

ATTACHMENT C
SAMPLE POWER PURCHASE AGREEMENT

COUNTY OF SANTA CLARA

Contract Award Notice



CONTRACT TITLE: POWER PURCHASE AGREEMENT

CONTRACT NUMBER: _____

AWARD DATE: _____

CONTRACT PERIOD: _____

SERVICE: Electricity Service Provision

COMMODITY NO: _____

BUYER CONTACT: _____

TITLE: _____

BUYER TEL: _____

BUYER EMAIL: _____

SELLER NAME: _____

SELLER CONTACT: _____

TITLE: _____

SELLER TEL: _____

SELLER EMAIL: _____

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PURPOSE: To establish a service contract with _____ for delivery of electricity.

TOTAL VALUE: The total value of this contract shall not exceed \$ _____.

REFERENCE: The following (and all exhibits) constitutes the contract document:

Agreement By and Between _____ and _____ executed effective _____

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COUNTY OF SANTA CLARA [/ Buyer]
REGIONAL POWER PURCHASE AGREEMENT

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COUNTY OF SANTA CLARA [/ Buyer]
REGIONAL POWER PURCHASE AGREEMENT

[Fixed Subarticle numbers, alignment, and spacing throughout the document to clean up the document presentation]

This agreement (“Agreement”), by and between _____ (hereafter referred to as “Buyer”) and _____ (hereafter referred to as “Seller”) is dated _____.

RECITALS

- A. [Buyer] wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;
- B. [Buyer] has solicited proposals from persons, firms, organizations, and/or other legal entities to provide such power from renewable resources in a cooperative/joint solicitation led by the County of Santa Clara;
- C. [Seller] is in the business of designing, constructing and operating solar photovoltaic (“PV”), fuel cell or hybrid electric generating systems for the purpose of selling power generated by the systems to its customers;
- D. [Buyer] has selected [Seller] to design, construct, own and operate a solar PV, fuel cell or hybrid generating system to be located on its property subject to the terms, conditions, covenants and provisions set forth herein;
- E. [Seller] intends to construct, own, and operate renewable energy-powered generating facilities that shall qualify as an eligible renewable energy resource (“ERR”) under the State of California Renewable Portfolio Standard (“RPS”) and desires to sell electricity produced by such generating facilities together with other attributes to Buyer pursuant to the terms, conditions, covenants and provisions set forth herein;
- F. Buyer desires to purchase electricity generated by Seller’s generating facility, together with all Environmental Attributes pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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ARTICLE 1: DEFINITIONS

References in the Agreement to the terms or phrases below shall have the meanings as set forth in this Article. In the event of a conflict between the information in this Article and any more specific provision of the Agreement, the more specific provision shall control.

- 1.1** “Actual Commercial Operation Date” means the date on which Commercial Operation first occurs.
- 1.2** “Adjusted Base Contract Price” means the Base Contract Price adjusted according to Article 4 and shall begin to apply on the first day of the first full month after the submission of the PTC analysis results to the [Buyer].
- 1.3** “Adjusted Delivered Energy” means the sum of (i) the Delivered Energy from the Generating Facility and (ii) any Energy that was scheduled during a Dispatch Down Period that would have been delivered if the Seller had not been directed to reduce the Delivered Energy from the Generating Facility.
- 1.4** “Agreement” has the meaning set forth in the preamble of this Agreement.
- 1.5** “Annual Escalation Adjustment” means the (____ %) increase to be applied commencing on the first anniversary date of the Actual Commercial Operation Date, and every anniversary date thereafter during the Term, as described in Exhibit 6 [Contract Price].
- 1.6** “Business Day” means a normal working day excluding weekends and holidays.
- 1.7** “Base Contract Price” means the price in \$U.S. per kWh to be paid by Buyer to Seller for the purchase of the Output, as specified in Article 4 and Exhibit 6 [Contract Price].
- 1.8** “Buyout Option” means the option that Seller grants to Buyer pursuant to Article 14 to terminate this Agreement and purchase some or all of the Generating Facilities at each Project Site.
- 1.9** “Buyout Payment” means the amount set forth in Article 2.
- 1.10** “Buyer Address for Payments” means the address to which invoices to the Buyer should be sent, currently:

- 1.11** “Buyer Address for Notices” means the addresses to which notices to the Buyer should be sent as set forth in Article 15.
- 1.12** “California Solar Initiative” means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the PUC and implemented through chapter 8.8 (commencing with Section 25780) to Division 15 of the California Public Utilities Code.

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- 1.13** “Commercial Operation” means that: (i) the Generating Facilities have been constructed in accordance with Prudent Industry Practice, all Permits, Requirements of Law, the specifications set forth in Exhibit 2 [Description of Generating Facilities], Exhibit 4 [Technical and Warranty Requirements]; and Exhibit 5 [Engineering & Construction Requirements] and (ii) Seller has successfully completed the Commissioning Tests.
- 1.14** “Commissioning Tests” means the tests set forth in Exhibit 5 [Engineering & Construction Requirements].
- 1.15** “Commercial Operation Date” means the date on which Commercial Operation first occurs and the PV Systems commence generating electricity for sale to the Buyer at the Project Sites.
- 1.16** “Contract AC Power Rating” means the AC power rating for the Generating Facility in a given Contract Year, as specified in Exhibit 8 [Expected Contract Quantity Form].
- 1.17** “Contract Capacity” means the maximum instantaneous output of the Generating Facility in kilowatts measured at the Delivery Point.
- 1.18** “Contract Year” means each year beginning on January 1st and ending on December 31st of such year following the Actual Commercial Operation Date; provided, however, that the first Contract Year shall commence on the Actual Commercial Operation Date and end on the following December 31st, and the last Contract Year shall end on the relevant anniversary of the Actual Commercial Operation Date as set forth in Section 2.2.
- 1.19** “Days” unless otherwise specified, shall mean calendar days.
- 1.20** “Degradation” means forecasted deterioration calculated on an annual basis of Generating Facilities due to normal wear and tear and decreasing efficiency causing reductions in power output.
- 1.21** “Delivered Energy” means the amount of Energy delivered to the Delivery Point, adjusted to reverse the application of distribution loss adjustments, if any, from the amount of Metered Energy. For example, if distribution losses are programmed into the Meter by applying a factor of 0.99 to reflect a reduction in output of 1% the Metered Energy would be divided by 0.99 to obtain the Delivered Energy. Conversely, if distribution losses are programmed into the Meter by applying a factor of 1.01 to reflect an increase in output of 1% the Metered Energy would be divided by 1.01 to obtain the Delivered Energy.
- 1.22** “Delivery Point” means the metering point at the high side of the transformer for each Generating Facility, as specified in Exhibit 2 [Description of Generating Facilities].
- 1.23** “Dispatch Down Period” means any period of time during which (a) the Transmission Provider orders a curtailment that affects the Generating Facility, for reasons which do not constitute a Force Majeure, or (b) there is scheduled or unscheduled maintenance on the Transmission System that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point.
- 1.24** “EA Agency” means any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities

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Commission, and any successor agency thereto.

- 1.25** “Energy” means the electricity generated by each Generating Facility pursuant to this Agreement, as expressed in units of kWh.
- 1.26** “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its displacement of conventional energy generation. Environmental Attributes including but not limited to: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. .
- 1.27** “Environmental Attributes Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under the Energy Policy Act of 1992, and any regulations promulgated thereof.
- 1.28** “Environmental Laws” shall mean and include all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.
- 1.29** “Existing Financial Incentives” means (i) the ITC and any tax deductions or other benefits under the Internal Revenue Code or applicable state law available as a result of the ownership and operation of the Generating Facilities or the Output generated by the Generating Facilities (including without limitation tax credits, accelerated depreciation, or bonus depreciation) that are in effect on the Effective Date and (ii) any other financial incentives that result from the ownership and operation of the Generating Facilities or the Output that are in effect on the Effective Date.
- 1.30** “Expected Annual Contract Quantity” means the amount of Delivered Energy and Environmental Attributes that Seller expects to deliver to Buyer hereunder in a given Contract Year other than the first and last Contract Years (which may be partial years), as set forth in Exhibit 8 [Expected Contract Quantity Form].
- 1.31** “Expected Commercial Operation Date” means the date on which the Parties expect the Generating Facilities to achieve Commercial Operation, established in accordance with Section 3.4.
- 1.32** “Force Majeure Event” has the meaning set forth in Article 9.
- 1.33** “GAAP” means Generally Accepted Accounting Principles in the United States of America that is consistently applied.
- 1.34** “Generating Facilities” means Seller’s electricity generating facilities as more particularly described in Exhibit 2 [Description of Generating Facilities], excluding the Sites, land rights, and interests in land.

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- 1.35** “Governmental Authority” means any federal or state government, or political subdivision thereof, including, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, any corporation or other entity owned or controlled by any of the foregoing.
- 1.36** “Green Tag Reporting Rights” are the right of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green tag purchaser’s discretion, and include those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. “Green Tags” are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.
- 1.37** “Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.
- 1.38** “Initial Synchronization” means the date upon which the Generating Facilities are first synchronized with the Transmission System.
- 1.39** “Interconnection” means the interconnection of the Generating Facilities with the Transmission System, including construction, installation, operation, and maintenance of all Interconnection Facilities.
- 1.40** “Interconnection Agreement” means the agreement between Seller, the Transmission Provider, and if applicable, the ISO which sets forth the terms and conditions for Interconnection of the Generating Facilities to the Transmission System, as amended from time to time.
- 1.41** “Interconnection Facilities” means all of the facilities installed for the purpose of interconnecting the Generating Facilities to the Transmission System, including transformers and associated equipment, relay and switching equipment and safety equipment.
- 1.42** “Interest Rate” means the interest rate applicable for refunds calculated pursuant to 18 C.F.R. Section 35.19a of the FERC Regulations, as that section may be amended or superseded from time to time. The monthly interest rate shall be prorated by days from the date a payment is due until the date a payment is received.
- 1.43** “Investment Tax Credit” or “ITC” means the energy credit under Section 48 of the Internal Revenue Code
- 1.44** “kWh” means one kilowatt of electricity supplied for one hour.

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- 1.45** “Lease(s)” means the lease (s) attached as Exhibit C, Attachment 11 to the RFP, which is to be executed by Seller and the Buyer for use of the Project Sites for the construction and operation of the Generating Facilities.
- 1.46** “Lender(s)” means any Person(s) extending credit to Seller to finance the construction of the Generating Facilities.
- 1.47** “Mechanical Completion” means when (i) installation of all necessary components and systems of the Generating Facilities (except for completion of painting, final grading, and similar portions of the construction work not affecting the operability, safety, or mechanical and electrical integrity of the Generating Facilities) has been completed; (ii) the Generating Facilities are mechanically and electrically sound; and (iii) the Generating Facilities are ready for initial operation, adjustment, and testing.
- 1.48** "Meter" or “Meters” means the physical metering devices, data processing equipment and apparatus associated with the meters owned by Seller or Transmission Provider or its designee, and used to determine the quantities of Energy generated by each Generating Facility and to record other related parameters required for the reporting of data to Seller.
- 1.49** “Metered Energy” means the amount of Energy measured at the Meter for each Generating Facility, including any adjustments programmed into the Meter for distribution losses after the Delivery Point.
- 1.50** “Monitoring System” means physical devices, data processing equipment and apparatus associated with real-time monitoring of the quantities and quality of energy generated by each Generating Facility and complying with all requirements of Article 4. The Monitoring System shall meet or exceed PG&E monitoring and reporting standards.
- 1.51** “MW” means one megawatt of electric energy.
- 1.52** “MWh” means one megawatt of electricity supplied for one hour.
- 1.53** “Outage” means a physical state in which all or a portion of the Generating Facilities is unavailable to provide Energy to the Delivery Point, including any reduction in the capacity of the Generating Facilities, and including tilting the photovoltaic panels away from the configuration set forth in the most recent approved as built drawings, whether planned or unplanned.
- 1.54** “Output” means (i) the Contract Capacity and associated Energy; (ii) Test Energy; and (iii) all Environmental Attributes.
- 1.55** “Parties” means Buyer and Seller, and each such Party’s respective successors and permitted assignees.
- 1.56** “Party” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.
- 1.57** “Permits” means, collectively, all federal, state or local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Generating Facilities.

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- 1.58** “Person” means an individual, a corporation, a partnership, a joint venture or any other form of business association.
- 1.59** “PG&E” means the Pacific Gas and Electric Company.
- 1.60** “Preliminary Requirements” has the meaning set forth in Article 3.
- 1.61** “Project Sites” means the real property, on which the Generating Facilities are to be built and located.
- 1.62** “Prudent Industry Practice” means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expedition; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expedition. Prudent Industry Practices are not limited to an optimum practice, method, selection of equipment or act, but rather are a range of acceptable practices, methods, selections of equipment or acts.
- 1.63** “PV System” shall mean the solar photovoltaic (PV) electric generating facilities to be constructed and operated by Seller at the Project Sites.
- 1.64** “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code section 399.12(h) as may be amended from time to time or as further defined or supplemented by applicable law.
- 1.65** “Replacement Price” has the meaning set forth in Section 4.1(c)(ii).
- 1.66** “Requirements of Law” means, collectively, any federal or state law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer or any of their property or to which Seller or Buyer or any of their respective properties are subject.
- 1.67** “Schedule” “Scheduled” or “Scheduling” means the actions of Seller, Buyer and /or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered for each interval on any given day on which the delivery of Energy is scheduled to occur during the Term at the Delivery Point.
- 1.68** “Seller” means _____, the entity that has executed this Agreement as of the date hereof. Seller shall have the meaning set forth in the preamble. For purposes of access rights and other rights necessary for Seller to perform its obligations hereunder, the term “Seller” shall include Seller’s authorized agents, contractors and subcontractors. The term “Contractor” may be used in place of the term “Seller.”
- 1.69** “Seller Address” means:

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- 1.70** “Seller’s Project Management Team” means individuals identified by Seller as responsible for oversight and contract management of all phases of project design/build, operations, maintenance, verification and billing account management.
- 1.71** “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.72** “Term” has the meaning set forth in Article 2.
- 1.73** “Test Energy” means Metered Energy generated by the Generating Facilities prior to the Actual Commercial Operation Date.
- 1.74** “Transmission Provider” means any entity or entities responsible for the interconnection of each Generating Facility (e.g. PG&E) with a Control Area or distributing or transmitting Energy on behalf of Seller from each Generating Facility to the Delivery Point, and on behalf of the Buyer from the Delivery Point.
- 1.75** “Transmission Provider Tariffs” means the duly authorized tariff, rules, schedules, protocols and other requirements of the Transmission Provider, as these may be amended from time to time.
- 1.76** “Transmission System” means the facilities used for the distribution and transmission of electricity, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider
- 1.77** “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

ARTICLE 2: EFFECTIVE DATE, TERM

- 2.1** This Agreement shall become effective on the date of execution by Buyer (the “Effective Date”).
- 2.2** Unless earlier terminated pursuant to an express provision of this Agreement, the Agreement shall continue to be effective until 11:59 PM the day before the 20th annual anniversary of the Commercial Operation Date (“Term”).
- 2.3** Buyout Option
- (a) After ten (10) full years from the Actual Commercial Operation Date, Buyer may, in its sole and discretion, buy the Generating Facilities and terminate this Agreement without liability of any kind other than for previously-accrued obligations, and the Buyout Payment. This Buyout Option shall apply separately to each Site. Buyer may exercise this right on an annual basis by giving Seller notice at least ninety (90) days prior to the

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following anniversary of the Actual Commercial Operation Date and paying the Seller the Buyout Payment on or before the anniversary of the Actual Commercial Operation Date.

(b) Buyout Payment: The Buyout Payment for each Site shall be the fair market value, as determined by agreement between the parties or, if no agreement can be reached by use of an independent appraiser as described below:

- (i) Within 30 days of the Buyer's delivery of notice provided under 2.3 (a) above, Buyer and Seller shall confer and agree on an independent appraiser with experience and expertise in the renewable energy sector.
- (ii) If Seller and Buyer do not agree upon the appointment of an independent appraiser within such thirty (30) days, then at the end of such period, Seller and Buyer shall notify each other in writing of their respective designation of three proposed independent appraisers. Seller and Buyer shall each within five (5) Business Days of receipt of such notice strike two of the proposed independent appraisers designated by the other party and shall provide notice of the same to the other party. The remaining two proposed independent appraisers shall, within two (2) Business Days of the last-received notice, select one of themselves to perform the valuation and provide notice thereof to Seller and Buyer.
- (iii) Seller and Buyer shall each be responsible for payment of one-half of the costs and expenses of the independent appraiser.

(c) The Parties shall promptly execute all documents necessary to cause title of the Generating Facility to pass to Buyer, free and clear of any liens. Seller shall assign all vendor warranties for the Generating Facility to Buyer, and Buyer shall pay the Buyout Payment at mutually-agreed upon terms. Upon commencement of Buyout Payment, there shall be no further Output payments. Seller shall provide Buyer with an operation and maintenance manual for any item purchased by Buyer.

(d) Transfer of the Generating Facility: Within sixty (60) days of receipt of the Buyout Payment, Seller shall transfer to Buyer ownership of the Generating Facilities subject to the Buyout and shall cooperate with the Buyer to give prompt effect to such transfer. All Output of the Generating Facilities shall become the property of the Buyer upon the date of receipt by Seller of the initial Buyout Payment, and the Buyer shall not be liable for any further payments for the Output as of that date. All other personal property of the Seller shall be removed from the Site in accordance with the requirements of the Lease, and the Lease Agreement shall be automatically terminated upon the Generating Facilities transfer date.

(e) Transfer of Warranties: In addition to the transfer of generating facility, the Seller shall transfer all warranties to the Buyer for full remaining term of the warranty period.

ARTICLE 3: ENGINEERING AND CONSTRUCTION REQUIREMENTS

3.1 All elements of engineering and construction of RPG Systems are Seller's responsibility.

3.2 Seller shall provide services as described herein and pursuant to Attachment 5 – Engineering and Construction Requirements.

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3.3 Seller shall establish mutually agreeable milestones with the Buyer to complete all Work in this Agreement.

3.4 Seller shall provide bi-weekly status reports throughout this phase, as well as any additional briefing requested by Buyer.

3.5 Seller will create, maintain and provide to Buyer, minutes of meetings between Buyer's representatives and Seller's Project Management Team.

3.6 CEQA Compliance

(a) Compliance with the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.*, is a condition precedent to the Buyer's obligations under this Agreement. The Seller shall not have any right to install the System until the Buyer has fully complied with CEQA and issued a notice to proceed to Seller. Buyer agrees to begin the initial analysis within ten (10) days after the effective date of this Agreement. If that analysis indicates that an exemption or negative declaration will suffice, then Buyer will proceed to complete the exemption or negative declaration in accordance with applicable law. Seller shall promptly reimburse Buyer for Buyer costs for such analysis and completion of exemption or negative declaration no later than 30 days after Buyer sends invoice for same to Seller. Seller shall promptly proceed to perform its obligations under this Agreement.

(b) If the Buyer determines that a mitigated negative declaration ("MND") or environmental impact report ("EIR") is required to comply with CEQA, then Seller shall be responsible for paying Buyer all costs associated with preparing the MND or EIR and complying with CEQA, including but not limited to environmental consultant costs and implementation of any feasible mitigation measures or alternatives the Buyer determines is needed to mitigate or avoid the project's potentially significant environmental impacts. Buyer shall notify Seller of its determination that an MND or EIR is required, and the estimated costs and timing of preparing the MND or EIR. If after such notice, the Seller determines not to proceed, then this Agreement shall terminate and neither Party shall have any further obligations or liability to the other. Such a determination not to proceed on the part of the Seller may only be reasonably based on the exceptional costs associated with the MND or EIR and mitigation measures or alternatives, and shall not excuse non-performance on the part of the Seller for any other reason. If Seller determines to proceed with the project, then Seller shall pay to Buyer all estimated costs of preparing the MND or EIR within 10 days of receiving the estimate from the Buyer. To the extent that Buyer's actual costs exceed such estimates, Seller shall pay Buyer for any excess. Conversely, Buyer shall reimburse to Seller any payment by Seller based on Buyer's overestimation of costs.

(c) If Buyer finds that it is not feasible to reduce or avoid significant potential environmental effects of the proposed project and Buyer determines not to issue a statement of overriding considerations, then Seller shall pay Buyer all costs and expenses related to the EIR process that have been incurred and this Agreement shall thereafter terminate and neither Party shall have any further obligations or liability to the other.

3.7 Engineering - Design Phase

During this phase, Seller shall proceed with all activities necessary to allow commencement of the construction phase, including completing the Preliminary Requirements (as set forth below). Upon

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completion of this phase, Seller shall proceed with the installation & construction phase.

(a) Preliminary Requirements:

- (i) Prior to the execution of the Power Purchase Agreement, the Seller must comply with the Insurance Requirements for design phase included as B-3A [Design Phase Insurance Requirements] in PPA.
- (ii) Seller must comply with all requirements set forth in Attachment 5 [Engineering & Construction Requirements].
- (iii) Within two months of the effective date:
 - 1. Seller must have provided Buyer with an inspection and a structural engineering report (i.e. stamped PE report) that verifies the load bearing capacity and suitability of each of the project sites for the construction, installation, and ongoing operation of the Generating Facilities; and, based on such inspection and report, Seller must have provided written notices to Buyer that the Site(s) is/are adequate for purposes of proceeding with construction of the Generating Facilities ("Notice(s) of Site Acceptance.")
 - 2. Seller shall execute the [LEASE/LICENSE Agreement for each site] substantially in the form in which it has been authorized and drafted by the Buyer;
 - 3. Seller must have obtained a financing commitment for construction of the System and submitted satisfactory proof thereof to the Buyer. If the financing commitment is conditioned on any assignment to the Lender of an interest in this Agreement or the Lease(s), Seller shall also submit satisfactory proof to Buyer that the assignee meets all requirements of this Agreement, and agrees to comply, without modification, with the terms and condition of this Agreement and the Site Leases/Licenses.
 - 4. Seller shall notify the Buyer in writing of the Expected Commercial Operation Date. Such Expected Commercial Operation Date shall be no later than fifteen (15) months from the Effective Date;
 - 5. Seller shall provide Buyer with a project plan and milestone schedule for approval such that the Effective Commercial Operation date may be achieved and that all design standards specified in the Agreement are met or exceeded. This project plan shall be subject to approval by the Buyer and may be amended by Buyer. Seller shall create a revised project plan upon Buyer's request.
 - 6. Seller shall provide Buyer proof of all insurance coverage required by Buyer.
- (iv) Within four (4) calendar months from the Effective Date:
 - 1. Seller must secure pre-certification for the System as an ERR (for purposes of the RPS legislation) from the California Resources, Conservation and Development Commission ("CEC") and present proof of same to the Buyer.

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2. Seller must have obtained approval from the Buyer of the final 100% detailed engineering drawings and specifications for the Generating Facilities. Seller must submit 65% and final 100% detailed engineering drawings and specifications for the Generating Facilities to Buyer for approval no later than two months and three months, respectively from the Effective Date.
 3. Seller must have obtained from the Transmission Provider the final reports for the studies needed in order for the Transmission Provider to tender to the Seller an Interconnection Agreement.
 4. Seller must have obtained approval from the Transmission Provider the final 100% detailed engineering drawings for the Interconnection Facilities.
- (v) Within six (6) calendar months from the Effective Date, Seller must have obtained from the Transmission Provider an Interconnection Agreement for each Site.
- (b) Failure to Complete the Preliminary Requirements by the deadline: If Seller fails to complete the Preliminary Requirements in conformance with the timeline above, Buyer may terminate this Agreement without penalty, liability or expense of any kind to Buyer by providing to Seller a written notice of termination after the deadline for completion of the Preliminary Requirements. The Buyer may extend deadlines at its option.

3.8 Construction Phase:

- (a) Prior to the execution of the Power Purchase Agreement, the Seller must comply with the Insurance Requirements for construction phase included as B-1 [Construction Phase Insurance Requirements] in PPA.
- (b) Seller must comply with all requirements set forth in Attachment 5 [Engineering & Construction Requirements].
- (c) Seller shall provide to Buyer an Installation & Construction plan that shall include, at a minimum, the following:
 - (i) Detailed array layout with stringing configuration
 - (ii) Mounting and racking details
 - (iii) Details of electrical transmission showing conduit routing and location of electrical enclosures, conduit support details, and enclosure mounting details
 - (iv) Electrical single line diagram
 - (v) Electrical three line diagram
 - (vi) Monitoring plan
 - (vii) Construction project plan with timeline
- (d) Seller shall cause the System to be designed, installed and constructed in accordance with the California Building Code, with the laws and regulations of all governmental authorities with jurisdiction, with all requirements of the Agreement and pursuant to the final approved project design, and at Seller's sole cost. Upon completion of construction of the System, Seller shall be responsible for verifying System performance on an ongoing basis.

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- (e) Minimum Standards: Seller shall ensure that minimum design standards are followed, including;
 - (i) All power generation and transmission equipment shall be UL listed for its use
 - (ii) Generating Facility must meet all regulatory and environmental requirements including but not necessarily limited to PG&E, CSI, CPUC, Fire Marshall, UL, UBC, and CEQA.
 - (iii) Requirements of Material
 1. Fasteners and hardware throughout system shall be stainless steel or material of equivalent corrosion resistance
 2. Racking components shall be anodized aluminum, hot dipped galvanized steel, or material of equivalent corrosion resistance
 3. Unprotected steel shall not to be used in any components
 4. Seller shall obtain electrical PE stamp verifying the integrity and code compliance of proposed PV systems and interconnection with facilities
 - (iv) All conductors, RHW and otherwise, must be covered to prevent exposure to sunlight
 - (v) All penetrations flashed and sealed by a certified roofer and maintain current warranty.
 - (vi) Array layout shall be designed to provide walking access around the perimeter of the roof and convenient access to existing roof mounted HVAC equipment
 - (vii) Parking canopy systems shall be designed to include safety lighting, impact resistance, and height requirements as specified by site.
 - (viii) A Monitoring System shall be included for each Generating Facility.

ARTICLE 4: DELIVERY OF POWER, METERING & MONITORING

4.1 Purchase & Sale

- (a) Commencing on the Actual Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay for, the Output as follows:

Adjusted Delivered Energy multiplied by Base Contract Price as per Exhibit 6 – [Contract Price].

Seller shall only Schedule and deliver Energy and Environmental Attributes from the Generating Facilities.

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- (b) Annual Escalation Adjustment. Commencing on the first anniversary date of the Actual Commercial Operation Date, and every anniversary date thereafter during the Term, the applicable Contract Price shall be escalated to reflect the Annual Escalation Adjustment as set forth in Exhibit 6- [Contract Price].
- (c) Meters
- (i) The transfer of Energy from Seller to Buyer shall be measured by Meters at the Delivery Point, which are selected, provided, installed, owned, maintained, programmed and operated, at the Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Transmission Provider Tariffs and the Buyer-PG&E Interconnection Agreement. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least annually. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of +/- 2% or better and a Performance Monitoring and Reporting Service (PMRS) that is accessible by Buyer at all times. Eligible meters and PMRS providers must be listed as approved on the Go Solar California website
- (ii) Meter Reading and Communications Equipment. After Initial Synchronization, Seller shall, at its sole cost and expense, read, or cause to be read, the Meters at least as frequently as is needed and at least at the end of each calendar month during the Term. Seller shall install, own and maintain, at its sole cost and expense, communications equipment and services necessary to allow remote reading of the Meters pursuant to the requirements of the Meter Service Agreement for ISO Metered Entities, whether or not the Generating Facilities are an ISO Metered Entity. Seller shall apply verification, editing and estimation techniques to ensure that the meter data accurately represent actual Output and are in compliance with all applicable requirements of (i) the Transmission Provider; and (iii) the Buyer-PG&E Interconnection Agreement.
- (iii) Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement. Seller shall permit the Buyer or Buyer's representative access to its Generating Facilities for the purpose of verifying meters.
- (iv) Transmission Provider and PG&E Requirements. If and to the extent requested to do so by Buyer, Seller shall submit to the Transmission Provider and/or PG&E, or allow the Transmission Provider and/or PG&E to retrieve, any meter data required by the Transmission Provider and/or PG&E related to each Generating Facility and associated with the provision of transmission or distribution for the Output of each Generating Facility in accordance with the Transmission Provider Tariffs, and the Buyer PG&E Interconnection Agreement.
- (d) Delivery Obligations.
- (i) At the end of every month, if the Adjusted Delivered Energy is less than 90 percent of the prorated monthly amount of Expected Annual Contract Quantity, Seller shall

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provide an immediate report to Buyer on the reasons for such shortfall and shall take immediate steps to restore energy delivery.

- (ii) At the end of every month, if the Adjusted Delivered Energy is less than 75 percent of the prorated monthly amount of Expected Annual Contract Quantity (after accounting for weather-related and seasonal changes) this shall constitute an event of default under Article 11.1.
 - (iii) At the end of the first full Contract Year, if the Adjusted Delivered Energy is less than the Expected Annual Contract Quantity in such Contract Year, Seller shall pay to Buyer the product of (A) the positive difference between the Replacement Price and the Adjusted Base Contract Price, and (B) the difference between the Expected Annual Contract Quantity and the Adjusted Delivered Energy.
 - (iv) The Replacement Price shall be, at Buyer's sole discretion, either (a) the price at which Buyer, acting in a commercially reasonable manner, purchased or purchases a replacement for any Output required to be, but not, delivered by Seller hereunder, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Output, and (ii) additional transmission and distribution charges, if any, reasonably incurred by Buyer to the Delivery Point.
 - (v) If Seller is prevented from generating or delivering Output due to a Force Majeure Event, Seller's obligation under this Section shall be reduced to the extent of such impact.
 - (vi) The Parties recognize and agree that (A) the actual damages to Buyer for a failure by Seller to deliver the Expected Annual Contract Quantity are difficult or inconvenient to determine, (B) payment of amounts by Seller to Buyer pursuant to this Section is an appropriate remedy, and (C) any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement.
- (e) Excess Energy: if the Delivered Energy exceeds Buyer's need for electricity, Seller shall have the right to resell any excess Energy Output to the local utility or any third party, provided that such any sales of excess Energy shall be made in accordance with all applicable laws and regulations and that proceeds from the sale of such electricity shall be divided equally between Buyer and Seller. Excess energy may be sold to the Buyer at 50% of the base contract price.
- (f) Test Energy. Prior to the Actual Commercial Operation Date, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay to Seller the Test Energy Payment for the Test Energy. All Test Energy shall be Scheduled in accordance with this Agreement.

4.2 Monitoring System and Web Interface

- (a) Seller shall provide the Buyer with a Monitoring System for each Generating Facility.
- (b) The Monitoring System shall include, without limitation, ability to monitor Revenue grade AC production data; weather data, (including ambient temperature and wind speed); and

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shall include a pyranometer.

- (c) Seller shall make available to Buyer a web-based tool or interface to view, collect and store data, in real time, including the energy delivered, greenhouse gas emissions reduced, peak AC efficiency, peak DC efficiency, and total percent of energy used from system.
- (d) Additional requirements and specifications for monitoring is described in Exhibit 7 – [Operations Forecasts, Scheduling Protocols, & Monitoring].

4.3 AC Power Rating Adjustment

- (a) Seller shall ensure that each Generating Facility meets the Contract AC Power Rating. Within six months of the Actual Commercial Operation Date, Seller shall perform and submit to Buyer the results of a PTC Rating analysis. The failure of this analysis to demonstrate to Buyer’s satisfaction that each Generating Facility has an AC power rating of at least ninety (90) percent of the Contract AC Power Rating, shall constitute an Event of Default on the part of the Seller. If the analysis demonstrates that the Generating Facilities have an AC power rating of less than ninety-five (95) percent of the Contract AC Power Rating, then the Base Contract Price shall be adjusted as follows:

$$[A / B] \times C = D$$

Where:

- A = the actual AC power rating (as demonstrated by the PTC rating analysis).
- B = the Contract AC Power Rating
- C = the Base Contract Price
- D = the Adjusted Base Contract Price

The Adjusted Base Contract Price shall begin to apply on the first day of the first full month subsequent to the submission of the PTC rating analysis result to the Buyer. In no event shall the Adjusted Base Contract Price be greater than the Base Contract Price.

- (b) Annual Analysis. At least once in every twelve (12) months beginning 30 days after the Actual Commercial Date, other than the first Contract Year, Seller shall perform and submit to the Buyer the results of a PTC Rating analysis. If this analysis demonstrates that each Generating Facility has an AC power rating of less than ninety-five (95) percent of the Contract AC Power Rating, then the Contract Price shall be adjusted as defined in subsection (a) above. The failure of this once-yearly analysis to demonstrate to Buyer’s satisfaction that each Generating Facility has an AC power rating of at least ninety (90) percent of the Contract AC Power Rating, shall constitute an Event of Default on the part of the Seller.
- (c) Insolation. To the extent that (1) Buyer’s actions or failure to honor its obligations under this Agreement or the Lease result in a reduction of the Insolation available to the Generating Facilities, and (2) this reduction in turn causes the actual AC power rating of the Generating Facility to be less than 90% of the Contract AC Power Rating, then the reductions in the Contract Price set forth in Sections (a) and (b) shall not apply. For purposes of this Section, “Insolation” shall mean the Generating Facility’s access to sunlight at the Site.

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4.4 Delivery Point

- (a) Allocation of Costs and Risks. Except as expressly set forth in this Agreement, Seller shall be responsible for any costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Except as expressly set forth in this Agreement, the Buyer shall be responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

4.5 Environmental Attributes

- (a) Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from the Seller, all rights, titles and interest in and to the Environmental Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller agrees that the Contract Price and the Test Energy Payment, as applicable are the full compensation for all Environmental Attributes.
- (b) Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes to any Person other than Buyer.
- (c) During the Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to the Buyer belong to anyone other than the Buyer, and the Buyer may report under any program that such attributes purchased hereunder belong to it.
- (d) Seller shall document the production of Environmental Attributes under this Agreement by delivering on an annual basis to Buyer an attestation of Environmental Attributes produced by the Generating Facilities and purchased by Buyer in the preceding calendar month. On or before the Commencement Anniversary of each year following a Contract Year, Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to the Buyer an attestation of Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit 11 [Form of Attestation]. Exhibit 11 [Form of Attestation] may be updated or changed by Buyer as necessary to ensure that the Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder.
- (e) Documentation. At Buyer's option, the Parties, each at their own expense, shall execute all such documents and instruments in order to affect the transfer of the Environmental Attributes specified in this Agreement to the Buyer or its designees, as Buyer may reasonably request. Upon notification by an EA Agency 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 the EA Agency to effectuate any transfers.

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4.6 Tax Credits and Financial Incentives

- (a) Buyer agrees and acknowledges that the ITC shall be owned by Seller.
- (b) In connection with Seller's rights and interests in performance based incentive payments to be made under the California Solar Initiative after the Commercial Operation Date, Buyer agrees to cooperate with Seller, including signing authorizations needed by Seller, to obtain or transfer any such performance based incentives under the California Solar Initiative.
- (c) Seller acknowledges that Buyer has made no statements, representations or warranties regarding the eligibility of the Generating Facilities for the ITC or the CSI and Seller is not relying on any statement, representation or warranty by Seller or any third party with respect to the ITC or CSI in entering into this Agreement.

ARTICLE 5: BILLING AND PAYMENT

5.1 Billing and Payment

- (a) Generally. During the Term, on a monthly basis, Seller shall invoice Buyer, and Buyer shall make payment for Energy delivered to Buyer during the prior month, in accordance with Article 4. Such payment shall be full compensation to Seller for the Output received under this Agreement. Invoices furnished by Seller under this Agreement must be in a form acceptable to the Buyer, and must include a unique invoice number. All amounts paid by Buyer to Seller shall be subject to audit by the Buyer.
- (b) Payment. All payments shall be made on or before thirty (30) days after receipt of an undisputed invoice. Each Party shall make payments by electronic funds transfer or by other mutually agreeable method(s), to the account designated by the other Party.
- (c) Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other pursuant to this Agreement on the same date through netting, in which case all amounts owed by each Party to the other for the purchase and sale of Output during the monthly billing period under this Agreement, including any related damages, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

5.2 Allocation of Taxes and Possessory Interest Tax

- (a) Delivery Point. Seller shall pay or cause to be paid all Taxes due under or by virtue of this Agreement or the sale and delivery of Output sold hereunder including but not limited to ad valorem, franchise or income taxes which are related to the sale of Output.
- (b) Real Estate or Property Taxes. Seller shall pay or cause to be paid all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are now or hereafter assessed, levied, charged, confirmed or imposed by any Governmental Authority on Sellers Occupancy and use of the Property (or any portion or component thereof) or on Seller's

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ownership or operation of the Generating Facilities.

- (c) Buyer Credit for Payment of Taxes. If the Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, the Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law.

ARTICLE 6: DEPOSIT REQUIREMENTS

6.1 Deposit Requirements during Operation.

- (a) Removal and Disposal Fund – General. In order to ensure that funds are available for the removal of the Generating Facilities and remediation of the Site upon the expiration or termination of this Agreement, Seller agrees to establish an interest bearing escrow account at a federally insured banking institution to hold funds dedicated for such purpose (the "Removal Fund"). The terms for the escrow account shall be reasonably acceptable to the Buyer and the Seller.
- (b) Interest. All interest earned shall become part of the Removal Fund.
- (c) Deposits. Seller shall make deposits into the Removal Fund in annual amounts of \$ [], one-twelfth (1/12th) of which shall be the "Monthly Contribution". The Seller shall deposit the first Monthly Contribution into the Removal Fund on the first day of the month following the Actual Commercial Operation Date, and shall deposit additional Monthly Contributions on the first day of each subsequent month during the Term. Seller agrees to deposit the Monthly Contribution until the Removal Fund (including interest income) has a balance equal to or greater than \$[] per Site.
- (d) Remediation Cost Estimate and Additional Deposit. Five (5) years prior to the expiration of this Agreement, Seller shall provide Buyer with an estimate of the cost to remove the Generating Facilities and restore each Project Site in accordance with Section 11.4 below. Seller and Buyer shall then meet and confer within thirty (30) days after such estimate is provided to resolve any concerns regarding such estimated cost, and a revised estimate taking those concerns into account shall then constitute the final restoration cost estimate. If the final restoration cost estimate as approved by Buyer exceeds \$[] per site, Seller shall then increase the Monthly Contributions due by the amount necessary to ensure that the escrow fund, including all interest earned thereon, is on deposit as of the scheduled termination date in an amount equal to the final restoration cost estimate.
- (e) Disbursement if Seller has obligation to pay for removal and remediation. If this Agreement expires or terminates and, in accordance with this Agreement and the Lease, the Seller has the obligation to pay for the removal of the Generating Facilities and the remediation of the Sites, then Seller shall remove the Generating Facilities and remediate the Sites within 90 days of the date of expiration or termination of this Agreement. Within fifteen (15) days of notice by the Seller to the Buyer that removal of the Generating Facilities has been completed and that the Sites has been remediated, Buyer shall either (1) certify in writing that Seller has completed removal and remediation in accordance with this Agreement or (2) list in writing any outstanding tasks. Upon Buyer's certification that Seller has completed removal and remediation in accordance with the requirements of this Agreement and the Lease, which certification shall not be unreasonably conditioned,

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withheld or delayed, the funds in the Removal Fund shall be released to the Seller. In the event that the Seller and its Lenders fail to fully remove the Generating Facilities and remediate the Project Site(s) as required in this Agreement and the Lease within the applicable deadline set forth in this Agreement and the Lease, the Buyer may access the Removal Fund and use the available balance to undertake removal of the Generating Facilities and remediation of the Site(s). Seller shall be responsible for payment of all Buyers' reasonable removal or remediation costs, including any in excess of the Removal Fund. Any excess funds remaining in the Removal Fund after the completion of payment for the removal of the Generating Facilities and remediation of the Sites by the Buyer shall be released to Seller within sixty (60) days of payment of the last related invoice.

- (f) Disbursement if Seller does not have obligation to pay for removal and remediation. If this Agreement expires or terminates, and in accordance with this Agreement and the Lease, Seller does not have the obligation to pay for the removal of the Generating Facilities and the remediation of the Site(s), the Removal Fund shall be released to Seller within sixty (60) days of the date of expiration or termination of this Agreement.

ARTICLE 7: SELLER'S ADDITIONAL OBLIGATIONS

- 7.1** Seller shall reimburse the Buyer for Buyer's payment of the California Solar Initiative rebate reservation fee within 30 days of receipt of the Buyer's invoice for such payment. In addition, Seller shall apply for any rebates from the State of California, PG&E or other electricity provider on behalf of the Buyer.
- 7.2** Seller shall reimburse Buyer for all costs associated with any and all review of Seller's design proposal, construction inspection, quality assurance, construction management and coordination no later than 30 days after Buyer sends invoice for such costs to Seller.
- 7.3** Seller shall provide Buyer with an as-built plan set after project completion.
- 7.4** Seller shall develop, finance, own, maintain and operate the Generating Facilities in accordance with this Agreement including the Technical Requirements appended as Exhibit 4 [Technical and Warranty Requirements], the Lease, all Requirements of Law, all Permits, the Transmission Provider Tariffs and Prudent Industry Practice. Additionally, Seller shall obtain the warranties described in Exhibit 4 [Technical and Warranty Requirements] for the equipment detailed in that Exhibit.
- 7.5** Seller agrees it shall pay prevailing wages in connection with the construction and operation of the Generation Facilities.
- 7.6** Milestones
- (a) Generally.

Seller shall diligently pursue all milestones established pursuant to Article 3 and the Expected Commercial Operation Date. The Parties agree that time is of the essence in connection with the completion of the Generating Facilities, and that Milestones for the development, financing and construction of the Generating Facilities must be achieved in a timely fashion. Seller shall strive to achieve the Milestones mutually agreed to at the time of PPA execution by the Seller and Buyer.

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(b) Weekly Reports.

Unless otherwise specified in this Agreement, starting on the Effective Date, Seller shall provide to the weekly progress reports concerning the progress towards completion of the Milestones. In addition, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to the Buyer (along with any supporting documentation) demonstrating the satisfaction of such Milestone. Seller shall provide to the Buyer additional information concerning Seller's progress towards, or confirmation of, achievement of the Milestones, as the Buyer may reasonably request from time to time.

(c) Notice of Failure to Achieve a Milestone.

Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more Milestone(s) by the required date, for any reason including a Force Majeure Event, Seller shall so notify the Buyer in writing immediately. Such notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s), and describe Seller's plan for meeting such Milestone(s). Seller's notice will also explain any impact such delay may or will have on any other Milestone, and the measures to be taken to mitigate such impact.

(d) Facility Mechanical Completion Inspection.

Seller shall notify Buyer when Mechanical Completion of the Generating Facilities is achieved. At discretion of Buyer, Seller shall schedule and arrange for Buyer to conduct an inspection of the Generating Facilities. The inspection shall be scheduled for a date, mutually agreeable to Seller and Buyer, which is within ten (10) Business Days of Seller's notification of Mechanical Completion. Based on the inspection, Buyer may, within ten (10) Business Days of the inspection, prepare and provide to Seller a punch list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement. Seller shall be responsible for completion, correction, or otherwise addressing issues identified by the Buyer, and shall provide a written response to document actions taken in response to the punch list items. If requested by Buyer, Seller shall schedule and arrange a follow-up inspection for Buyer after all punch list items are resolved. All punch list items shall be resolved prior to the Actual Commercial Operation Date of the Generating Facilities except those items specifically excepted by mutual agreement between Buyer and Seller.

(e) Force Majeure Event. In the event that a Force Majeure Event causes any delay in the achievement of a Milestone, such Milestone's deadline may be extended, together with any Force Majeure Event extensions for other Milestones, for a period not to exceed, in the aggregate, six (6) months. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure Events for any or all of the Milestones exceed six (6) months. The extension provided for in this Section shall be the only effect of a Force Majeure Event on Seller's obligations with respect to the Milestones.

(f) Waiver of Right. The Buyer may, at its discretion, grant waivers for Seller's failure to meet any of the Milestones, but in no way shall any such waiver constitute a waiver of any future failures by Seller to meet other Milestones.

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7.7 Compliance: Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Requirements of Law, the ISO Tariff, the Transmission Provider Tariffs or any Governmental Authority as are necessary for Seller to engage in the activities and obligations required by the Agreement.

7.8 Maintenance, Audit and Inspection of Records

- (a) Maintenance of Records. Seller shall maintain any and all documents and records which demonstrate performance under this Agreement and the lease, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to Buyer for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement.
- (b) Inspection. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to Buyer, at any time during regular business hours, upon written request by a designated representative of the Buyer. Seller shall provide copies of such documents to Buyer for inspection at a time and place that is convenient to Buyer.
- (c) Custody of Records. Where Buyer has reason to believe that any of Seller's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Seller's business, Buyer may, by written request by any of the above-named officers, require that custody of the Seller's documents be given to Buyer. Seller shall comply with Buyer's reasonable written request.

7.9 Insurance:

Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 10 [Insurance Requirements].

7.10 Commissioning Tests:

Seller shall comply with all applicable ISO and Transmission Provider requirements for pre-operational testing. In addition, no later than fourteen (14) days prior to conducting its Commissioning Tests, Seller shall notify Buyer of the date on which it intends to conduct such tests. Within seven (7) days of the successful completion of Seller's Commissioning Tests, Seller shall provide to Buyer written notification of the Actual Commercial Operation Date, including any relevant data demonstrating that Commercial Operation has occurred. Buyer has the right to be present during any Commissioning Test, and to receive all information, including meter and performance data associated with such tests. Seller may change the date for such tests upon written notice to Buyer, provided that Buyer has at least fourteen (14) days notice of the date of such tests.

7.11 Obligation to Interconnect:

Seller shall be solely responsible for Interconnection of the Generating Facilities to the Transmission System. Seller shall, at its own cost and expense, negotiate and enter into an Interconnection Agreement and such other agreements with the Transmission Provider as needed to enable Seller to transmit Energy to the Delivery Points. Seller shall be responsible for all costs under the Interconnection Agreement and any other agreements with the Transmission Provider

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including but not limited to the costs of any upgrades to the Transmission System associated with the Interconnection of the Generating Facilities. Seller shall, at its own cost and expense, maintain the Interconnection Facilities including metering facilities.

7.12 WREGIS

As applicable, prior to the Commercial Operation Dates, Seller shall register the Generating Facilities in the WREGIS, and take all other actions necessary to ensure that the Energy or Environmental Attributes produced by the Generating Facilities are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Buyer as applicable. In the event that WREGIS is not in operation as of the Actual Commercial Operation Date, Seller shall perform its obligations, as required under this Section as soon as WREGIS is in operation.

7.13 Facility Conformance to Host Specifications. Seller shall assure that each Generating Facility remains in conformance with the most recent version of the as-built drawings approved by the Buyer; all specifications and requirements of this Agreement during the Term, including when maintenance is performed or when modifications are implemented. Buyer may, at any time, prepare and provide to Seller a letter or notice of any observed defects, deficiencies or deviations between each Generating Facility and the most recent version of the as-built drawings approved by the Buyer, or any specification or requirement of this Agreement. Within twenty (20) Days of Buyer's notification, Seller shall correct or address the issue(s) or propose to Buyer a reasonable schedule for correcting or addressing the issue(s). The schedule shall be subject to the written consent of the Buyer which consent shall not be unreasonably withheld or delayed. If Seller fails to correct or address issue(s) identified by Buyer, Buyer shall have the right to receive a Delay Correction payment from Seller. Delay Correction Payments shall be 75% of the Contract Price multiplied by the expected Contract Quantity per day, beginning twenty one (21) Days after receipt of notification or ten (10) Days after the agreed upon date for resolution, whichever is later, and continuing for each day that the non-conformance remains uncorrected. Any such Delay Correction Payments shall be in addition to all other rights and remedies available to Buyer under this Agreement, in law or in equity.

7.14 So long as Seller is paying such Delay Correction Payments as described above on a weekly basis, Buyer shall not be permitted to declare Seller in default of this Agreement or otherwise terminate this Agreement, provided that in no event, shall the extension from such Delay Correction Payment damages exceed twenty (20) Business Days. The Parties agree that Buyer will suffer damages if the corrections are not timely made, and that the Buyer's actual damages in the event that corrections are delayed would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Delay Correction Payments constitute an appropriate remedy. The Delay correction Payments do not constitute a forfeiture or penalty of any kind.

7.15 Coordination with the ISO, Transmission Provider and Western Electricity Coordinating Council ("WECC")

- (a) ISO, Transmission Provider and WECC Standards. Each Party shall undertake its obligations under this Agreement in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the ISO and Transmission Provider; (ii) WECC scheduling practices; and (iii) Prudent Utility Practices.
- (b) Start-ups and Shut-downs. Seller shall coordinate all Generating Facilities start-ups and shut-downs, in whole or in part, with Buyer in accordance with the reasonable protocols

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established by Buyer in Exhibit 7 [Operations Forecasts, Scheduling Protocols, & Monitoring] and applicable requirements of the ISO Tariff.

- 7.16** Seller shall use commercially reasonable efforts to minimize the number and duration of Outages during periods when the Generating Facilities otherwise would be able to produce Energy. Planned Outages shall be limited to no more than five (5) calendar days per Contract Year. Seller shall be responsible for all expenses and costs associated with all requirements and timelines for generation Outage scheduling, including, if applicable, those posted on the ISO's website. Planned and forced Outages shall be coordinated between Seller and the Buyer in accordance with Exhibit 7 [Operations Forecasts, Scheduling Protocols, & Monitoring].
- 7.17** Transmission and Distribution Maintenance Information: If either Party receives information through the ISO or from the Transmission Provider regarding maintenance that will directly affect the Generating Facilities, it will provide this information promptly to the other Party.
- 7.18** Modifications to the Generating Facilities

Upon approval by Buyer of the design of the Generating Facilities, Seller shall have no right to change, replace or alter the Generating Facilities nor attach fixtures or erect additions or structures in or upon the Facility (collectively "Alterations") without receiving prior written approval of Buyer prior to undertaking any such Alterations. Seller shall submit to Buyer detailed and complete plans and specifications for the proposed Alterations. Buyer may, in its sole discretion, waive the requirement for detailed plans upon Seller's demonstration that the proposed Alteration consists solely of modification or replacement of like-kind equipment. Buyer shall not unreasonably delay or withhold written approval of Seller's proposed Alteration, provided that such Alteration shall impose no additional burdens or obligations on Buyer. As a condition to consenting to the Alterations, Buyer may impose reasonable requirements, including the requirement that Seller provide Buyer with a surety bond or other financial assurance that the cost of the Alterations will be paid when due, and reimbursement of any costs incurred by Buyer in responding to Seller's request or inspecting such Alterations. Any such Alterations performed by Seller shall be performed in accordance with all Applicable Laws and Requirements, including any and all necessary permits and approvals to be obtained from Buyer. Seller agrees to provide Buyer with sufficient advance notice of any proposed Alterations to allow the coordination and consideration by Buyer of the construction schedule for such Alterations. Notwithstanding the foregoing, Seller's routine repair, replacement, or maintenance of the equipment components of the Generating Facilities shall not require Buyer's consent.

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure Events

- (a) Excuse. Subject to Section 8.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Output) if such delay or failure is due to a Force Majeure Event, but only to the extent that:
- (i) Such Force Majeure Event is not attributable to fault or negligence or action or inaction on the part of that Party;

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- (ii) Such Force Majeure Event is caused by factors beyond that Party's reasonable control; and
 - (iii) Despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.
- (b) "Force Majeure Event" may include, subject to this section:
- (i) acts of Nature such as storms, floods, lightning and earthquakes;
 - (ii) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
 - (iii) Utility Transmission System outage or failure not caused by Seller or Seller activities;
 - (iv) war, riot, acts of a public enemy or other civil disturbance;
 - (v) strike, walkout, lockout or other significant labor dispute; or
 - (vi) theft, vandalism, accidents, or construction related power interruptions and mechanical moves
 - (vii) curtailment by the ISO, or its successor, but only to the extent that the ISO declares a "Force Majeure" under the ISO Tariff.
- (c) Exclusion. "Force Majeure Event" does not include the following:
- (i) economic hardship of either Party;
 - (ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Section 9.1;
 - (iii) failure or delay in the granting of Permits;
 - (iv) failures or delays by the Transmission Provider or the ISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement;
 - (v) curtailment or interruption of transmission services, other than by the ISO where the ISO declares a "Force Majeure" under the ISO Tariff; or
 - (vi) insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event

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8.2 Conditions

- (a) In addition to the conditions set forth in Section 8.1(a) above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:
 - (i) provides prompt notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
 - (ii) exercises all reasonable efforts to continue to perform its obligations under this Agreement;
 - (iii) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;
 - (iv) exercises all reasonable efforts to mitigate or limit damages to the other Party; and
 - (v) provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

8.3 Termination Due To Force Majeure Event

In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of 180 consecutive or non-consecutive days or more (whether full or partial days), the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days written notice at any time during the Force Majeure Event.

ARTICLE 9: TERMINATION FOR CONVENIENCE

9.1 Buyer's Option to Terminate for Convenience With Payment Obligation

The Buyer shall have the option, in its sole discretion, to terminate this Agreement, at any time during the Term, for convenience and without cause, subject to this Article. Such right of termination for convenience shall apply separately to each Site. The Buyer shall exercise this option by giving Seller written notice of termination. The notice shall specify the Site and date on which termination shall become effective.

9.2 Seller's Obligations upon Notice of Termination for Convenience

Upon receipt of the notice, Seller shall commence and perform, with diligence, all actions necessary on the part of Seller to effect the termination of this Agreement on the date specified by the Buyer and to minimize the liability of Seller and Buyer to third parties as a result of termination. All such actions shall be subject to the prior approval of the Buyer. Such actions shall include, without limitation:

- (a) Halting the performance of all services and other work under this Agreement on the Site(s) and date(s) and in the manner specified by Buyer

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- (b) Not placing any further orders or subcontracts for materials, services, equipment or other items for the Site(s) noticed for termination.
- (c) Terminating all existing orders and subcontracts for the Site(s) noticed for Termination.
- (d) At the Buyer's direction, assigning to the Buyer any or all of Seller's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Buyer shall have the right, in its sole discretion, settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (e) Subject to Buyer's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (f) Completing performance of any services or work that Buyer designates to be completed prior to the date of termination specified by the Buyer.
- (g) Taking such action as may be necessary, or as the Buyer may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Seller and in which Buyer has or may acquire an interest.

9.3 Seller's Invoice upon Termination for Convenience

Within 90 days after the specified termination date, Seller shall submit to Buyer an invoice, which shall include adequate backup documentation including relevant invoices and purchasing orders, and which shall set forth, if termination occurs after the Preliminary Requirements are completed but before the Actual Commercial Operation Date, the following:

- (a) the reasonable cost to Seller, without profit, for all services and other work undertaken by Seller to develop and construct the Generating Facilities prior to the specified termination date, for which services or work Buyer has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Seller's direct costs for services or other work. Any overhead allowance shall be separately itemized. Seller may also set forth the reasonable cost of preparing the invoice;
- (b) the reasonable cost to Seller for materials or equipment that has been procured for construction of the Generating Facilities;
- (c) the reasonable cost to Seller of handling materials or equipment returned to the Seller, delivered to the Buyer or otherwise disposed of as directed by the Buyer;
- (d) a deduction for the cost of materials and equipment to be retained by Seller, amounts realized from the sale of materials and equipment and not otherwise recovered by or credited to Buyer, and any other appropriate credits to Buyer against the cost of the services or other work; and
- (e) the total payment to which the Seller believes it is entitled to from Buyer in accordance with Sections 9.3 and 9.4 and the rest of the Agreement set forth in sufficient detail for Buyer to recreate the calculations and relate them to the requirements of this Agreement.

9.4 Buyer's Payment Obligation

Buyer's payment obligation shall be as follows depending on the status of development of the Generating Facilities when the Buyer gives written notice of termination:

- (a) If Buyer gives notice of termination before the Preliminary Requirements are met, Buyer shall refund the amount remaining on deposit with Buyer for Buyer's costs and inspection, less all expenses incurred by Buyer to the date of termination.
- (b) If Buyer gives notice of termination after the Preliminary Requirements are met but before the Actual Commercial Operation Date, Buyer shall be liable for Seller's documented costs

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as set forth in Sections 9.3 and Buyer shall refund the amount remaining on deposit with Buyer for Buyer's costs and inspection, less all expenses incurred by Buyer to the date of termination.

- (c) If Buyer gives notice of termination after the Actual Commercial Operation Date, Buyer's payment obligation shall be limited to (1) the sum of (A) the expected payment (calculated as set forth below for the Output of the Generating Facilities from the date of termination until the date on which the Buyer next had the option to exercise the Buyout Option (pursuant to Article 2); (B) if applicable, any penalties paid by the Seller to the Internal Revenue Service connected with a forfeiture of the ITC or its extension or replacement, due to a termination for convenience prior to ten (10) full years from the Actual Commercial Operation Date, and (C) the Buyout Payment per Article 2 that would have applied on the date on which the Buyer next had a termination option under Article 14 minus (2) the cost of materials and equipment retained by Seller and amounts realized from the sale of materials and equipment and not otherwise recovered by or credited to the Buyer.

The expected payment for the Output of the Generating Facilities shall be calculated as:

- (A) the applicable Contract Price multiplied by
- (B) the Expected Annual Contract Quantity multiplied by
- (C) a fraction which represents (1) the number of days between the date of termination and the date on which the Buyer next had a termination option under Article 14 divided by (2) 360.

9.5 Non-Recoverable Costs

In no event shall Buyer be liable for costs incurred by Seller or any of its subcontractors after the termination date specified by Buyer, except for those costs specifically enumerated and described in the immediately preceding sections 9.3 and 9.4. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or specifically authorized under Article 9.

9.6 Deductions

In arriving at the amount due to Seller under this Article, Buyer may deduct: (1) all payments previously made by Buyer for work or other services covered by Seller's final invoice; (2) any claim which Buyer may have against Seller in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding Section 10.5; and (4) in instances in which, in the opinion of Buyer, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Buyer's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

9.7 Removal of Personal Property and the Generating Facilities

Upon termination for convenience, Seller shall remove all of its personal property from the Site, including, any materials, equipment and, if it has been constructed, the Generating Facilities. In

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addition, the Seller shall comply with all the requirements of the Lease for the return of the Site to its owner. This subsection shall survive termination of this Agreement.

ARTICLE 10: DISPUTE RESOLUTION

- 10.1** Buyer and Seller shall negotiate in good faith in event of any dispute during the performance of this Agreement. If the dispute cannot be resolved between the Buyer's Project Manager and the Seller's Project Manager after 2 days of negotiations, at either the Buyer's or Seller's option, the matter may be promptly escalated to the next level of command within each party's organization. If the dispute or problem cannot be resolved within five (5) additional business days, the matter shall be promptly escalated to the CEO level of the Buyer and director of the Seller who shall attempt to resolve the dispute within five (5) business days.
- 10.2** Notwithstanding anything to this contrary, this Article is not intended to limit or restrict the rights of either party to seek any judicial remedy.

ARTICLE 11: DEFAULT & REMEDIES

11.1 Events of Default Generally.

An Event of Default shall occur under this Agreement upon the occurrence of any of the following events (severally "Event of Default" and collectively "Events of Default"):

- (a) Seller Schedules and/or delivers to Buyer, without Buyer's consent, energy or other product from a resource other than the Generating Facilities specified in this Agreement; or
- (b) Seller fails for any reason, including as a result of a Force Majeure Event, to Schedule and/or deliver at least one-half of the Expected Annual Contract Quantity during a Contract Year; or
- (c) Seller fails to satisfy the credit requirements set forth in Article XX of this Agreement; or
- (d) Seller sells or transfers Output to any Person other than Buyer; or
- (e) Seller shall have failed to pay, when due, any rent, fee, charge or obligation of Seller requiring the payment of money under the terms of this Agreement; or
- (f) Seller shall have failed to maintain any insurance required pursuant to this Agreement; or
- (g) Seller shall have failed to achieve Commercial Operation Date by the Expected Commercial Operation Date as such deadline is established pursuant to Article 3.
- (h) Any representation or warranty made by Seller hereunder shall have been false or misleading in any material respect; or
- (i) Seller shall have made a general assignment of its assets for the benefit of its creditors without prior written approval by Buyer; or

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- (j) Seller shall have assigned or otherwise transferred its interest in this Agreement in violation of the provisions contained in this Agreement whether voluntarily or by operation of law; or
- (k) Seller shall have failed to maintain continuous operations at any Project Site for any thirty (30) consecutive days, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Premises; or
- (l) A court shall have made or entered any decree or order: (i) adjudging Seller to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of Seller or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of Seller in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of Seller and such decree or order shall have continued for a period of sixty (60) days; or (v) Seller shall have voluntarily submitted to or filed a petition seeking any such decree or order; or
- (m) The sequestration or attachment of or execution or other levy on Seller's interest in this Agreement or the Premises or any improvements located thereon shall have occurred and Seller shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such levy, whichever first occurs; or
- (n) The occurrence of any act or omission on the part of Seller which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for Seller to lawfully conduct the operations which Seller is required or permitted to conduct on the Premises or on the Site; or
- (o) Any lien shall be filed against the Premises because of any act or omission of Seller, and shall not be discharged or contested by Seller in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice thereof by Buyer; or
- (p) An Event of Default by Seller under one of the Lease(s); or
- (q) Seller shall have failed to perform any term, covenant, or condition of this Agreement to be performed by Seller, except those referred to in the immediately preceding subparagraphs, and Seller shall have failed to cure the same within thirty (30) days after written notice from Buyer, provided, however, Buyer may give Seller additional time to cure at Buyer's option. Buyer and Seller shall attempt to resolve all such disputes pursuant to Article 10's dispute resolution procedure, provided however, nothing shall prejudice Buyer's rights and remedies in the event that Seller fails to cure within the 30-day period or within any other period granted by Buyer.

11.2 Termination for Default and Other Remedies

- (a) Termination for Default. In the event of default, the non-defaulting Party may terminate the Agreement by notifying the defaulting Party in writing of (i) the decision to terminate; and (ii) the effective date of the termination. In the event of termination of the Agreement for an Event of Default under the Lease, this Agreement will terminate on the same date as the date of the termination of the Lease.

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- (b) Remedies. For all claims, causes of action and damages with respect to an Event of Default, in addition to the right to termination under Section 11.2(a), the non-defaulting party shall be entitled (1) to foreclose upon, or otherwise employ, any security provided by the defaulting Party, (2) to recover actual damages allowed by law, and (3) to seek equitable remedies including specific performance of all or any part of this Agreement unless otherwise limited by this Agreement. In addition, Buyer shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Seller any Event of Default; Seller shall pay to Buyer on demand all costs and expenses incurred by the Buyer in effecting such cure, with interest thereon from the date of incurrence at the Interest Rate. Buyer shall have the right to offset from any amounts due to Seller under this Agreement or any other agreement between Buyer and Seller all damages, losses, costs or expenses incurred by Buyer as a result of such Event of Default and any liquidated damages due from Seller pursuant to the terms of this Agreement or any other agreement. Neither the enumeration of Events of Default nor the termination of this Agreement by a non-defaulting Party shall limit the right of a non-defaulting Party to rights and remedies available at law or in equity. Except as otherwise specifically and expressly provided herein, all remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

11.3 Limitation

- (a) Except as otherwise specifically and expressly provided in this Agreement, Buyer shall not be liable to Seller under this Agreement for any indirect, special or consequential damages, including loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its customers or members to which service is made.
- (b) Under no circumstances shall the non-defaulting Party be required to make a termination payment or any other payment to the defaulting Party (except for payments due under this Agreement for performance prior to termination).

11.4 Effect of Termination - Survival of Obligations

- (a) Removal and Restoration. Unless the Parties otherwise mutually agree in writing, upon termination for any reason other than a Buyout in accordance with Article 14, or upon expiration of this Agreement, Seller shall remove all of its property from the Sites within ninety (90) days of such termination or expiration, including any materials, equipment and, if it has been constructed, the Generating Facilities. In addition, the Seller shall comply with all the requirements of the Lease for the remediation and return of the Sites to its owner.
- (b) Abandonment. If Seller has an obligation to remove the Generating Facilities from the Sites and remediate the Sites due to the termination or expiration of this Agreement, but Seller and/or its Lender(s) fails to complete its removal and remediation obligations within one hundred and twenty (120) days of such termination, then any part of the Generating Facilities and all personal property of Seller not removed from the Sites within one hundred twenty (120) days after such termination of this Agreement shall be deemed abandoned by Seller shall become the property of Buyer, and Buyer may, at its option, remove and warehouse or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion.

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- (c) Survival of Obligations. The following rights, obligations or provisions shall survive termination or expiration of this Agreement:
- (i) obligations by one Party to the other for payment of any amounts, or for performance of any duties, that have accrued or arose prior to, or have directly resulted from, the expiration or termination of this Agreement;
 - (ii) indemnity obligations pursuant to the Agreement, which shall survive to the full extent of the statute of limitations period applicable to any third party claim;
 - (iii) limitation of liability provisions pursuant to the Agreement;
 - (iv) for a period of four (4) years after the expiration or termination date, the right to dispute an invoice or
 - (v) the obligations under Section [TBD].

11.5 Indemnification, Assumption of Risk & Waiver

- (a) Seller, for and on behalf of its directors, officers, employees and agents, covenants and hereby agrees to indemnify, defend, protect and hold harmless Buyer, its officers, employees, contractors and agents, from and against any and all claims, demands, damages, obligations, liabilities, losses, costs, expenses, penalties, suits or judgments, at any time received, incurred or accrued by Buyer, its officers, agents, employees, contractors or members of the public using Generating Facilities, arising out of or resulting in whole or in part from any act (or failure to act) of Seller, its officers, employees, contractors, agents, permittees or invitees, or which results from their noncompliance with any Laws respecting the condition, use, occupation or safety of the Generating Facilities or any part thereof, or which arises from Seller's activities or which arises from Seller's failure to do anything required under this Agreement, except as may arise from the sole active negligence or the willful misconduct of Buyer, its officers, employees or agents. Buyer's rights hereunder shall arise notwithstanding that principles of joint, several or concurrent liability or comparative negligence, might otherwise impose liability on Buyer pursuant to statutes, ordinances, regulations or other Laws. All of Seller's obligations under this Section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement. In an action or claim against Buyer in which Seller is defending Buyer, Buyer shall have the right to approve legal counsel providing Buyer's defense. The indemnification obligations of Seller shall include the obligation of Seller to defend, indemnify, protect and hold harmless Buyer, its officers, agents or employees, from and against fines, costs, claims, damages, obligations, suits, judgments, penalties, proceedings, causes of action, losses, liabilities or costs arising under the Americans with Disabilities Act, which arise from Seller's activities under this Agreement.
- (b) Seller agrees to and covenants that it shall voluntarily assume any and all risk of loss, damage or injury to the person or property of Seller, its directors, officers, employees, agents, and contractors which may occur in, on, or about the Project Sites at any time and in any manner, except such loss, injury, or damage as may be caused by the sole active negligence or the willful misconduct of Buyer, its officers, employees or agents.
- (c) Seller, as a material part of the consideration to be rendered to Buyer under this Agreement, hereby waives all claims or causes of action against Buyer, its officers, agents, contractors or employees which it may now or hereafter have for damage to its operations (including, without limitation, any interruption thereof), or to goods, wares, merchandise or other property on or about the Project Sites, and for injuries or death to persons on or about the Project Sites, from any cause or causes arising at any time, except as may arise from

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the sole active negligence or willful misconduct of Buyer, its officers, agents or employees. By way of example and not limitation, save and except as arises out of the sole active negligence or the willful misconduct of Buyer, its officers, agents, contractors or employees, Seller hereby waives any and all claims or causes of action which it may now or hereafter have against Buyer, its officers, agents, contractors or employees (i) for loss, injury or damage sustained by reason of any deficiency, impairment and interruption of any water, electrical, gas, plumbing, air conditioning or sewer service or system serving any portion of the Site; (ii) for any loss, injury or damage arising or resulting from any negligent act or omission of any other contractor or occupant of the Project Sites, or any person who uses the Project Sites with or without the authorization or permission of Buyer; and (iii) for any loss or damage to the property of, or injury or damage to Seller its officers, agents, employees, contractors, sub-Sellers or any other person whomsoever, from any cause or causes arising at any time because of Seller's uses or occupancy of Project Sites, or its operations thereon.

- (d) Seller shall, at its own expense, indemnify, defend, settle, and hold harmless the Buyer and its agencies against any claim or potential claim that any service, technology or good provided under this Agreement, or Buyer's use thereof, infringes any patent, trademark, copyright or other intellectual property rights, including trade secret rights. Seller shall pay all costs, damages and attorneys' fees that a court awards as a result of any such claim.
- (e) Seller shall reimburse Buyer for all costs incurred in enforcing indemnification provisions in this Agreement.

11.6 Buyer's Right to Operate in the Event of Seller's Default

- (a) If (i) Seller fails to achieve (A) the Commercial Operation Date set forth in the Milestones, or (B) a revised estimated Commercial Operation Date that has received written approval by the Buyer, or (ii) an Event of Default under Article 11 occurs, then the Buyer or its designee may, but shall not be obligated to, step-in and assume operational control from Seller of the Generating Facility. The Buyer, its employees, contractors and designees shall have the unrestricted right to enter the Generating Facility to the extent necessary to operate the Generating Facility. Notwithstanding the foregoing, Seller shall not be excused from any obligation or remedy available to the Buyer as a result of the Buyer's operation of, or election not to operate, the Generating Facility. The Buyer shall pay Seller the applicable Base Contract Price or Adjusted Contract Price for Output provided hereunder, less any costs incurred by the Buyer to operate the Generating Facility. Upon the Buyer's satisfaction that Seller has the ability to operate the Generating Facility in accordance with this Agreement, Seller shall resume operational control.

ARTICLE 12: REPRESENTATIONS, WARRANTIES AND COVENANTS

12.1 Seller's Representations, Warranties and Covenants

Seller represents, warrants and covenants to the Buyer that as of the date of execution of this Agreement:

- (a) Seller is duly organized and validly existing as a [Seller's business registration] under the laws of [State of Registration], and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such

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qualification necessary;

- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part;
- (c) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (d) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;
- (e) Seller will deliver to Buyer at the Delivery Point the Output free and clear of all liens, security interests, claims and encumbrances or any interest therein, or thereto, by any Person.
- (f) Prior to conveyance to Buyer, Seller holds and will hold throughout the Term, the rights to all Environmental Attributes, which it has conveyed and has committed to convey to Buyer hereunder; and
- (g) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected.

12.2 Seller's Additional Representations, Warranties and Covenants

- (a) Seller warrants, represents and covenants that all of its operating and maintenance personnel shall be adequately qualified and trained throughout the term of the Agreement.
- (b) Seller represents, warrants and covenants that any goods and/or services furnished under this Agreement shall be covered by the most favorable commercial warranties that Seller gives to any of its customers for the same or substantially similar goods and/or services. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to Buyer by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.
- (c) Seller expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the Buyer, in compliance with all applicable federal, state and local laws and regulations.
- (d) Seller warrants that all services shall strictly conform to the County's requirements.

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- (e) During the provision of goods and services, Seller may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Seller's standard warranties or other rights and warranties that the Buyer may have or obtain.
- (f) Seller covenants to maintain and repair Project Sites if such maintenance and repairs are necessary as a result of Sellers' authorized or permitted use, including without limitation, the repair of any roofs to the reasonable satisfaction of Buyer.

12.3 Buyer Representations and Warranties

Buyer represents and warrants to Seller that as of the Effective Date of this Agreement:

- (a) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part; and
- (b) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and
- (c) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to result in any impairment of the Buyer's ability to perform its obligations under this Agreement. Seller and Buyer further understand and agree that the Buyer is entering into this Agreement in its capacity as a purchaser of electric power. Nothing in this Agreement shall limit in any way Seller's obligation to obtain any required approvals from departments, boards, commissions or governmental entities having jurisdiction over this Agreement. By entering into this Agreement, Buyer is in no way modifying Seller's obligation to cause the Generating Facilities to be installed and operated in accordance with all Requirements of Law.

ARTICLE 13: ASSIGNMENT AND FINANCING

13.1 Assignment

- (a) Seller shall not assign, sublease, convey, sell, pledge, hypothecate, encumber by deed of trust, mortgage, or other instrument, or otherwise transfer this Agreement, the Premises or any part thereof, or any rights of Seller hereunder, whether voluntarily or by operation of law, without the prior written consent of Buyer.
- (b) A transfer within the meaning of this Section shall include, but is not limited to the following: (i) the incorporation of an individual Seller and the transfer of Seller's rights hereunder to the corporation which is not wholly owned by Seller; (ii) in the event that Seller is a partnership, incorporation of Seller and transfer of Seller's rights hereunder to the corporation, or the withdrawal or addition of any partner to Seller's partnership; (iii) in the event that Seller consists of co-Sellers, the incorporation of Seller and transfer of its

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rights hereunder to the corporation, or the voluntary or involuntary transfer by any one or more co-Sellers of his, her or its rights hereunder to his, her or its co-Seller or to a third person; (iv) in the event that Seller is a corporation, the change in the ownership of fifty percent (50%) or more of the capital stock of Seller; and (v) in the event that Seller is an unincorporated association, the incorporation of Seller and the transfer of its rights hereunder to the corporation, or the change in fifty percent (50%) or more of the membership of the association.

- (c) Buyer may require payment by Seller of any processing fee established by Buyer pursuant to a resolution or ordinance for reviewing the proposed transfer and preparing any documents in connection therewith. Seller's failure to provide Buyer with full, complete, and necessary information, or to pay the processing fee, shall be sufficient cause for Buyer to deny consent to, or to refuse to review, the proposed transfer.
- (d) The consent of Buyer to any transfer described in this Section shall not relieve Seller of its obligation to obtain the further consent of Buyer for any subsequent transfer.
- (e) Any attempt to transfer (as defined above) without the consent of Buyer shall be void, and shall constitute an Event of Default.

ARTICLE 14: OTHER TERMS & CONDITIONS

14.1 NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

Buyer

Name:
Title:
Address 1:
Address 2:
City:
State:
Zip:
Phone:

Seller

Name:
Title:
Company:
Address 1:
Address 2:
City:
State:
Zip:
Phone:

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Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

14.2 COMPLIANCE WITH ALL LAWS

Seller shall at all times comply with all applicable laws, ordinances, rules and regulations. Seller shall keep itself fully informed of Buyer's charter, codes, ordinances and regulations and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with all applicable local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Seller shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act, etc. and the standards and regulations issued there under.

14.3 NO DEDICATION

Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Generating Facilities or any portion thereof to the public or to any portion thereof.

14.4 NON-WAIVER OF RIGHTS

Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

14.5 HEADINGS

All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

14.6 NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to create rights in, or to grant remedies to, any third party (other than a permitted successor or assignee bound to this Agreement) as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

14.7 FORWARD CONTRACT

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

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14.8 GOVERNING LAW

This Agreement is made in the State of California and shall be interpreted and governed by the laws of the State of California without regard to conflict of law principles.

14.9 VENUE

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the County of Santa Clara or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San Jose, California.

14.10 NATURE OF RELATIONSHIP

- (a) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and the Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. A Party shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.
- (b) Seller shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of Buyer. Seller shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the Buyer and Seller. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of Buyer, nor shall any such person be entitled to any benefits available or granted to employees of the Buyer.
- (c) Seller shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Seller's performing services and work, or any agent or employee of Seller providing same.
- (d) Any terms in this Agreement referring to direction from Buyer shall be construed as providing for direction as to policy and the result of Seller's work only, and not as to the means by which such a result is obtained. Buyer does not retain the right to control the means or the method by which Seller performs work under this Agreement.
- (e) Payment of Taxes and Other Expenses. Should Buyer, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Seller is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Seller which can be applied against this liability). Buyer shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Seller for the Buyer, upon notification of such fact by Buyer, Seller shall promptly remit such amount due or arrange with Buyer to have the amount due withheld from future payments to Seller under this Agreement (again, offsetting any amounts already paid by Seller which can be applied as a

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credit against such liability).

- (f) A determination of employment status pursuant to the 14.10 (e) shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Seller shall not be considered an employee of Buyer. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Seller is an employee for any other purpose, then Seller agrees to a reduction in the Buyer's financial liability so that Buyer's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Seller was not an employee.

14.11 NO SUBCONTRACTING BY SELLER WITHOUT WRITTEN BUYER APPROVAL

Seller is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by the Buyer in writing. Seller shall be responsible for directing the work of any approved subcontractors and for any compensation due to any approved subcontractors. Seller shall ensure that all Seller subcontractors comply with this Agreement and shall be responsible for such compliance. Seller shall require any or all subcontractors to sign an agreement requiring compliance with this Agreement. Buyer shall be the third party beneficiary of such agreement(s). However, Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to subcontractors.

14.12 GOOD FAITH & FAIR DEALING

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: (i) wherever the Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

14.13 SEVERABILITY

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

14.14 COUNTERPARTS

This Agreement may be executed in two or more 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.

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14.15 COOPERATION

The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

14.16 NECESSARY ACTS AND FURTHER ASSURANCES

The Seller shall at its own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

14.17 TIME OF THE ESSENCE

Time is of the essence in performance by the Seller.

14.18 CONSTRUCTION

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.

14.19 ENTIRE AGREEMENT, INTEGRATION/MERGER CLAUSE

This Agreement and the Lease, together with all exhibits attached hereto, constitute the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.

14.20 NON-DISCRIMINATION

Seller shall comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Seller shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Seller discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

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14.21 NUTRITION/BEVERAGE CRITERIA

Seller shall not use County funds to purchase beverages that do not meet the County's nutritional beverage criteria. The six categories of nutritional beverages that meet these criteria are (1) water with no additives; (2) 100% fruit juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container); (3) dairy milk, non-fat, 1% and 2% only, no flavored milks; (4) plant derived (i.e., rice, almond, soy, etc.) milks (no flavored milks); (5) artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (teas, electrolyte replacements); and (6) other non-caloric beverages, such as coffee, tea, and diet sodas. These criteria may be waived in the event of an emergency or in light of medical necessity.

14.22 NON-EXCLUSIVE CONTRACT

This Agreement does not establish an exclusive contract between the Buyer and the Seller for the purchase of electricity or power or any services. The Buyer expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide Electricity, products, support and services; the right to request proposals from others with or without requesting proposals from the Seller; and the unrestricted right to bid any such product, support or service.

14.23 MODIFICATION

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties.

14.24 HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the Buyer in connection with this Agreement is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Contractor must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

14.25 BUDGETARY CONTINGENCY

Performance and/or payment by the Buyer pursuant to this Agreement is contingent upon the appropriation of sufficient funds by the Buyer for services covered by this Agreement. If funding is reduced or deleted by the Buyer for services covered by this Agreement, the Buyer may, at its option and without penalty or liability, terminate this Agreement or offer an amendment to this Agreement indicating the reduced amount.

14.26 DISENTANGLEMENT

Seller shall cooperate with Buyer and Buyer's other Sellers to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Seller shall cooperate with Buyer's efforts to ensure that there is no interruption of Electricity and no

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adverse impact on the provision of services or Buyer's activities. Seller shall return to Buyer all Buyer assets or information in Seller's possession. Seller shall deliver to Buyer or its designee, at Buyer's request, all documentation and data related to Buyer, including, but not limited to, the Buyer Data and client files, held by Seller, and Seller shall destroy all copies thereof not turned over to Buyer, all at no charge to Buyer.

14.27 ACCOUNTABILITY

Seller will be the primary point of contact and assume the responsibility of all matters relating to the Agreement, including those involving the manufacturer and/or deliverer and/or any subcontractor, as well as payment issues. If issues arise, the Seller must take immediate action to correct or resolve the issues.

14.28 CONFLICT OF INTEREST

Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

14.29 DAMAGE AND REPAIR BY SELLER

Any and all damages caused by Seller's negligence or operations shall be repaired, replaced or reimbursed by Seller at no charge to the Buyer. Repairs and replacements shall be completed with _____ hours of the incident unless the Buyer requests or agrees to an extension or another time frame. The cleanup of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Seller's vehicles or during performance shall be responsibility of the Seller. All materials must be cleaned up in a manner and time acceptable to Buyer (completely and immediately to prevent potential as well as actual environmental damage). Seller must immediately report each incident to the Buyer's Director of Facilities and Fleet Department. Damage observed by Seller, whether or not resulting from Seller's operations or negligence shall be promptly reported by Seller to Buyer. Buyer may, at its option, approve and/or dictate the actions that are in Buyer's best interests.

14.30 ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS

Seller shall maintain financial records adequate to show that Buyer funds paid were used for purposes consistent with the terms of the contract between Seller and Buyer. Records shall be maintained during the terms of the Agreement and for a period of three (3) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract.

14.31 COOPERATION WITH REVIEW

Seller shall cooperate with Buyer's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option of the Buyer. Seller shall make itself available onsite to review the progress of the project and Agreement, as requested by the Buyer, upon reasonable advanced notice. Seller agrees to extend to the Buyer or his/her designees and/or designated auditor of the Buyer, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Buyer, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained. The Seller shall be responsible for receiving,

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replying to, and complying with any audit exceptions set forth in Buyer audits. The Seller shall pay to Buyer the full amount of any audit determined to be due as a result of Buyer audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

14.32 AUDIT RIGHTS UNDER STATE LAW

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor.

14.33 DEBARMENT

Seller represents and warrants that it, its employees, Sellers, or agents are not suspended, debarred, or excluded from, or ineligible for, receiving Federal or state funds. Seller must within 30 calendar days advise the Buyer if, during the term of this Agreement, the Seller becomes suspended, debarred or excluded from, or ineligible for, receiving Federal or state funds.

14.34 CALIFORNIA PUBLIC RECORDS ACT

The Buyer is a public agency subject to the disclosure requirements of the California Public Records Act (“CPRA”). If Seller proprietary information is contained in documents or information submitted to Buyer, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, the Buyer will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before the Buyer’s deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Buyer’s deadline for responding to the CPRA request, Buyer may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Buyer harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys fees) that may result from denial by Buyer of a CPRA request for information arising from any representation, or any action (or inaction), by the Seller.

14.35 DEBT LIABILITY DISCLAIMER

The Buyer, including, but not limited to, any source of funding for Buyer, any General Fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the Seller or its heirs, successors or assigns. The Buyer shall not be liable for and shall be held harmless and indemnified by Seller for any claims or damages arising out of any other contract to which Seller is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by the Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the Seller. The Buyer and its agencies and divisions, including, has no obligation to defend or undertake the defense on behalf of the Seller or its heirs, successors or assigns.

14.36 COUNTY NO-SMOKING POLICY

Seller and its employees, agents and subcontractors, shall comply with the County’s No-Smoking Policy, as set forth in the Santa Clara County Board of Supervisors Policy Manual section 3.47 (as

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amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

14.37 USE OF BUYER’S NAME FOR COMMERCIAL PURPOSES

Seller may not use the name of the Buyer or reference any endorsement from the Buyer in any fashion for any purpose, without the prior express written consent of the Buyer as provided by the Director of Facilities and Fleet Department.

14.38 ACCOUNT MANAGER

Seller must assign an Account Manager to the Buyer to facilitate the contractual relationship, be fully responsible and accountable for fulfilling the Buyer’s requirements. Seller represents and warrants that such person will ensure that the Buyer receives adequate support, problem resolution assistance and required information on a timely basis.

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By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

[SIGNATURE BLOCK]

EXHIBITS INCORPORATED INTO AGREEMENT

- Exhibit 1 – Buyout Payment Form
- Exhibit 2 – Description of Generating Facilities (TO BE DEVELOPED WITH EACH PPA)
- Exhibit 3 – Sites Descriptions (TO BE DEVELOPED WITH EACH PPA)
- Exhibit 4 – Technical and Warranty Requirements
- Exhibit 5 – Engineering and Construction Requirements
- Exhibit 6 – Contract Price
- Exhibit 7 – Operations Forecasts, Scheduling Protocols, & Monitoring
- Exhibit 8 – Expected Contract Quantity Form
- Exhibit 9– Form of Attestation
- Exhibit 10 – Insurance Requirements
- Exhibit 11 – Lease Agreement