized during testing, data inaccuracy, or failure of the Primary Meter.

   ii. The Backup Metering System will connect to either SCADA or BAGC.

      1. Data limitations of BAGC override Section VI.e of this Policy.

d) For Generation Metering Points, and Jointly Owned Generation Metering Points, a backup meter data source shall be made available. The backup meter data source will only be utilized during testing, data inaccuracy, or failure of the Primary Meter.

e) A primary Revenue Quality Meter shall provide all meter functions and outputs, which include (but not limited to):

   i. Real-time Power (Mega-Watts or Kilo-Watts),

   ii. Real-Time Reactive Power (Mega-VAR or Kilo-VAR),

   iii. Accumulated Power (Mega-Watt-Hour or Kilo-Watt-Hour),

   iv. Accumulated Reactive Power (Mega-VAR-Hour or Kilo-VAR-Hour) pulses and data interval storage.

f) The precision of the data shall either be in:

   i. Kilo (1 kW, 1 kVAR), or

   ii. The nearest thousandth (0.001 MW, 0.001 MVAR).

g) Interchange Meter Systems shall be installed in an LADWP-owned or a neighboring facility.

h) Generation Meter Systems shall be installed at the generating station or the interconnecting station.

i) For a Generation Unit, the Primary Revenue Meter Systems shall be installed on:

   i. The high voltage side of a generator step-up transformer for the EIM and AGC Control.

1. This measurement is equivalent to a net meter read unless the auxiliary loads are metered elsewhere.

ii. For In-Basin thermal generation, the low side of the step-up transformer for the South Coast Air Quality Management District (SCAQMD) Continuous Emissions Monitoring System (CEMS).

1. This measurement is equivalent to a gross meter read.

j) Metering Systems shall be capable of providing telemetering to LADWP Energy Control Center (ECC).

i. Metering shall be capable of programming to adjust measured values with loss compensation to the point of delivery.

ii. Metering shall be capable of DNP 3.0 protocol and MODBUS protocol.

k) Preferred installation of Potential Transformer (PT) and Current Transformer (CT) equipment to be from a Common Electrical Node if there's a significant impedance present between both devices.

l) The Primary Meter shall provide hourly and 5-minute Accumulator data.

m) The Primary Meter shall, at a minimum, have three ports for multiple communication needs.

n) Interrogation is required for every meter installation. The remote Meter Interrogation access may be provided by TCP/IP or utility internal circuit (SCADA).

i. Reasonable accommodation shall be considered if NERC CIP requirements prove to be an impedance to a direct connection to the meter.

o) Interchange Metering design must conform to NERC Standard BAL-005 Balancing Authority Control or its successor. Both continuous analog kW/MW signals and integrated kWh/MWh readings are required for interchange metering installations.

p) Meter Time Clocks must meet or exceed the following requirement:

i. The meter time clock must be accurate within 2 minutes per week (0.02%) via internal or external time sources when not synchronized to the LADWP AGC clock.

q) Metering system installations shall adhere to current applicable utility standards that include, but are not limited to ANSI, IEEE, NESC, WECC, and NERC.

## VII. Design Standards

a) All Meter System installations shall conform to the LADWP Electrical Engineering Design Standard.

## VIII. Testing and Validation

a) Testing process

i. The accuracy testing for Watt-Hour Metering shall adhere to the ***Substation, Generation, and Intertie Watthour Metering Standard for Energy Imbalance Market*** Standard. [1]

ii. The accuracy testing of Meter Instrument Transformers shall adhere to the ***Substation, Generation, and Intertie Instrument Transformer Standard for Energy Imbalance Market*** Standard.[2]

## IX. Drawings

a) For new meter installations, a one-line diagram shall be provided delineating the following information:

i. PT Location with Accuracy Information

ii. CT Location with Accuracy Information

iii. Meter Location with Accuracy Information

b) An updated One-Line Diagram shall be provided for existing meter installations delineating the information list in Section IXa.

c) Multi-Page one-line diagrams are acceptable.

d) Drawings shall be provided to the Manager of Energy Reconciliation.

## X. Meter Data Submittal to External Entities

a) CAISO data submittals shall conform to the following timelines:

i. LADWP personnel will reconcile meter data in the MDMS no later than five Business Days after a Trading Day (T+5B).

[1] The Substation, Generation, and Intertie Watthour Metering Standard for Energy Imbalance Market is an LADWP standard document.

[2] The Substation, Generation, and Intertie Instrument Transformer Standard for Energy Imbalance Market is an LADWP standard document.

1. Once reconciled, such data will be deemed to be Settlement Quality Meter Data.

ii. LADWP personnel will submit SQMD to CAISO's Market Results Interface – Settlements (MRI-S) no later than seven Business Days after a Trading Day (T+7B).

1. In instances where data has to be reconciled after T+7B, LADWP will track deltas between the original T+7B submittal and subsequent SQMD submittals in the MDMS

a. Subsequent data shall be submitted no later than fifty-two Business Days after a Trading Day (T+52B)

## XI. Issue Resolution

a) The Manager of Energy Reconciliation shall be responsible for leading the Issue Resolution process.
b) The LADWP resources that have committed support of this Policy as signatories on the first page of this document shall make good faith efforts to prioritize the resolution of the metering issue.
c) When an issue is discovered, the problem should be reported to the Manager of Energy Reconciliation as soon as possible.
d) A plan to resolve this issue shall be collaboratively developed with necessary stakeholders and resource providers and finalized in no more than 90 days from the time of issue reporting.
e) Once complete, notification of Issue Resolution shall be communicated to (at minimum):

1. Manager of Grid Operations
2. Manager of Wholesale Energy Resource Management
3. Manager of Energy Reconciliation
4. Manager of Generating Stations and Facilities Engineering
5. Manager of System Protection
6. Manager of Metering and Controls

## XII. Resource Exclusion

a) In the instance where a resource (as listed in Attachment A) cannot meet the provisions of this policy, such resource is prohibited from market participation.

## XIII. Update / Replacement Plan

a) In the instance where a Meter System cannot meet Section V or Section VI of this policy, or cannot pass Testing and Validation, a plan to replace the Meter System equipment will be developed pursuant to Section XI.

b) A plan to replace the meter must be developed 90 days from issue discovery. The meter must be replaced within a reasonable timeframe unless Grid Operations or Wholesale Energy Resource Management requests the replacement occur earlier. A mutually-agreeable deadline decision shall be struck. Considerations will be given to the availability of resources, equipment, capital project prioritization, physical locations, availability of meter ports, and other project management constructs.

## XIV. Record Retention

a) Contemporaneous records of the following documents must be maintained to substantiate the requirements of this policy per resource:

   i. Meter Make and Model, or testing records
   ii. One-Line Diagram conforming to Section IX of this Policy.
   iii. PT Accuracy documentation or testing records
   iv. CT Accuracy documentation or testing records
   v. Compensation Factor documentation, if used
   vi. Completed and Approved Settlement Quality Meter Data Plan
   vii. Attestation of Compliance per this Policy
   viii. Attachments A and B of this Policy.

b) Record Retention shall be managed by the Manager of Energy Reconciliation.

## XV. Testing and Audit Cycle

a) LADWP will test all interchange and generation metering in accordance with Section VIII of this Policy. The testing will include examination and testing of metering facilities to ensure the accuracy and integrity of the Settlement Quality Meter Data.

b) On an annual basis, LADWP will complete a self-audit report for the audit review period of August 1st through July 31st. This audit report is due by October 31st of each year.

c) LADWP will perform tests at least every twenty-four (24) months on all revenue, generation integration, and interchange Meter Systems in accordance with Section 10.3.10.1 of the CAISO Tariff.[3]

## XVI. Annual Review

a) The Manager of Energy Reconciliation shall be responsible for the Annual Review of this Policy.

b) The annual review should examine whether the provisions of this policy are up-to-date and pertinent.

[3] CAISO Tariff Section 10.3.10.1 states: "At least every two years, each Scheduling Coordinator shall (or engage an independent, qualified entity to conduct) audit and test the Metering Facilities of the Scheduling Coordinator Metered Entities that it represents and the Meter Data provided to the Scheduling Coordinator in order to ensure compliance with all applicable requirements of any relevant Local Regulatory Authority and the Scheduling Coordinator Metered Entity's SQMD Plan. Scheduling Coordinators shall undertake any other actions that are reasonably necessary to ensure the accuracy and integrity of the Settlement Quality Meter Data (actual or Scheduling Coordinator estimated) provided by them to the CAISO."

## XVII. Attachment A: LADWP EIM Registered Resources List (CONFIDENTIAL)

| Project Name | Resource ID | MW Capability | Latitude | Longitude |
|---|---|---|---|---|
| | | | | |
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## XVIII. Attachment B: CAISO Approved List of Meters

This list is updated as needed by the CAISO. The current list is available at the following link: **https://www.caiso.com/Documents/ApprovedISOMeters.pdf**

California ISO

# ISO Approved Meters

The following meters have been certified and are compliant with ISO standards for the use in ISO Metered Entity applications. For more information on the ISO standards please refer to the Business Practice Manual (BPM) for Metering. *Note: The meters listed below come with different options such as memory capacity. Make sure your selections stay within compliance of the ISO standards outlined in the BPM.

Schweitzer Engineering Laboratories
**SEL 734, SEL 735**
Contact: Josh Barklow
MKI Matzinger-Keegan Inc.
Phone: 916-226-6642 Cell: 925-586-9611
Email: josh@mkireps.com
Web: www.mkireps.com

Landis + Gyr
**Quad 4, MAXsys 2510, Elite**
Contact: Robert Ingalls
Lafayette, CA 94549
Phone: 510-719-2464
Email: ringalls46@comcast.net
Web: www.landisgyr.com

AMETEK Power Instruments
**JEMStar II**
Contact: Steve Bleier
AMETEK Power
Phone: 585-238-4078
Email: steve.bleier@ametek.com
Web: www.ametekpower.com

SATEC Powerful Solutions
**EM920**
Contact: Joe Ruggeri
SATEC, INC.
Office: 908-686-9510 Cell: 908-346-0057
Email: Jruggeri@satecinc.com
Web: www.satec-global.com

TransData, Inc.
**Mark-V**
Contact: Steve Clegg
Transdata, Inc.
Phone: 972-418-7717 x 401
Email: sclegg@transdatainc.com
Web: www.transdatainc.com

Schneider Electric
**ION 8650 A, B, & C, ION 8600 A, B, & C**
**ION 7400, 7650**
Contact: Carlos Tello
Phone: (512) 496-0632
Email: Carlos.tello@schneider-electric.com
Web: www.schneider-electric.com

Electro Industries/Gauge Tech
**Nexus 1272, Nexus 1500+***
Contact: Sales
Electro Industries/ Gauge Tech
Phone: 866-928-7908
Email: sales@electroind.com
Web: www.electroind.com

# APPENDIX V

## TO THE
## POWER PURCHASE AGREEMENT
## BETWEEN
## SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
## AND
## NOTCH PEAK PROJECT, LLC

## [FORM OF TAX EQUITY CONSENT AND ESTOPPEL]

[Date][15]

Reference is made to that certain Power Purchase Agreement (the "Power Purchase Agreement") dated as of [___], 2026 (the "PPA"), by and between the Southern California Public Power Authority, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) ("Buyer"; provided, that in no event shall the term "Buyer" refer to any of the members of Buyer, and the term "Buyer's knowledge" as used herein shall refer only to the knowledge of persons at SCPPA, and not to the knowledge of anyone at any of the members of Buyer) and Notch Peak Project, LLC, a Delaware limited liability company ("Seller"). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the PPA, as amended, attached as Exhibit A, constitutes a true and complete copy of the PPA.

2. The PPA is in full force and effect and has not been modified or amended in any way [since [_____ __, 202_]], and constitutes the only agreement between Buyer and Seller other than that certain Consent and Estoppel Agreement dated as of [_____, 20__] and that certain Option Agreement dated as of [___], 2026.

3. Buyer has not transferred or assigned its interest in the PPA.

4. Buyer is not in default under the PPA nor has Buyer breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the PPA or that would give Seller the right to terminate the PPA. To Buyer's knowledge, Seller is not in default under the PPA nor, to Buyer's knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the PPA or that would allow Buyer to terminate the PPA.

5. All representations made by Buyer in the PPA were true and correct as of the effective date of the PPA and continue to be true and correct.

---

[15] To be delivered on the date of delivery of the Consent and, upon the initial funding and upon the final funding under the Tax Equity transaction commensurate with COD.

6. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Force Majeure under the PPA has occurred and is continuing.

7. Seller has not claimed any amounts under the indemnification obligation of Buyer set forth in the PPA.

8. To Buyer's knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the PPA. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA.

9. All payments due and owing[, except for those under dispute as described in Schedule I hereto][16], under the PPA by Buyer have been paid in full through the period ending on the date hereof.

10. [The Commercial Operation Date of the Facility occurred on [____], 202[__].

11. The Contract Capacity of the Project as of the Commercial Operation Date is [ ] MW.

[12. Upon the occurrence of a Default (as defined under the PPA) by Seller under the PPA, Buyer shall give concurrent notice of such Default to Seller and Tax Equity Investor. Buyer will not terminate the PPA or suspend performance of its services under the PPA on account of any Default (as defined under the PPA) of Seller thereunder, without written notice to the Tax Equity Investors and first providing to the Tax Equity Investors (i) thirty (30) days from the date notice of Default is delivered to the Tax Equity Investors to cure such Default if such Default is the failure to pay amounts to Buyer which are due and payable by Seller under the PPA, or (ii) forty-five (45) days from receipt of such notice, to cure such Default if the Default cannot be cured by the payment of money to Buyer (or up to sixty (60) additional days, so long as the Tax Equity Investors reasonably demonstrate to Buyer that they are diligently pursuing appropriate action to cure and are making sufficient progress toward curing such Default); provided, that if the Tax Equity Investors are prohibited from curing any such Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Seller, then the time periods specified herein for curing a Default shall be extended for the period of such prohibition, so long as the Tax Equity Investors have diligently pursued removal of such process, stay or injunction, but in no event more than one hundred twenty (120) days. Failure of Buyer to provide such notice to Tax Equity Investor shall not constitute a breach of the PPA or this Tax Equity Consent and Estoppel and Tax Equity Investor agrees that Buyer shall have no liability to Tax Equity Investor for such failure whatsoever; provided that no claim of Default or termination of the PPA by Buyer shall be binding without such notice and the lapsing of the applicable periods set forth above. If Tax Equity Investor fails to cure a Default within the applicable period, Buyer shall have all its rights and remedies with respect to such Default as set forth in the PPA.][17]

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[16] To include if applicable.

[17] Bracketed language in 10, 11 and 12 to be included in the Estoppel Certificate delivered at the final funding under the Tax Equity Transaction commensurate with COD.

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

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: _____

Name:

Title:

**[Schedule I**

SCHEDULE I TO FORM OF TAX EQUITY CONSENT AND ESTOPPEL][18]

[18] To include if applicable.

# APPENDIX W

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

## FORM OF MONTHLY REPORT

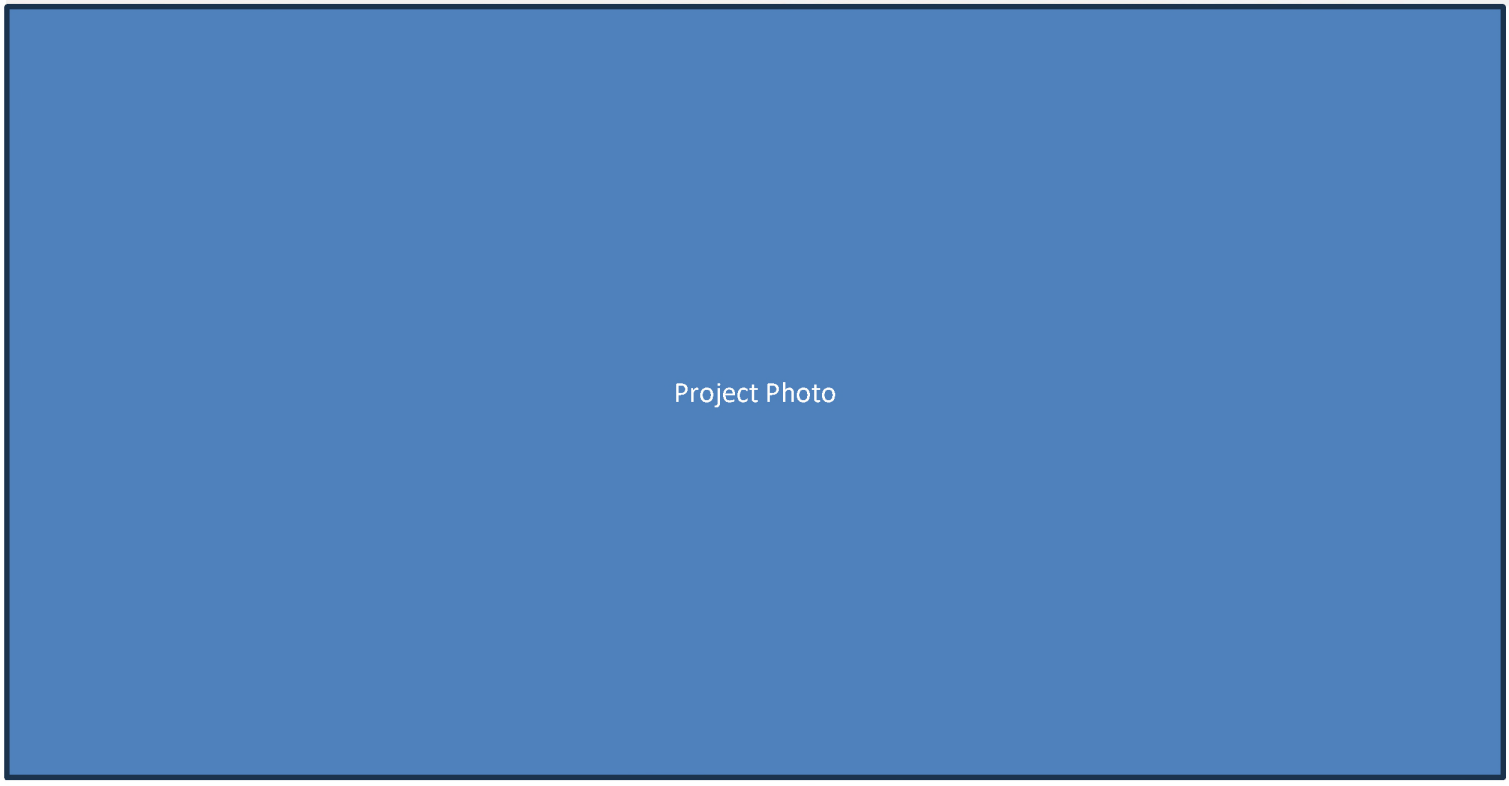
In accordance with Section 7.3(d), below are non-binding preliminary draft forms of monthly reporting to be used by the parties when finalizing a single final form. Monthly reports will be materially similar to the attachment, but all information in the current form below is preliminary and indicative and for form only. Other provisions of the Agreement shall control in the event of any conflict or inconsistency with this preliminary draft form of monthly reporting.

# DRAFT TEMPLATE

Report Date: Month Day, Year

# Monthly Report

# Month, Day Year




| | |
|---|---|
| **Project Name** | |
| **Address** | |

# DRAFT TEMPLATE

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**Getting started,**

The report aims to ensure normal operation and maximize power generation through regular inspections and power generation analysis of operated and maintained power plants.

The results of the review may be evaluated differently in accordance with the criteria and cannot be used as an absolute basis for judgment or as a means of resolving a legal dispute.

**Project Technical Team**

The person in charge of the technical due diligence service of the plant is as follows.

Inspector: Last Name, First Name

Report: Last Name, First Name

# DRAFT TEMPLATE

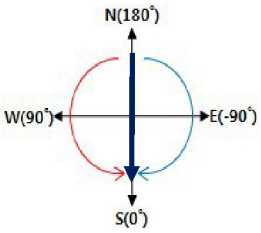
## 1 Introduction

### 1.1 Introduction

This monthly report consists of four (4) sections; Section 1 introduces the project with a general site summary, information on capacity, and location; Section 2 presents the actual energy output, availability, and Meteorological data; Section 3 presents the status on operations and maintenance log; Section 4 presents reports related to spare parts, the visitor log, warranty claim, etc.

### 1.2 General Site Information

| | |
|---|---|
| Project Name | |
| Capacity | kWP DC / kWP AC |
| Address | |
| PV Module | Company, Part Number (Qty.: )<br>Company, Part Number (Qty.: ) |
| Inverter | Company, Part Number (Qty.: ) |
| Mounting Type | |
| Tracker | Company, Part Number (Qty.: ) |

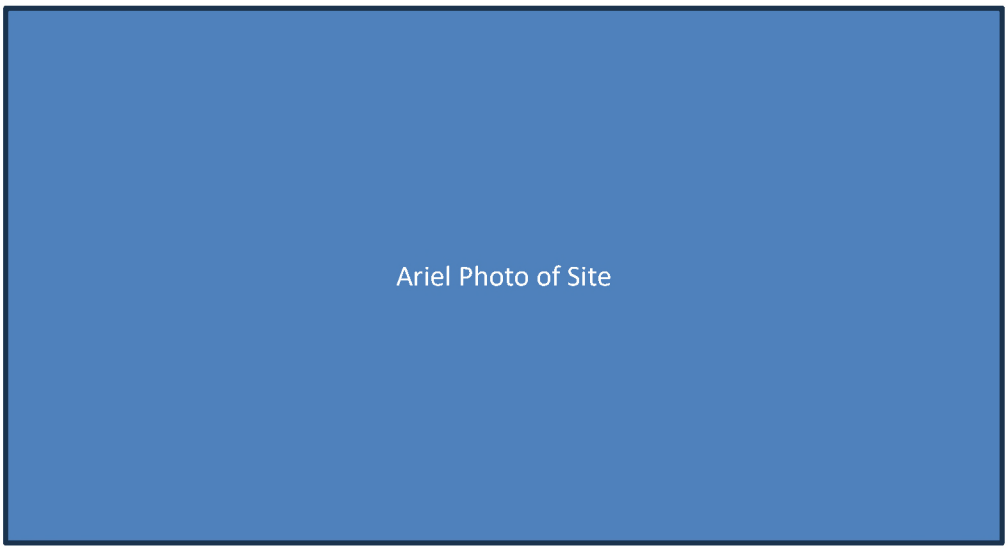


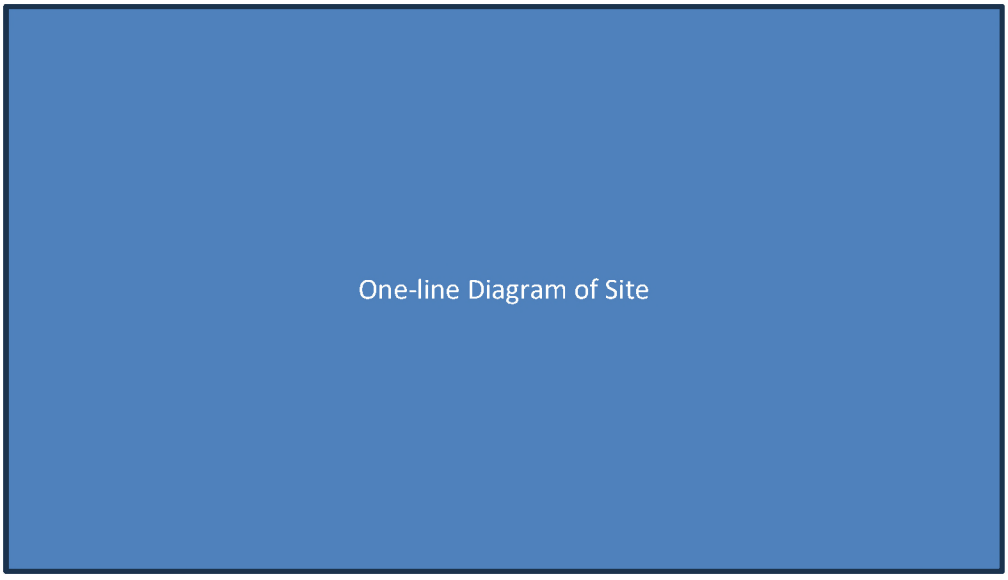

### 1.3 Contact Point

| Division | Name | Position | E-Mail |
|---|---|---|---|
| On-site | First Name, Last Name | On-Site Tech | |
| Off-site | First Name, Last Name | SR Director | |
| Off-site | First Name, Last Name | O&M Project Manager | |
| Off-site | First Name, Last Name | Performance Analyst | |
| Off-site | First Name, Last Name | Sr. Project Engineer | |
| Off-site | First Name, Last Name | O&M Operator | |

# DRAFT TEMPLATE

## 1.4 Location




| | |
|---|---|
| Latitude | |
| Longitude | |
| Altitude | |

# DRAFT TEMPLATE

## 1.5 Site Safety Event

| Month | OSHA Reportable Incidents (# count) | Near Misses (# count) | Property Damage (# count) | Days Without Recordable | Note |
|---|---|---|---|---|---|
| January | | | | | |
| February | | | | | |
| March | | | | | |
| April | | | | | |
| May | | | | | |
| June | | | | | |
| July | | | | | |
| August | | | | | |
| September | | | | | |
| October | | | | | |
| November | | | | | |
| December | | | | | |
| **Total** | | | | | |

# DRAFT TEMPLATE

## 1.6 Hours Worked

| Month | SIT Renewables Hours Worked (h) | Sub-Contract/Other Hours Worked (h) | Companies (Hrs. mins) |
|---|---|---|---|
| January | | | |
| February | | | |
| March | | | |
| April | | | |
| May | | | |
| June | | | |
| July | | | |
| August | | | |
| September | | | |
| October | | | |
| November | | | |
| December | | | |
| **Total** | | | **Total Hours (## Days)** |

# DRAFT TEMPLATE

## 2 Performance and Availability

### 2.1 Performance Summary Table

| Duration | Performance | Value | Units |
|---|---|---|---|
| Month Day Year to Month Day Year | Generated Energy | | MWh |
| | Avg. Generation Hour | | h/day |
| | POA (Plane of Array Insolation) | | kWh/m² |
| | GHI (Global Horizontal Insolation) | | kWh/m² |
| | PR (Performance Ratio) | | % |
| | Effective Availability | | % |

### 2.2 Definitions

| Performance | Name | Description |
|---|---|---|
| MWh | Generated Energy | The energy generated by Site Name during the period as measured by the revenue meter(s). |
| MWh_l | Lost Energy | The summation of all lost energy classified as Forced Outage (FO), Maintenance Outage (MO) or Planned Outage (PO) at Site Name during the period. |
| MWh_omc | OMC Lost Energy | The summation of all lost energy classified as Outside Management Control (OMC) at Site Name during the period. |
| MWh_m | Modeled Energy | The energy predicted to be generated by Site Name during the period based on the plant configuration, historical insolation (e.g., TMY data) and actual plant capacity history |
| MWh_e | Expected Energy | The energy expected to be generated by Site Name during the period after correcting for the impacts of measured weather. This value is based on PPA. |
| MWh/ MWh_m (%) | Ratio of Generated Energy to Modeled Energy | The energy generated by Site Name during the period divided by the energy predicted to be generated by Site Name during the period. |
| MWh/ MWh_e (&) | Ratio of Generated Energy to Expected Energy | The energy generated by Site Name during the period divided by the energy expected to be generated by Site Name during the period. |
| EA (%) | Effective Availability | The effective availability of Site Name during the period: EA = MWh / (MWh + MWh_l) |
| TA (%) | Technical Availability | The technical availability of Site Name during the period: TA = MWh / (MWh + MWh_l + MWh_omc - MWh_curtailment) |
| PI (%) | Performance Index | The performance index of Site Name during the period: PI = MWh / (MWh_e - MWh_l) |
| PR (%) | Performance Ratio | The performance ratio of Site Name during the period: PR = MWh / MW_DC / POA (kWh/m^2) |

# DRAFT TEMPLATE

2.3 Daily Performance Data

| Date | kWh (kWh) | kWh_ e (kWh) | kWh/ kWh_e (%) | kWh_m (kWh) | kWh/ kWh_m (%) | POA (Modeled) | POA (Actual) | PR (%) |
|---|---|---|---|---|---|---|---|---|
| 2-1-2024 | | | | | | | | |
| 2-2-2024 | | | | | | | | |
| 2-3-2024 | | | | | | | | |
| 2-4-2024 | | | | | | | | |
| 2-5-2024 | | | | | | | | |
| 2-6-2024 | | | | | | | | |
| 2-7-2024 | | | | | | | | |
| 2-8-2024 | | | | | | | | |
| 2-9-2024 | | | | | | | | |
| 2-10-2024 | | | | | | | | |
| 2-11-2024 | | | | | | | | |
| 2-12-2024 | | | | | | | | |
| 2-13-2024 | | | | | | | | |
| 2-14-2024 | | | | | | | | |
| 2-15-2024 | | | | | | | | |
| 2-16-2024 | | | | | | | | |
| 2-17-2024 | | | | | | | | |
| 2-18-2024 | | | | | | | | |
| 2-19-2024 | | | | | | | | |
| 2-20-2024 | | | | | | | | |
| 2-21-2024 | | | | | | | | |
| 2-22-2024 | | | | | | | | |
| 2-23-2024 | | | | | | | | |
| 2-24-2024 | | | | | | | | |
| 2-25-2024 | | | | | | | | |
| 2-26-2024 | | | | | | | | |
| 2-27-2024 | | | | | | | | |
| 2-28-2024 | | | | | | | | |
| 2-29-2024 | | | | | | | | |
| **TOTAL** | | | | | | | | |

* A healthy plant typically has a performance ratio (PR) between 75%-85%. PR greater than 95% probably indicates bad irradiance sensor data loss/inaccuracy. In winter months, PR can go up to 90% due to cool climate. (NREL Weather Corrected PR; Technical report NREL/TP-5200-57991 page 1, paragraph 2)

# DRAFT TEMPLATE

## 2.4 Detailed Availability Information

| Month | Off-Line Unit Loss (MWh) | Excused Loss (MWh) | De-rated Unit Loss (MWh) | Facility Off-Line Loss (MWh) | Raw Availability (%) | Effective Availability (%) | Curtailed Energy (MWh) |
|---|---|---|---|---|---|---|---|
| January | | | | | | | |
| February | | | | | | | |
| March | | | | | | | |
| April | | | | | | | |
| May | | | | | | | |
| June | | | | | | | |
| July | | | | | | | |
| August | | | | | | | |
| September | | | | | | | |
| October | | | | | | | |
| November | | | | | | | |
| December | | | | | | | |
| **Total** | | | | | | | |

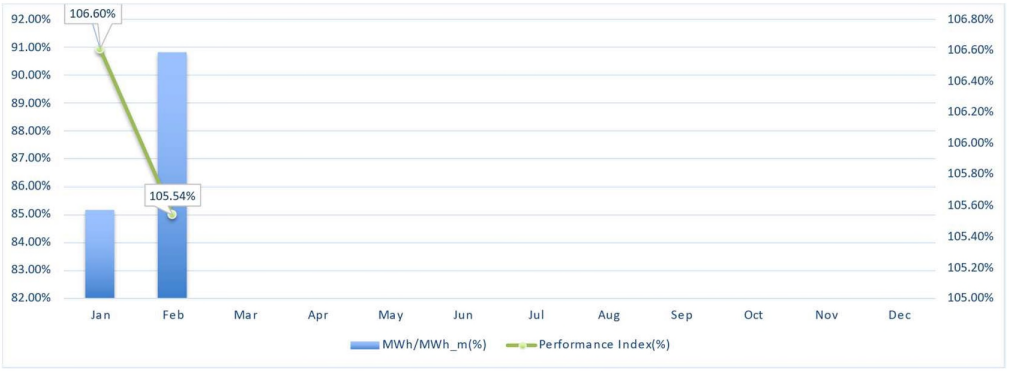
## 2.5 Energy and Effective Availability




The figure above displays the electricity generated at Site Name and the effective availability of Site Name so far in 2024.

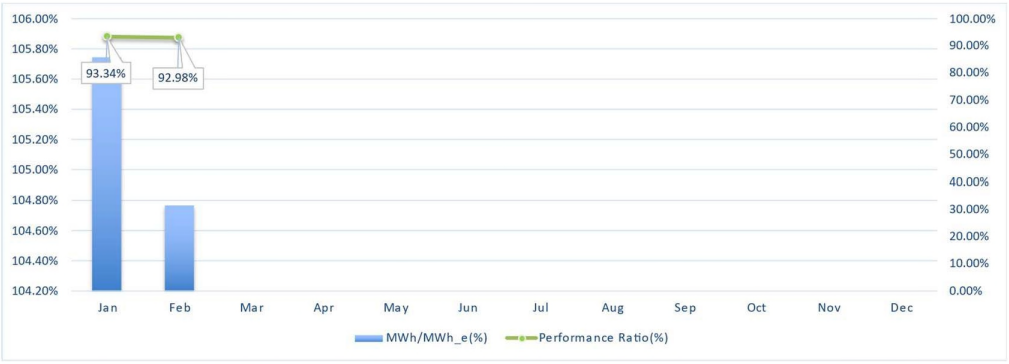
# DRAFT TEMPLATE

## 2.6 Performance Index: Measured / Modeled




The figure above displays the performance index of Site Name so far in 2024 in comparison to predicted data (e.g., TMY weather data and the accompanying plant model energy prediction).

## 2.7 Performance Index: Measured / Expected



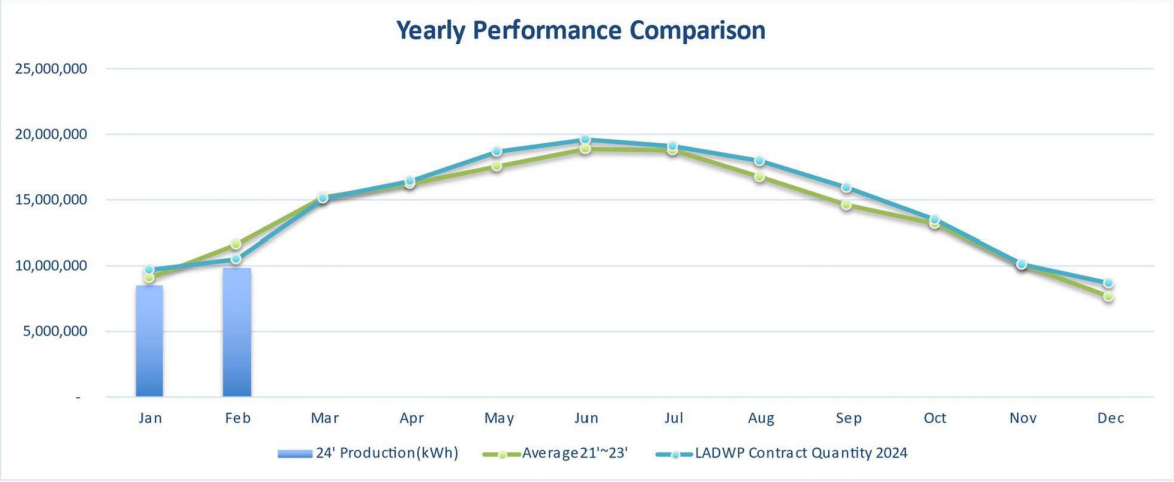

The figure above displays the performance index of Site Name so far in 2024 in comparison to expected data (e.g., measured weather data and the accompanying plant model energy expectation)

# DRAFT TEMPLATE

2.8 Yearly Performance Comparison with Previous 3 Years.

| Month | Net Production Current Year (kWh) | Net Production 2023 Year (kWh) | Net Production 2022 Year (kWh) | Net Production 2021 Year (kWh) | Avg. Production Latest 3 Years (kWh) | LADWP Contract Quantity 2024 (kWh) |
|---|---|---|---|---|---|---|
| January | | | | | | |
| February | | | | | | |
| March | | | | | | |
| April | | | | | | |
| May | | | | | | |
| June | | | | | | |
| July | | | | | | |
| August | | | | | | |
| September | | | | | | |
| October | | | | | | |
| November | | | | | | |
| December | | | | | | |
| **Total** | | | | | | |

2.8.1 Yearly Performance Comparison Graph



# DRAFT TEMPLATE

2.9 Year to Date Lost Energy by Outage Classification

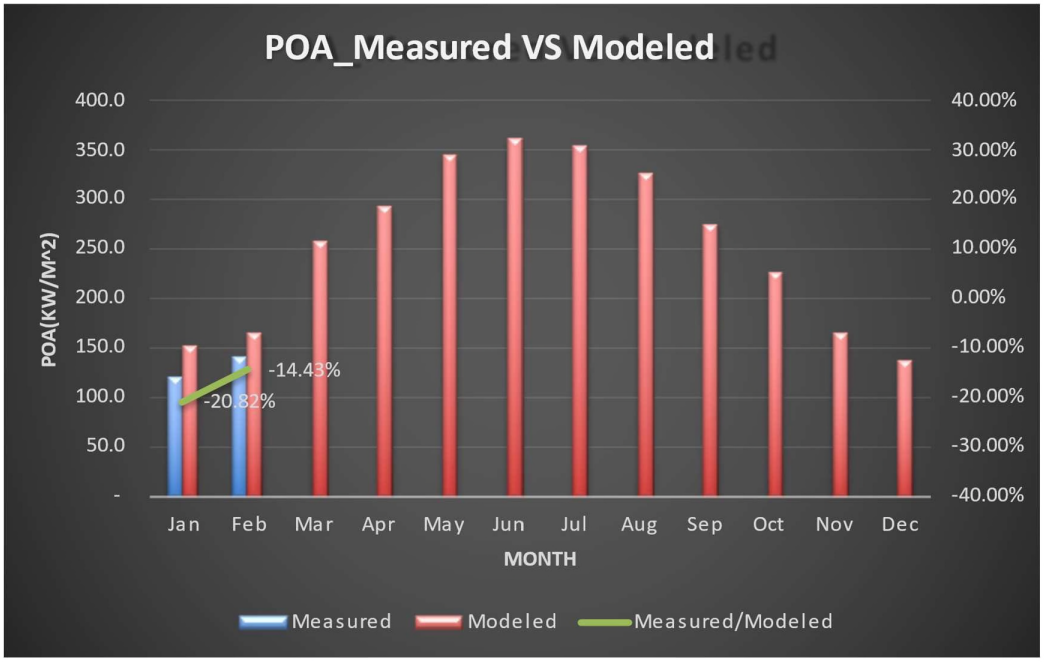
| Month | Forced Outage | | Maintenance | | Planned Outage | | Emergency Outside POI | | Oversupply Management | | Owner Instructed Curtailment | | Over Generation | | Transmission | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | MWh Loss | Hrs | MWh Loss | Hrs | MWh Loss | Hrs | MWh Loss | Hrs | MWh Loss | Hrs | MWh Loss | Hrs | MWh Loss | Hrs | MWh Loss | Hrs |
| January | | | | | | | | | | | | | | | | |
| February | | | | | | | | | | | | | | | | |
| March | | | | | | | | | | | | | | | | |
| April | | | | | | | | | | | | | | | | |
| May | | | | | | | | | | | | | | | | |
| June | | | | | | | | | | | | | | | | |
| July | | | | | | | | | | | | | | | | |
| August | | | | | | | | | | | | | | | | |
| September | | | | | | | | | | | | | | | | |
| October | | | | | | | | | | | | | | | | |
| November | | | | | | | | | | | | | | | | |
| December | | | | | | | | | | | | | | | | |

# DRAFT TEMPLATE

2.10 Meteorological Data - Yearly POA Insolation Comparison (Previous Three (3) Years).

| Month | Net POA Current Year (kW/ m²) | Net POA 2023 Year (kW/ m²) | Net POA 2022 Year (kW/ m²) | Net POA 2021 Year (kW/ m²) | Avg. POA Latest 3 Years (kW/ m²) |
|---|---|---|---|---|---|
| January | | | | | |
| February | | | | | |
| March | | | | | |
| April | | | | | |
| May | | | | | |
| June | | | | | |
| July | | | | | |
| August | | | | | |
| September | | | | | |
| October | | | | | |
| November | | | | | |
| December | | | | | |
| **Total** | | | | | |

2.10.1 POA_Measured VS Modeled

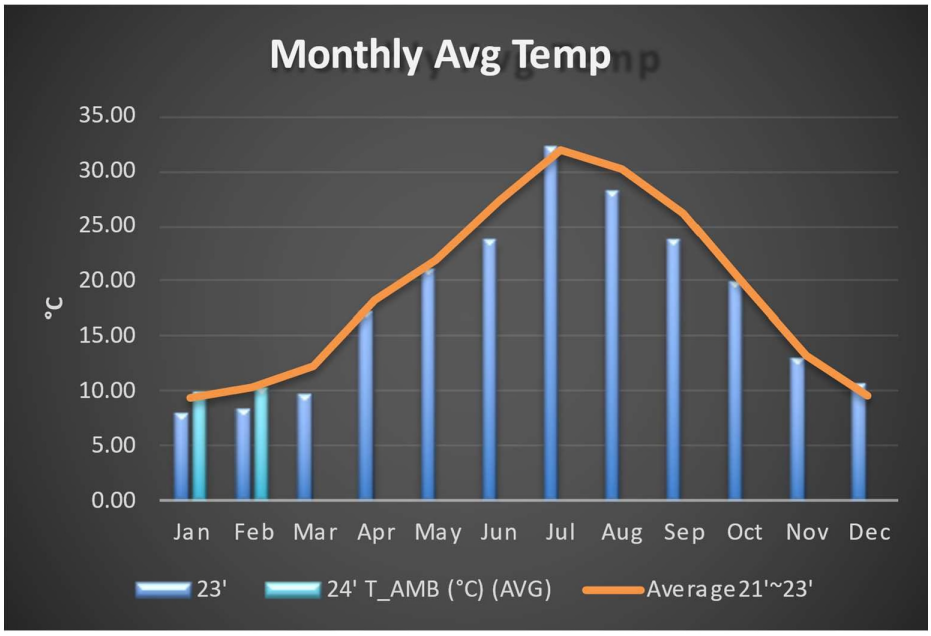


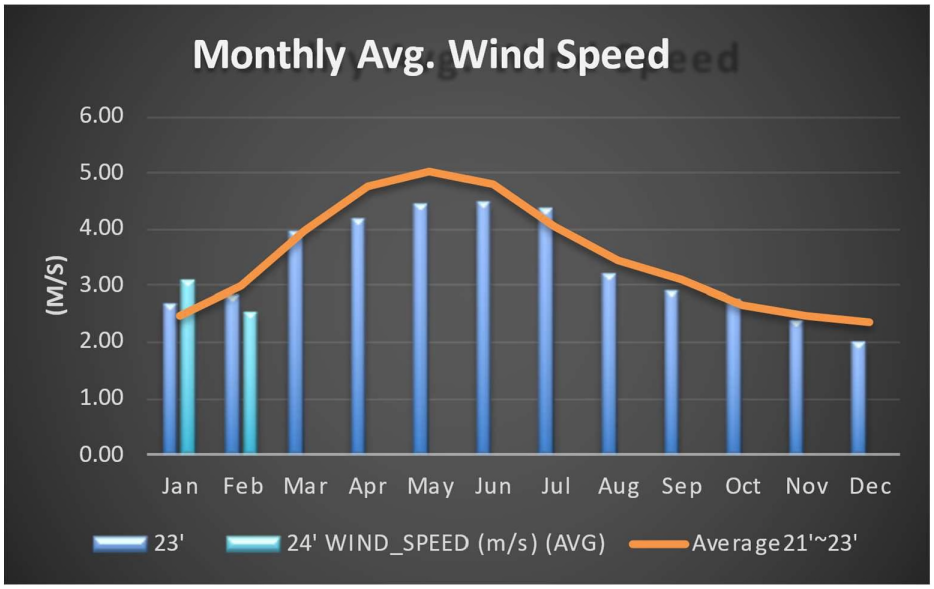
# DRAFT TEMPLATE

2.10.2 Wind & Temperature Data

| Month | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Temp | | | | | | | | | | | | |
| Wind | | | | | | | | | | | | |

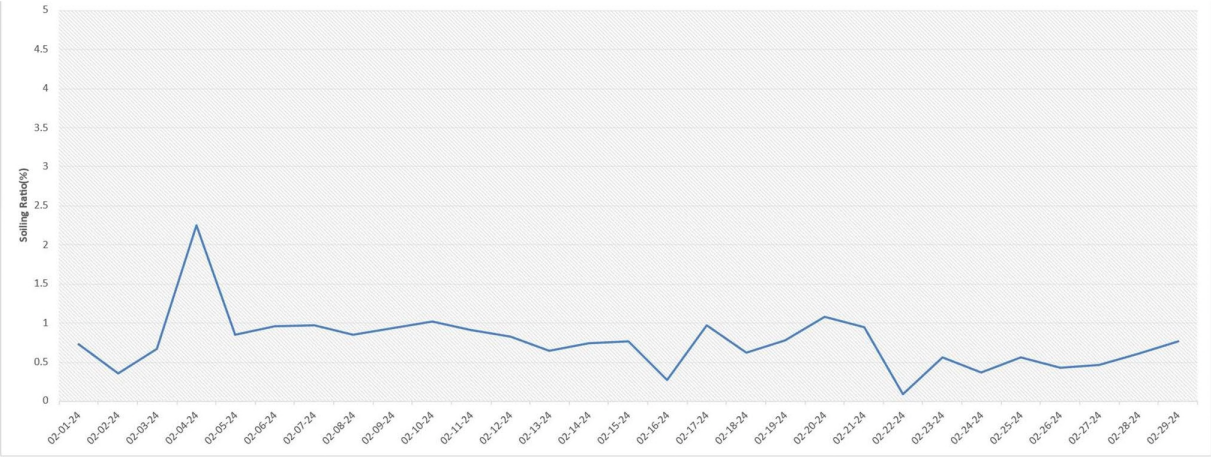
*Unit: Temp.(℃), Wind(m/s)



# DRAFT TEMPLATE

### 2.10.3 Soiling Data




- Observed overall soiling loss at average of 0.75% range for Feb, 2024.

# DRAFT TEMPLATE

## 3 Operation and Maintenance

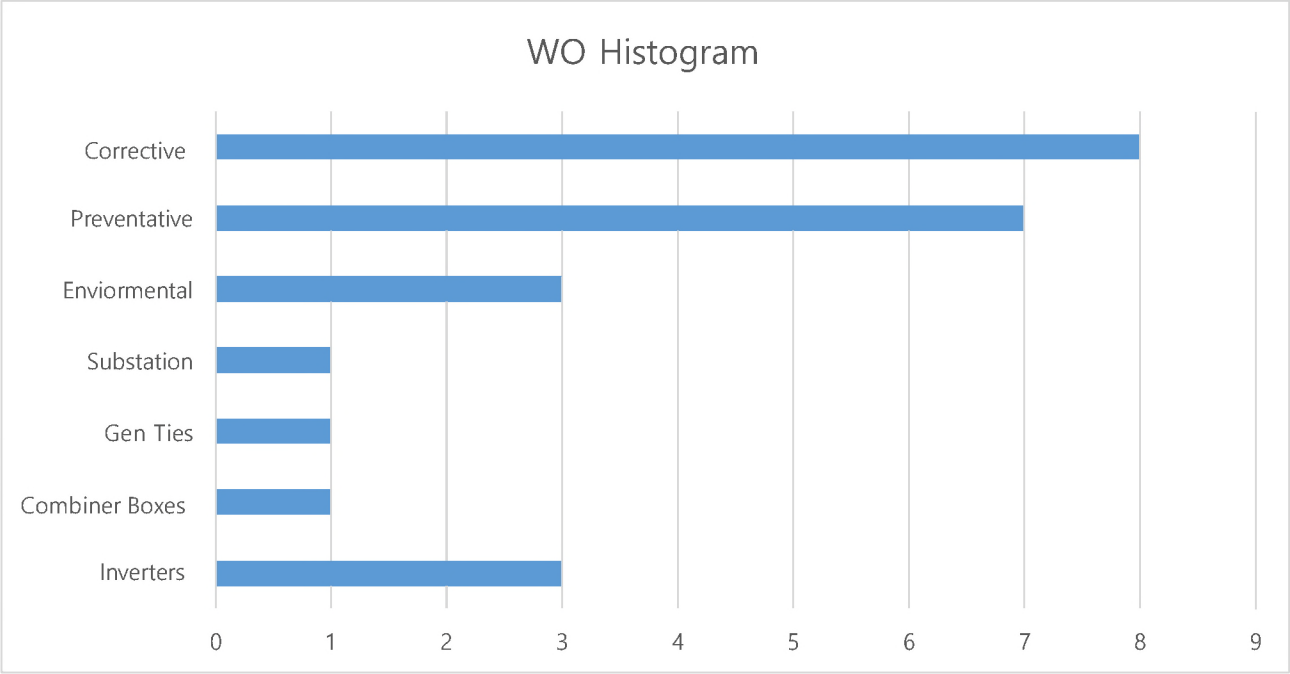
### 3.1 Work Order Activities

| Corrective Maintenance | | | | | |
|---|---|---|---|---|---|
| Work Order | Event Start | Event End | Asset Description | Description<br>Completion Notes | Status |
| | | | | | |
| | | | | | |
| | | | | - | |
| | | | | | |
| | | | | | |
| | | | | | |

# DRAFT TEMPLATE

### 3.2 Work Orders Per Equipment

#### 3.2.1 Work Order Histogram



# DRAFT TEMPLATE

### 3.3 Preventative Maintenance Activities

| Preventative Maintenance | | | | | |
|---|---|---|---|---|---|
| Work Order | Event Start | Event End | Description | Description<br>Completion Notes | Status |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | - | |
| | | | | | |
| | | | | | |

DRAFT TEMPLATE

#### 3.3.1 Scheduled Maintenance for Next Month

| Work Order# | Asset Description | Description Frequency | Event Start | Event End | Status |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

# 4 Documents

## 4.1 Site Security Log

| Date | Location/Contact | Description | Reportable or not | Status |
|---|---|---|---|---|
| | | | | |

## 4.2 Environmental or Permitting

DRAFT TEMPLATE

### 4.3 Non-covered Services

| Date | Title | Description |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

### 4.4 Site Visit Log

| Date | Company Name | Purpose |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

# APPENDIX X

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

## SHORTFALL ENERGY EXAMPLES

The following examples are based on hypothetical Contract Years 4, 5 and 6, as described in further detail below, using hypothetical numbers for Actual Delivered Energy. They assume that Contract Year 6 is the last year of an RPS Compliance Period. For reference, the Guaranteed Delivered Energy for these years is specified below. These examples assume that there has been no reduction in the amount of the Guaranteed Delivered Energy in accordance with Section 6.5 of this Agreement.

Guaranteed Delivered Energy:

Contract Year 4: 678,119 MWh

Contract Year 5: 674,728 MWh

Contract Year 6: 671,354 MWh

Contract Year 7: 667,998 MWh

Total of Guaranteed Delivered Energy for Contract Years 4, 5 and 6: 2,024,201 MWh

1. Example #1: *Shortfall Energy in a Contract Year that is not the end of an RPS Compliance Period, but no RPS Compliance Shortfall Energy*

   Actual Delivered Energy:

   Contract Year 4: 600,000 MWh

   Contract Year 5: 674,728 MWh

   Contract Year 6: 800,000 MWh

   Total for RPS Compliance Period: 2,074,728 MWh

   Shortfall Energy for Contract Year 4 = 78,119 MWh

   RPS Compliance Shortfall Energy = 0 MWh (since total Delivered Energy over the RPS Compliance Period exceeds the Guaranteed Delivered Energy for such RPS Compliance Period)

   Consequence:

   Seller may remedy this Shortfall Energy for Contract Year 4 in the following Contract Year 5 (extended on a day-for-day basis resulting from the occurrence of an event of Force Majeure, but in no event longer than two (2) Contract Years following the end of Contract Year 5) by delivering Replacement Energy at the Point of Delivery or delivering Delivered Energy in

excess of 674,728 MWh (the Guaranteed Delivered Energy in Contract Year 5, as may be adjusted pursuant to Section 6.5) in the amount equal to 78,119 MWh. If Shortfall Energy has not been cured with Delivered Energy or Replacement Energy by the commencement of Contract Year 6, Seller must pay Annual Shortfall Liquidated Damages in an amount for each MWh that was not delivered equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during Contract Year 4, weighted by hourly Delivered Energy and (B) Green Value associated therewith, and (ii) the Full Contract Price.

2. Example #2: *Shortfall Energy in the last Contract Year of an RPS Compliance Period, but no RPS Compliance Shortfall Energy*

Actual Delivered Energy:

Contract Year 4: 700,000 MWh

Contract Year 5: 700,000 MWh

Contract Year 6: 600,000 MWh

Total for RPS Compliance Period: 2,000,000 MWh

Shortfall Energy for Contract Year 6 = 71,354 MWh

RPS Compliance Shortfall Energy = 0 MWh (since total Delivered Energy over the RPS Compliance Period exceeds the Guaranteed Delivered Energy for such RPS Compliance Period)

Consequence:

Seller may remedy this Shortfall Energy for Contract Year 6 in the following Contract Year 7 (extended on a day-for-day basis resulting from the occurrence of an event of Force Majeure, but in no event longer than two (2) Contract Years following the end of Contract Year 7) by delivering Replacement Energy at the Point of Delivery or delivering Delivered Energy in excess of 667,998 MWh (the Guaranteed Delivered Energy in Contract Year 7, as may be adjusted pursuant to Section 6.5) in the amount equal to 71,354 MWh. If Shortfall Energy has not been cured with Delivered Energy or Replacement Energy by the commencement of Contract Year 8, Seller must pay Annual Shortfall Liquidated Damages in an amount for each MWh that was not delivered equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during Contract Year 6, weighted by hourly Delivered Energy and (B) Green Value associated therewith, and (ii) the Full Contract Price.

3. Example #3: *Shortfall Energy in the last Contract Year of an RPS Compliance Period and the same amount of RPS Compliance Shortfall Energy*

Actual Delivered Energy:

Contract Year 4: 678,119 MWh

Contract Year 5: 674,728 MWh

Contract Year 6: 600,000 MWh

Total for RPS Compliance Period: 1,952,847 MWh

Shortfall Energy for Contract Year 6 = 71,354 MWh

RPS Compliance Shortfall Energy = 71,354 MWh

Consequence:

With respect to the RPS Compliance Shortfall Energy, Seller may remedy this shortfall by providing Replacement Energy during Contract Year 6 in the amount of 71,354 MWh. If the RPS Compliance Shortfall Energy has not been cured with Replacement Energy by the end of Contract Year 6, then Seller must pay (I) RPS Compliance Shortfall Liquidated Damages in an amount for each MWh that was not delivered equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during the last 90 days of Contract Year 6, weighted by hourly Delivered Energy and (B) Green Value associated therewith, and (ii) the Full Contract Price and (II) any and all amounts of reasonably documented penalties or fines incurred or paid by any Participating Member as a result of such Participating Member's noncompliance with EPS Law or RPS Law to the extent such non-compliance was caused by Seller's uncured failure to provide the RPS Compliance Shortfall Energy.

With respect to the Shortfall Energy for Contract Year 6, Seller will not owe any Annual Shortfall Liquidated Damages, as such Shortfall Energy has already been covered by remedies for the RPS Compliance Shortfall Energy pursuant to the immediately preceding paragraph.

4. Example #4: *Shortfall Energy in the last Contract Year of an RPS Compliance Period and smaller amount of RPS Compliance Shortfall Energy*

Actual Delivered Energy:

Contract Year 4: 678,119 MWh

Contract Year 5: 700,000 MWh

Contract Year 6: 600,000 MWh

Total for RPS Compliance Period: 1,978,119 MWh

Shortfall Energy for Contract Year 6 = 71,354 MWh

RPS Compliance Shortfall Energy = 46,073 MWh

Consequence:

With respect to the RPS Compliance Shortfall Energy, Seller may remedy this shortfall by providing Replacement Energy during Contract Year 6 in the amount of 46,073 MWh. If the RPS Compliance Shortfall Energy has not been cured with Replacement Energy by the end of Contract Year 6, then Seller must pay (I) RPS Compliance Shortfall Liquidated Damages in an amount for each MWh that was not delivered equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during the last 90 days of Contract Year 6, weighted by hourly Delivered Energy and (B) Green Value associated therewith, and (ii) the Full Contract Price and (II) any and all amounts of reasonably documented penalties or fines incurred or paid by any Participating Member as a result of such Participating Member's noncompliance with EPS Law or RPS Law to the extent such non-compliance was caused by Seller's uncured failure to provide the RPS Compliance Shortfall Energy.

With respect to the remaining Shortfall Energy for Contract Year 6 (i.e., the Shortfall Energy (71,354 MWh) less the RPS Compliance Shortfall Energy (46,073 MWh), which is 25,281 MWh), Seller may remedy this shortfall in the following Contract Year 7 (extended on a day-for-day basis resulting from the occurrence of an event of Force Majeure, but in no event longer than two (2) Contract Years following the end of Contract Year 7) by delivering Replacement Energy at the Point of Delivery or delivering Delivered Energy in excess of 667,998 MWh (the Guaranteed Delivered Energy in Contract Year 7, as may be adjusted pursuant to Section 6.5) in the amount equal to 25,281 MWh. If such Shortfall Energy has not been cured with Delivered Energy or Replacement Energy by the commencement of Contract Year 8, Seller must pay Annual Shortfall Liquidated Damages in an amount for each MWh that was not delivered equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index for during Contract Year 6, weighted by hourly Delivered Energy and (B) Green Value associated therewith, and (ii) the Full Contract Price.

**5.** Example #5: *Shortfall Energy in a Contract Year that is not the end of an RPS Compliance Period and some RPS Compliance Shortfall Energy*

Actual Delivered Energy:

Contract Year 4: 600,000 MWh

Contract Year 5: 674,728 MWh

Contract Year 6: 671,354 MWh

Total for RPS Compliance Period: 1,946,082 MWh

Shortfall Energy for Contract Year 4 = 78,119 MWh

RPS Compliance Shortfall Energy = 78,119 MWh

Consequence:

Same as in Example 1, Seller may remedy the Shortfall Energy for Contract Year 4 in the following Contract Year 5 (extended on a day-for-day basis resulting from the occurrence of an event of Force Majeure, but in no event longer than two (2) Contract Years following the end of Contract Year 5) by delivering Replacement Energy at the Point of Delivery or delivering Delivered Energy in excess of 674,728 MWh (the Guaranteed Delivered Energy in Contract Year 5, as may be adjusted pursuant to Section 6.5) in the amount equal to 78,119 MWh. If Shortfall Energy has not been cured with Delivered Energy or Replacement Energy by the commencement of Contract Year 6, Seller must pay Annual Shortfall Liquidated Damages in an amount for each MWh that was not delivered equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during Contract Year 4, weighted by hourly Delivered Energy and (B) Green Value associated therewith, and (ii) the Full Contract Price.

With respect to the RPS Compliance Shortfall Energy, Seller may remedy this shortfall by providing Replacement Energy during Contract Years 4, 5 or 6 in the amount of 78,119 MWh reduced by the Shortfall Energy for Contract Year 4 for which the Annual Shortfall Liquidated Damages have been paid pursuant to the immediately preceding paragraph. If the RPS Compliance Shortfall Energy (as reduced in the immediately preceding sentence) has not been cured with Replacement Energy by the end of Contract Year 6, then Seller must pay (I) RPS

Compliance Shortfall Liquidated Damages in an amount for each MWh that was not delivered equal to any positive difference between (i) the sum of (A) the weighted average of the Market Price Index during the last 90 days of Contract Year 6, weighted by hourly Delivered Energy and (B) Green Value associated therewith, and (ii) the Full Contract Price; provided, that, for the avoidance of doubt, the reduction of the RPS Compliance Shortfall Energy described in the first sentence of this paragraph shall not result in any refund of Annual Shortfall Liquidated Damages or the RPS Compliance Shortfall Liquidated Damages by Buyer.

**SCHEDULE 12.2(H)**

**TO THE**
**POWER PURCHASE AGREEMENT**
**BETWEEN**
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**
**AND**
**NOTCH PEAK PROJECT, LLC**

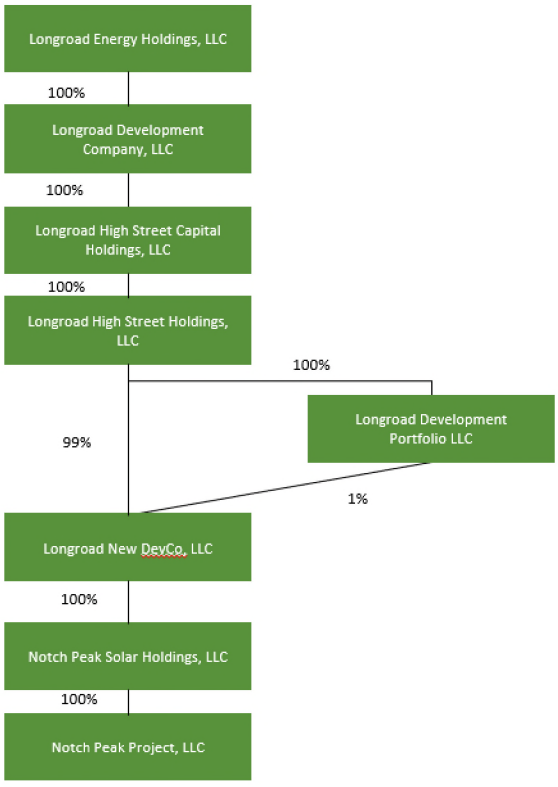
**SPECIFIED UPSTREAM EQUITY OWNERS AND ORGANIZATIONAL AND OWNERSHIP STRUCTURE OF SELLER AND UPSTREAM EQUITY OWNERS**

This Schedule 12.2(h) may be updated from time to time by agreement of Buyer and Seller to account for a Change in Control that has been consented to by Buyer in accordance with this Agreement.

**Section 1. Specified Ultimate Upstream Equity Owner.**

Longroad Energy Holdings, LLC

**Section 2. Organizational and Ownership Structure of Seller and Upstream Equity Owners.**



**Section 3. Principals:**

Paul Gaynor, Chief Executive Officer
Peter Keel, Chief Financial Officer
Michael U. Alvarez, Chief Operating Officer
Charles Spiliotis, Chief Investment Officer