Board Energy Resources & Customer Services Committee Meeting and Special SMUD Board of Directors Meeting

Date: Wednesday, November 20, 2024

Time: Scheduled to begin at 6:00 p.m.

Location: SMUD Headquarters Building, Auditorium
6201 S Street, Sacramento, CA

Powering forward. Together.

SMUD®

AGENDA
BOARD ENERGY RESOURCES & CUSTOMER SERVICES COMMITTEE MEETING
AND SPECIAL SMUD BOARD OF DIRECTORS MEETING

Wednesday, November 20, 2024
SMUD Headquarters Building, Auditorium
6201 S Street, Sacramento, California
Scheduled to begin at 6:00 p.m.

This Committee meeting is noticed as a joint meeting with the Board of Directors for the purpose of compliance with the Brown Act. In order to preserve the function of the Committee as advisory to the Board, members of the Board may attend and participate in the discussions, but no Board action will be taken. The Energy Resources & Customer Services Committee will review, discuss and provide the Committee's recommendation on the following:

Virtual Viewing or Attendance:
Live video streams (view-only) and indexed archives of meetings are available at: http://smud.granicus.com/ViewPublisher.php?view_id=16

Zoom Webinar Link: Join Board Energy Resources & Customer Services Committee Meeting Here
Webinar/Meeting ID: 160 543 5392
Passcode: 599850
Phone Dial-in Number: 1-669-254-5252 or 1-833-568-8864 (Toll Free)

Verbal Public Comment:
Members of the public may provide verbal public comment by:

- Completing a sign-up form at the table outside of the meeting room and giving it to SMUD Security.
- Using the "Raise Hand" feature in Zoom (or pressing *9 while dialed into the telephone/toll-free number) during the meeting at the time public comment is called. Microphones will be enabled for virtual or telephonic attendees when the commenter's name is announced.

Written Public Comment:
Members of the public may provide written public comment on a specific agenda item or on items not on the agenda (general public comment) by submitting comments via email to PublicComment@smud.org or by mailing or bringing physical copies to the meeting. Email is not monitored during the meeting. Comments will not be read into the record but will be provided to the Board and placed into the record of the meeting if received within two hours after the meeting ends.

DISCUSSION ITEMS

1. Chad Adair

Discuss authorization of the Chief Executive Officer and General Manager to negotiate and execute the following:

a. A power purchase agreement with **Hatchet Ridge Wind, LLC**, for a 7-year term for 101.2 MW of renewable wind power at an annual approximate cost of $24 million, substantially in the form attached.
b. A power purchase agreement with **SunZia Wind PowerCo, LLC (SunZia)** for a 15-year term for 150 MW of renewable wind power at an annual approximate cost of $41 million, substantially in the form attached; and subsequent replacement power purchase agreement(s) with a **Pattern Energy, LLC**, subsidiary to address project investment capital needs, under substantially the same terms and conditions as the **SunZia** original power purchase agreement.

Presentation: 15 minutes
Discussion: 15 minutes

2. AJ Jacobs
Kirsten DePersis
Kelsey McFadyen

Discuss the monitoring report for **Strategic Direction SD-16, Information Management and Security**.
Presentation: 7 minutes
Discussion: 3 minutes

3. AJ Jacobs

Discuss proposed revisions to **Strategic Direction SD-16, Information Management and Security**.
Presentation: 3 minutes
Discussion: 2 minutes

INFORMATIONAL ITEMS

4. Public Comment

5. Brandon D. Rose

Summary of Committee Direction.
Discussion: 1 minute

ANNOUNCEMENT OF CLOSED SESSION AGENDA

1. **Threats to Public Buildings, Services and Facilities**.

   Pursuant to Section 54957 of the Government Code:

   Consultation with: Suresh Kotha, Chief Information Officer; Jose Bodipo-Memba, Chief Diversity Officer; Joe Schofield, Deputy General Counsel; AJ Jacobs, Director, Cybersecurity, and Kirsten DePersis, Director, Facilities, Security & Emergency Operations.

Members of the public shall have up to three (3) minutes to provide public comment on items on the agenda or items not on the agenda, but within the jurisdiction of SMUD. The total time allotted to any individual speaker shall not exceed nine (9) minutes.

Members of the public wishing to inspect public documents related to agenda items may click on the Information Packet link for this meeting on the smud.org website or may call 1-916-732-7143 to arrange for inspection of the documents at the SMUD Headquarters Building, 6201 S Street, Sacramento, California.

ADA Accessibility Procedures: Upon request, SMUD will generally provide appropriate aids and services leading to effective communication for qualified persons with disabilities so that they can participate equally in this meeting. If you need a reasonable auxiliary aid or service for effective communication to participate, please email Toni.Stelling@smud.org, or contact by phone at 1-916-732-7143, no later than 48 hours before this meeting.

SSS No.
ET&C 24-068

BOARD AGENDA ITEM
STAFFING SUMMARY SHEET

Committee Meeting & Date
ERCS - 11/20/2024
Board Meeting Date
November 21, 2024

TO		TO	
1.	Jon Olson	6.	Lora Anguay
2.	Bryan Swann	7.	Brandy Bolden
3.	Russell Mills	8.	Frankie McDermott
4.	Scott Martin	9.	**Legal**
5.	Suresh Kotha	10.	**CEO & General Manager**

Consent Calendar	X	**Yes**		**No** *If no, schedule a dry run presentation.*	**Budgeted**	X	**Yes**		**No** *(If no, explain in Cost/Budgeted section.)*

FROM (IPR)	DEPARTMENT	MAIL STOP	EXT.	DATE SENT
John Hansen	Energy Trading and Contracts	A404	6614	10/25/2024

NARRATIVE:

Requested Action: Authorize the Chief Executive Officer and General Manager, or his designee, to negotiate and execute the following:

a. A power purchase agreement with Hatchet Ridge Wind, LLC for a 7-year term for 101.2 MW of renewable wind power at an annual approximate cost of $24 million, substantially in the form attached.

b. A power purchase agreement with SunZia Wind PowerCo, LLC (SunZia) for a 15-year term for 150 MW of renewable wind power at an annual approximate cost of $41 million, substantially in the form attached; and subsequent replacement power purchase agreement(s) with a Pattern Energy, LLC subsidiary to address project investment capital needs, under substantially the same terms and conditions as the SunZia original power purchase agreement.

Summary: SMUD received non-binding indicative offers from Pattern Energy, LLC (Pattern) for the Hatchet Ridge Wind and SunZia Wind Projects in 2023. SMUD conducted an evaluation of the market and determined that these projects provided superior value and key solutions compared to available alternatives for meeting our 2030 Zero Carbon Plan and California Renewables Portfolio Standard (RPS) compliance. SMUD and Pattern negotiated mutually beneficial power purchase agreements (PPAs) under which SMUD will purchase the energy, capacity attributes, and Portfolio Content Category 1 Renewable Energy Credits (PCC1 RECs). The two PPAs are offered by Pattern as a package deal and are therefore contingent on each other.

a. Hatchet Ridge Wind Project, owned and operated by Hatchet Ridge Wind, LLC, is located in Northern California and is an existing wind facility interconnected to the California Independent System Operator Corporation (CAISO) grid. The renewable generation project has a capacity of 101.2 MW and will provide approximately 270,000 MWh annually. The contract start date for the PPA is December 14, 2025, and has a term of seven years. The approximate annual cost of the PPA is $24M.

b. SunZia Wind Project, owned and operated by SunZia Wind PowerCo, LLC, and the associated SunZia Transmission Project, are located in New Mexico and Arizona and will combine to create the largest clean energy infrastructure project in United States history at more than 3,500 MW split between a northern portion (SunZia North) and southern portion (SunZia South). SMUD's share of the overall project is 150 MW of capacity which will be part of the CAISO Balancing Authority Area and provide approximately 490,000 MWh annually. The PPA's expected commercial operation date is April 30, 2026, and has a term of 15 years. The approximate annual cost of the PPA is $41M.

Given the unique size of the SunZia Wind Project, Pattern intends to separate the project into different portions and sell all or a part of the ownership interests to an outside investor to facilitate capital needs

to finance the project. To support the sale, the PPA provides for SunZia Wind PowerCo, LLC the right to either (i) split the original PPA into two new PPAs, one with SunZia North and one with SunZia South (a "Bifurcation"), or (ii) replace the original PPA with one new PPA with either SunZia North or SunZia South (a "Transition"). New PPAs under a Bifurcation or a Transition would be with a separate subsidiary of Pattern Energy and under substantially the same terms and conditions as the SunZia original PPA. The original PPA will be terminated upon the effective date of the new PPA(s).

Board Policy: *(Number & Title)* Strategic Direction SD-2, Competitive Rates; Strategic Direction SD-7, Environmental Leadership; Strategic Direction SD-9, Resource Planning. This contract provides economic, carbon free generation supporting SMUD's Renewables Portfolio Standard (RPS) and 2030 Zero Carbon Plan.

Benefits: Competitively priced renewable energy that helps meet SMUD's renewable energy and carbon reduction goals under its 2030 Zero Carbon Plan and California Renewables Portfolio Standard compliance.

Cost/Budgeted:
a. The average annual cost for Hatchet Ridge is approximately $24 million.
b. The average annual cost for SunZia is approximately $41 million.

Alternatives: Find another source for renewable energy.

Affected Parties: Energy Trading & Contracts, Energy Settlements, Resource Planning, Commodity Risk Management, Treasury, and Legal.

Coordination: Energy Contracts

Presenter: Chad Adair, Manager, Energy Contracts

Additional Links:

SUBJECT	ITEM NO. *(FOR LEGAL USE ONLY)*
Hatchet Ridge Wind Project and SunZia Wind Project PPAs	

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Hatchet Ridge Wind, LLC

Buyer: Sacramento Municipal Utility District (SMUD)

Description of Facility: A wind-powered electricity generating facility with a nameplate capacity of 101.2 MW, as described in Exhibit A, as such facility may be modified under the terms of this Agreement.

Milestones:

Milestone	Date for Completion
Expected Contract Start Date	12/14/2025
Guaranteed Contract Start Date	12/31/2025
Outside Contract Start Date	2/1/2026

Delivery Term: The period for Product delivery will be from the Contract Start Date through December 1, 2032.

Guaranteed Capacity: 101.2 MW.

Contract Price: $[redacted]/MWh (flat) with no escalation.

Expected Energy: [redacted] MWh per Contract Year.

Product:

☒ Delivered Energy
☒ Green Attributes/Renewable Energy Credits (Portfolio Content Category 1) attributable to the Delivered Energy
☒ Capacity Attributes

Scheduling Coordinator: Seller/Seller Third Party.

Pre-CSD Security and Performance Security

Pre-CSD Security: $[redacted]/kW of Guaranteed Capacity.

Performance Security: $[redacted]/kW of Guaranteed Capacity.

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Exhibit E	Energy Replacement Damages Calculation
Exhibit F	[Reserved]
Exhibit G	Form of Installed Capacity Certificate
Exhibit H	Reserved
Exhibit I	Form of Letter of Credit
Exhibit J	Form of Buyer Limited Assignment Agreement
Exhibit K	Notices
Exhibit L	Operating Restrictions
Exhibit M	Principles of Renewable Energy Development
Exhibit N	Sample Settlements Worksheet

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

This Renewable Power Purchase and Sale Agreement ("**Agreement**") is entered into as of _____, 2024 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**."

RECITALS

WHEREAS, Seller owns and operates the Facility; and

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

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.12.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit E.

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

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

"**Approved Meter**" means a CAISO-approved revenue quality meter or meters, together with a CAISO-approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility net of Electrical Losses and Station Use.

"**Available Capacity**" means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.

"**Balancing Authority Area**" has the meaning set forth in the CAISO Tariff.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.8(a).

"**CAISO**" means the California Independent System Operator Corporation or any successor entity performing similar functions.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Instruction**" has the same meaning as "Operating Instruction" as defined in the CAISO Tariff.

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

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the Installed Capacity that may be used to satisfy resource adequacy obligations, including Resource Adequacy Benefits and Non-Resource Adequacy Capacity.

"**Capacity Attribute Shortfall**" means, for any calendar month, the difference, expressed in kW, between (i) the Guaranteed Capacity Attributes, *minus* (ii) the Capacity Attributes of the

Facility that are delivered to Buyer with respect to such month, *minus* (iii) any Deemed Delivered Capacity Attributes with respect to such month.

"**Capacity Attribute Damage Amount**" has the meaning set forth in Section 3.8(f)(i).

"**Capacity Attributes Guarantee Date**" shall mean the date that, in the CAISO's determination, the Facility is capable of delivering Capacity Attributes to Buyer.

"**Capacity Replacement Price**" means (a) the price actually paid for any replacement Capacity Attributes purchased by Buyer to mitigate Capacity Attribute Shortfall, plus costs reasonably incurred by Buyer in purchasing such replacement Capacity Attributes, or (b) absent a purchase of any replacement Capacity Attributes, the prevailing market price for such Capacity Attributes. The Buyer shall determine such market price by averaging quotes from (3) unaffiliated brokers; *provided, however*, if three (3) broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the Capacity Replacement Price shall be determined by averaging quotes provided by Buyer from two (2) unaffiliated brokers.

"**CEC**" means the California Energy Commission, or its successor agency.

"**CEC Certification and Verification**" means that the CEC has certified that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

"**Change of Control**" means any circumstance in which (a) in respect of Buyer, the Person that has ultimate control over Buyer ceases to have such ultimate control, and (b) in the case of Seller, the Ultimate Parent ceases to have control over Seller; provided that, for the avoidance of doubt, it shall not be a Change of Control of Seller if the Ultimate Parent, itself or together with other Persons that would meet the requirements of the definition of Permitted Transferee, retains either (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of Seller or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in Seller, or (b) the right to direct the policies or operations of Seller.

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

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

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

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Contract Start**" has the meaning set forth in Exhibit B.

"**Contract Start Date**" has the meaning set forth in Exhibit B.

"**Contract Term**" has the meaning set forth in Section 2.1.

"**Contract Year**" means a period of twelve (12) consecutive months, with the first Contract Year commencing on the Contract Start Date and each subsequent Contract Year commencing on the anniversary of the Contract Start Date.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement, and all reasonable expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement, excluding attorneys' fees.

"**Cover Sheet**" means the cover sheet to this Agreement.

"**COVID-19**" means the pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, or the efforts of a Governmental Authority to combat or mitigate such disease.

"**CPUC**" means the California Public Utilities Commission, or successor entity.

"**CPUC Decisions**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 19-02-022, 20-06-002, 20-06-031, and any other existing or subsequent decisions, resolutions or rulings related to the resource adequacy program or any successor program, as may be amended from time to time by the CPUC.

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

"**Curtailment Order**" means any of the following:

(a) the CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Instruction, to curtail deliveries of Energy from the Facility for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by a Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by a Transmission Provider due to scheduled or unscheduled maintenance on the Transmission Provider's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy at the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation or deliveries of Delivered Energy from the Facility pursuant to a Curtailment Order. Curtailment Period shall not include periods during which Seller reduces generation as a result of a Market Curtailment Period.

"**Damage Payment**" means the dollar amount that equals the amount of the Pre-CSD Security as set forth on the Cover Sheet less the amount of any Delay Damages paid by Seller to Buyer hereunder.

"**Day-Ahead Forecast**" means a non-binding estimate of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, for each hour of the immediately succeeding day, based upon, at Seller's option, (i) the CAISO VER forecast or (ii) a forecast prepared by the Third-Party Forecast Vendor using an industry-standard methodology that utilizes the potential generation of the Facility as a function of Available Capacity, wind speed and direction, wind turbine power curves and other pertinent data for the period of time, consistent with Prudent Operating Practice; provided that, for the avoidance of doubt, market conditions and pricing shall not be factored in such determination of the potential generation of the Facility.

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

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

"**Deemed Delivered Capacity Attributes**" has the meaning set forth in Section 3.8(e).

"**Deemed Delivered Energy**" means the amount of Energy, expressed in MWh, that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point due to Seller's reduction of generation during a Market Curtailment Period, which shall be (i) determined by Seller in a commercially reasonable manner using an industry-standard methodology that calculates the potential generation of the Facility delivered to the Delivery Point as a function of available capacity, actual meteorological conditions on the Site, including wind speed and direction, and wind turbine power curves and other pertinent data for the period of time, consistent with Prudent Operating Practice (with supporting information provided to Buyer), and (ii) accepted by Buyer, which acceptance shall not be unreasonably withheld or delayed.

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

"**Deficient Month**" has the meaning set forth in Section 4.8(e).

"**Delay Damages**" means an amount equal to (a) the Pre-CSD Security amount required hereunder, divided by (b) three hundred sixty five (365).

"**Delay Damages Payment**" has the meaning set forth in Exhibit B.

"**Delivered Energy**" means, in any Settlement Interval or Settlement Period, as applicable, (i) the Energy produced by the Facility and delivered to the Delivery Point as measured in MWh by the Approved Meter, net of all Electrical Losses and Station Use; *plus* (ii) all Replacement Energy delivered as part of prospectively delivered Replacement Product pursuant to Section 4.7(b)(i).

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

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

"**Disclosing Party**" has the meaning set forth in Section 18.2.

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

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

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, other than losses that are financially settled by Seller.

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

"**Energy**" means electrical energy, measured in MWh.

"**Energy Replacement Damages**" has the meaning set forth in Exhibit E.

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

"**Excess MWh**" has the meaning set forth in Section 3.3(d).

"**Expected Contract Start Date**" has the meaning set forth on the Cover Sheet.

"**Expected Energy**" means the quantity of Delivered Energy (with associated Green Attributes) that Seller expects to be able to deliver to Buyer during each Contract Year in the quantity specified on the Cover Sheet.

"**Facility**" means the energy generating facility described on the Cover Sheet and in Exhibit A.

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

"**Fitch**" means Fitch Ratings Ltd., or its successor.

"**Floor Price**" means zero dollars per MWh ($0/MWh); *provided*, for any period during which Seller is eligible to obtain and is actually obtaining PTCs, Floor Price shall mean the

Negative PTC Value; *provided further*, the Floor Price may be set lower than the amount set forth in this definition pursuant to Section 4.3(c).

"**Force Majeure Event**" has the meaning set forth in Section 10.1.

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Future Environmental Attributes**" means any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other Law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by a wind generation facility as opposed to from a conventional generation resource.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and WREGIS; *provided*, *however*, that "Governmental Authority," as such term is used in this Agreement in connection with Seller's obligations to comply with Law or bear Taxes, shall not include Buyer to the extent that Buyer's acts or omissions would impose incremental burdens on Seller or Seller's performance under this Agreement or limit or deprive Seller of any of Seller's rights or benefits under this Agreement.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Delivered Energy. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of

altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives associated therewith, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

"**Green Tag**" means a certificate or other instrument recognized by a Governmental Authority, with one Green Tag representing the Green Attributes associated with one (1) MWh of Energy generated by the Facility.

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

"**Guaranteed Capacity**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Capacity Attributes**" means all Capacity Attributes available from the Facility, expressed in kW, subject to reductions that may result from Planned Outages, Forced Facility Outages (not caused by Seller's fault or negligence), System Emergencies, Curtailment Orders, Force Majeure Event, or operation of the Facility consistent with the Operating Restrictions and Prudent Operating Practice.

"**Guaranteed Contract Start Date**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Energy Production**" has the meaning set forth in Section 4.7(a).

"**Imbalance Energy**" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

"**Indemnifiable Event**" has the meaning set forth in Section 16.1(a).

"**Indemnified Party**" has the meaning set forth in Section 16.1(a).

"**Indemnifying Party**" has the meaning set forth in Section 16.1(a).

"**Installed Capacity**" means the nameplate capacity of the Facility at the point of interconnection (which point of interconnection is specified in the Interconnection Agreement), as evidenced by a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto.

"**Inter-SC Trade**" has the meaning set forth in the CAISO Tariff.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the PTO's Transmission System, and pursuant to which any Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the PTO's Transmission System in order to meet the terms and conditions of this Agreement.

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

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"**Lender**" means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit (a) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, and (b) in a form substantially similar to the letter of credit set forth in Exhibit I, or as otherwise reasonably acceptable to the Party that is the beneficiary of the Letter of Credit.

"**Licensed Professional Engineer**" means either (i) DNV Energy USA, Inc., (ii) the independent engineer retained by the Lenders, or on their behalf under customary terms and conditions, in connection with a financing of the Facility, which engineer, or employee or principal thereof (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Facility, (c) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility other than as the independent engineer for the Lenders, and (d) is licensed in an appropriate engineering discipline for the required certification being made, or (iii) a person acceptable to Buyer in its reasonable judgment.

"**LMP**" means "Locational Marginal Price," which has the meaning set forth in CAISO Tariff.

"**Losses**" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" has the meaning set forth in Exhibit E.

"**Low Wind Period"** A period of time during which the Facility is expected to average hourly generation less than twenty seven (27) MWh.

"**Market Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which both the LMP in the Day-Ahead Market and the LMP in the Real-Time Market at the Delivery Point are less than the Floor Price; *provided* that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

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

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MW**" means megawatts measured in alternating current.

"**MWh**" means megawatt-hour measured in alternating current.

"**NERC**" means the North American Electric Reliability Corporation or any successor entity.

"**Negative PTC Value**" means the amount, on a dollar per MWh basis, equal to the PTC value that Seller is eligible to earn in respect of Delivered Energy from the Facility at the time of calculation, *multiplied by* negative one (-1).

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

"**Non-RA Capacity Termination**" has the meaning set forth in Section 2.5(a).

"**Non-Resource Adequacy Capacity**" means the resource adequacy benefits of a unit/resource that is qualified to provide resource adequacy (including Resource Adequacy Benefits) to Buyer in accordance with the resource adequacy rules established by the CAISO and the CPUC or the Buyer's governing board, as applicable, but which resource adequacy benefits have not been committed to any other entity for Resource Adequacy Benefits counting purposes

as part of a Supply Plan or for other applicable compliance reporting. For the avoidance of doubt, Non-Resource Adequacy Capacity is utilized by Buyer to serve as a supporting resource to firm Buyer's self-scheduled export transactions from the CAISO Balancing Authority Area, in order for such Non-Resource Adequacy Capacity to meet Buyer's resource adequacy obligations to its customers, as set by Buyer's governing board.

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service or electronic communication (including email or other electronic means).

"**Operating Restrictions**" means the operational characteristics of the Facility set forth in Exhibit L.

"**Outside Contract Start Date**" has the meaning set forth on the Cover Sheet; *provided*, the Outside Contract Start Date may be extended on a day-for-day basis for each day of delay to Contract Start caused by Buyer breach of or default under this Agreement.

"**Owner**" has the meaning set forth in Section 2.2.

"**Pacific Prevailing Time**" means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

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

"**Parties**" has the meaning set forth in the Preamble.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" has the meaning set forth in Section 4.7(a).

"**Performance Security**" means, at Seller's option (i) cash (ii) a Letter of Credit, and/or (iii) a surety bond, in the amount set forth on the Cover Sheet.

"**Permitted Extension**" has the meaning set forth in Exhibit B.

"**Permitted Transferee**" means an entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth plus unfunded capital commitments of not less than one [redacted] or a Credit Rating of at least [redacted] from S&P, [redacted] from Fitch, or [redacted] from Moody's; and

(b) At least [redacted] years of experience in the ownership and operations of power generation facilities with an aggregate nameplate capacity of at least [redacted], or has retained a third-party with such experience to operate the Facility.

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

"**Planned Outage**" means an outage or derate that has been scheduled by Seller in advance of one or more of the Facility's components that results in a reduction of the ability of the Facility to produce Energy and is consistent with Prudent Operating Practice.

"**Portfolio Content Category 1**" or "**PCC1**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"**Pre-CSD Security**" means, at Seller's option (a) cash and/or (b) a Letter of Credit, in the amount set forth on the Cover Sheet.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Production Tax Credits**" or "**PTCs**" means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Facility, is eligible.

"**Project**" has the same meaning as "Facility".

"**Prudent Operating Practice**" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the utility-scale wind energy industry for facilities of similar size, type and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practice is not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"**PTC Amount**" means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of energy from the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Market Curtailment Period or Buyer breach or default.

"**QRE**" has the meaning set forth for "Qualified Reporting Entity" in the WREGIS Operating Rules.

"**Real-Time Forecast**" has the meaning set forth in Section 4.4(e).

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

"**REC Price**" means the prevailing market price (expressed in $/MWh) for RECs meeting the requirements for Portfolio Content Category 1, determined by Buyer in a commercially reasonable manner by averaging quotes from three (3) unaffiliated brokers; *provided, however*, if three (3) broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the REC Price shall be determined by averaging quotes provided by Buyer from two (2) unaffiliated broker.

"**Receiving Party**" has the meaning set forth in Section 18.2

"**Recurring Certificate Transfers**" has the meaning set forth in the WREGIS Operating Rules.

"**Remedial Action Plan**" has the meaning in Section 2.5.

"**Renewable Energy Credit**" or **"REC"** has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

"**Replacement Energy**" means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has green attributes that have the same or comparable value as the energy produced by the Facility.

"**Replacement Green Attributes**" means Renewable Energy Credits meeting the RPS requirements for Portfolio Content Category 1.

"**Replacement Product**" means (a) Replacement Energy and (b) Replacement Green Attributes provided pursuant to Section 4.7.

"**Resource-Specific System Resource**" has the meaning set forth in the CAISO Tariff.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Capacity Attributes available from the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in the CAISO Tarriff or CPUC Decisions and any subsequent

CAISO Tariff or CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility, if any.

"**Resource Data Template**" has the meaning set forth in the CAISO Tariff.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"**Schedule**" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered in any given hour on any given day or days at a specified Delivery Point.

"**Scheduled Energy**" means the Energy from the Facility that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.8(a).

"**Serial Defect**" means failures or malfunctions of the Facility, or any portion thereof, arising from a failure or malfunction of no less than fifteen percent (15%) of the same or similar Facility equipment (or any portion thereof).

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

"**Settlement Period**" has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

"**Shared Facilities Agreement**" has the meaning set forth in Section 6.3.

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as may be updated by Seller no later than sixty (60) days after Seller's

delivery of the final certificate stating the Installed Capacity, substantially in the form attached as Exhibit G hereto.

"**Station Use**" means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"**Supply Plan**" has the meaning set forth in the CAISO Tariff.

"**System Emergency**" means any condition that: (a) requires, as determined and declared by a Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

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

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

"**Third-Party Forecast Vendor**" means (a) ENFOR A/S, UL Services Group LLC, Underwriters Laboratories LLC, Vaisala Group, Meteologica S.A., or (b) any other reputable third-party vendor that is registered to do business in California, experienced in providing and verifying wind energy generation forecasts, and not an Affiliate of Seller.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point, including CAISO and the Participating Transmission Owner.

"**Transmission System**" means the transmission facilities operated by the Transmission Provider(s), now or hereafter in existence, which provide energy transmission service upstream to or downstream from the Delivery Point.

"**Ultimate Parent**" means Pattern Energy Group LP.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8(e).

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. In addition, the confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, all indemnity obligations shall remain in full force and effect for one (1) year following termination of this Agreement, all audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement, and Buyer's obligation to return to Seller the Pre-CSD Security and/or Performance Security less any amounts drawn in accordance with this Agreement shall remain in full force and effect following the termination of this Agreement.

2.2 **Buyer Extension Offer**. No later than one (1) year prior to the conclusion of the Delivery Term, Seller may make a one-time good faith offer to Buyer, delivered via written Notice to Buyer("Extension Offer"), to purchase the Product following end of the Contract Term. Such Extension Offer shall (i) include Seller's proposed delivery term, contract price, and payment settlement mechanics; and (ii) specify that all other terms of such Extension Offer shall be materially similar as the terms set forth in this Agreement, other than any terms that Seller may

specifically set forth in such Extension Offer. If Buyer accepts such Extension Offer, in its sole discretion, within one (1) month following receipt of such Extension Offer, Seller and Buyer shall negotiate the terms of a binding agreement consistent with such Extension Offer for a period of three (3) months, during which period Seller shall not enter into any binding agreement with a third party for the sale of the output of the Facility. If the Parties have not executed a binding agreement consistent with such Extension Offer within such three (3) month period, either Party may elect to discontinue negotiations at any time thereafter, and Seller shall be free to enter into an agreement with one or more third parties for the purchase and sale of the output of the Facility, or any portion thereof, following the end of the Delivery Term. .

2.3 **Obligations Prior to Delivery Term**. Prior to commencement of the Delivery Term, Seller shall complete each of the following:

(a) Seller shall have delivered to Buyer a certificate from a Licensed Professional Engineer substantially in the form of Exhibit G;

(b) A Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) between CAISO and Seller shall have been executed and delivered and be in full force and effect, and a copy of such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has received the CEC Certification and Verification for the Facility;

(f) Installed Capacity equal to one hundred percent (100%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Product to Buyer, as stated in the certificate in the form of Exhibit G delivered pursuant to clause (a) of this Section 2.3;

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements pursuant to the WREGIS Operating Rules (that are reasonably capable of being completed prior to the Contract Start Date under the WREGIS Operating Rules), including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all Delay Damages due and owing under this Agreement, if any.

Upon request from Seller from time to time, Buyer shall confirm in writing the completion of those of the foregoing conditions that have been completed by Seller as of such request.

2.4 **Status Updates**. The Parties agree time is of the essence in regard to the Agreement. From the Effective Date and continuing until the Contract Start Date, Seller shall notify Buyer promptly upon learning of any condition that will, or would reasonably be expected to, prevent the Contract Start Date from occurring as of the Expected Contract Start Date. Seller shall also provide Buyer with any reasonably requested documentation (subject to availability and confidentiality restrictions) directly related to any such delay or expected delay within ten (10) Business Days of receipt of such request.

2.5 **Outside Contract Start Date**.

(a) If, due to a Permitted Extension, Contract Start is not achieved by the Outside Contract Start Date (as it may be extended), either Party may terminate this Agreement upon Notice to the other Party, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party except for those obligations that survive termination as described in Section 2.1(b).

(b) If Contract Start is not achieved by the Guaranteed Contract Start Date, as it may be extended due to a Permitted Extension, for reasons other than a Permitted Extension, either Party may terminate this Agreement upon Notice to the other Party, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party except for the payment by Seller, as liquidated damages, of the full amount of the Pre-CSD Security less any Delay Damages (as described in Exhibit B) paid as of the date of such termination, if any, and those obligations that survive termination as described in Section 2.1(b).

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**

(a) Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all the Product produced by or associated with the Installed Capacity of the Facility. The sale by Seller and purchase by Buyer of Delivered Energy hereunder shall be for resale. Subject to Buyer's obligations to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

(b) Remarketing Rights. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Seller shall use good faith efforts to work with Buyer to finalize

remarketing arrangements that will allow Buyer to remarket Product to third parties during the Delivery Term if Buyer so desires; *provided* that Buyer shall reimburse Seller for any reasonable and material costs associated with such efforts and any remarketing or reselling of Product, and Seller shall incur no liabilities pursuant to the terms of any remarketing arrangement in excess of what Seller would bear or incur, as applicable, under the terms of this Agreement had such remarketed Product not been remarketed.

3.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes.

3.3 **Compensation.**

(a) Delivered Energy. For each MWh of Delivered Energy in each Settlement Period or Settlement Interval, as applicable, Buyer shall pay Seller [redacted]

(b) Deemed Delivered Energy. For each Settlement Period or Settlement Interval, as applicable, during the Delivery Term, Buyer shall pay Seller the Contract Price for each MWh of Deemed Delivered Energy. In addition, during the period (if any) in which Seller is receiving the PTC for the Delivered Energy, Buyer shall also pay the PTC Amount for all Deemed Delivered Energy. Notwithstanding the foregoing, Seller shall receive no compensation from Buyer, including for the PTC Amount, for Deemed Delivered Energy to the extent that Seller is required to reduce delivery of Delivered Energy as a result of any Curtailment Period.

(c) Excess Deliveries. [redacted]

(d) Excess Settlement Interval Deliveries. If, during any Settlement Interval, Seller delivers Product amounts to Buyer, as measured by the amount of Delivered Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then Buyer shall not be obligated to pay for any such Excess MWh and Buyer shall receive any RECs associated with Excess MWh. If the LMP in the Real-

Time Market at the Delivery Point is negative for a Settlement Interval with Excess MWh, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the LMP in the Real-Time Market at the Delivery Point, *times* (ii) Excess MWh for such Settlement Interval.

3.4 **Imbalance Energy**. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. Seller shall be responsible for all CAISO costs, and shall be entitled to all CAISO revenues, associated with Imbalance Energy.

3.5 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. The Parties shall promptly notify each other upon becoming aware of the existence of Future Environmental Attributes and, subject to the final sentence of this Section 3.6(a), in such event, Buyer shall have the exclusive right to claim such Future Environmental Attributes by providing Notice to Seller. If Buyer provides such Notice, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or its operations unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) the determination of any additional costs to be borne by Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Reserved**.

3.8 **Capacity Attributes.**

(a) From and after the Capacity Attributes Guarantee Date, Seller sells, grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes.

(b) Subject to the provisions of this Section 3.8 and Section 3.12, throughout the Delivery Term, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility is eligible to provide Capacity Attributes at the Delivery Point. From and after the Capacity Attributes Guarantee Date, subject to the provisions of this Section 3.8 and Section 3.12, Seller hereby covenants and agrees to transfer all Capacity Attributes to Buyer. Seller shall not commit or encumber any portion of the Facility so as to prevent it from serving as Buyer's Supporting Resource (as defined in the CAISO Scheduling Infrastructure Business Rules) and delivering the Guaranteed Capacity Attributes.

(c) Subject to Section 3.12, for the duration of the Delivery Term, Seller shall use good faith efforts, including as set forth in this Section 3.8(c), to comply with requirements in connection with Non-Resource Adequacy Capacity that (i) are instituted by the governing body of Buyer or the CAISO, and (ii) differ from CAISO or CPUC rules applicable to Resource Adequacy Benefits. Seller shall provide to Buyer an attestation, in a form reasonably acceptable to Buyer, stating that Buyer has procured the Capacity Attributes.

(d) Subject to the provisions of this Section 3.8, at Buyer's reasonable request, Seller shall execute such documents and instruments and take all steps and actions as may be reasonably required to effect recognition and transfer of the Capacity Attributes as belonging to Buyer; provided that no such request may impose any material additional third-party costs (other than those reimbursed by Buyer pursuant to Section 3.12) or obligations on Seller, or reduce Seller's compensation hereunder.

(e) Buyer acknowledges that it may be required to take action and obtain certain rights at the Delivery Point in order to make use of the Capacity Attributes, as may be required under applicable Law. If applicable, Seller shall use commercially reasonable efforts to support Buyer's efforts to (i) obtain any rights that Buyer is required to obtain, or (ii) take any other actions that Buyer is required to take, in each case in order for Buyer to make use of the Capacity Attributes, and in each case as may be required under Applicable Law and as may change from time to time. Buyer's failure to obtain or maintain any rights or capacities, or take any other actions, necessary to receive or utilize the Capacity Attributes, for reasons other than a Seller failure under this Agreement, shall not be a Seller breach hereunder; any Capacity Attributes, expressed in kW, not delivered to Buyer due to such failure of Buyer shall be defined as "**Deemed Delivered Capacity Attributes**". In addition, if any action or inaction of the governing board of Buyer (x) prevents Seller from delivering any Capacity Attributes to Buyer using commercially reasonable efforts consistent with and limited to Seller's obligations hereunder with respect to Capacity Attributes as of the Effective Date, or (y) disqualifies the Facility from providing Capacity Attributes to Buyer, in whole or in part, all such undelivered or ineligible Capacity Attributes shall constitute Deemed Delivered Capacity Attributes.

(f) From and after the Capacity Attributes Guarantee Date, for any calendar month in which there is a Capacity Attribute Shortfall greater than zero (0) kW

(i) Seller shall be liable for liquidated damages ("**Capacity Attribute Damage Amount**") in the amount of [redacted]

3.9 **CEC Certification and Verification**. Prior to CSD Seller shall provide Buyer with evidence that the Facility has obtained CEC Certification and Verification. Seller shall provide to the CEC all information necessary to maintain CEC Certification and Verification for the Facility throughout the Delivery Term.

Subject to the terms of this Section 3.9 and Section 3.12, Seller shall ensure that throughout the Delivery Term, the Product meet the criteria defined by the CEC Renewables Portfolio Standard Eligibility Guidebook for PCC-1.

3.10 **Non-Modifiable Terms.**

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

(b) Applicable Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

(c) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028 or the California Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*, which may be modified by subsequent decisions of the California Public Utilities Commission, updates by the California Energy Commission, or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

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

(e) Each of Buyer and Seller acknowledge that this Agreement does not conform to the non-modifiable standard contract term requirements of CPUC decisions 08-04-009, 08-08-028, 10-03-021, 13-11-024, or any successor CPUC decisions thereto. Buyer represents that deliveries of Product under this Agreement are not required to comply with such requirements.

3.11 **California Renewables Portfolio Standard**. Upon request of Buyer, Seller shall provide records or other information reasonably required to demonstrate that the Product has been conveyed and delivered in accordance with the terms and conditions of this Agreement, including, subject to Section 3.12, scheduling or delivery information necessary to meet the requirements of the California Renewables Portfolio Standard for the Product. Subject to Section 3.12, Seller represents and warrants the Product meets the requirements set forth in PUC Code 399.16(b)(1) and the RPS compliance requirements for Portfolio Content Category 1 as set forth in CPUC Decision 11-12-052.

3.12 **Compliance Expenditure Cap**. Notwithstanding anything herein to the contrary, if Seller establishes to Buyer's reasonable satisfaction that a change in Law occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed below, then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during any Contract Year shall be capped at [redacted] ("**Compliance Expenditure Cap**")

(a) CEC Certification and Verification;

(b) Green Attributes;

(c) WREGIS; and

(d) Capacity Attributes.

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

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have ninety (90) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof, for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within ninety (90) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the

subject of the Notice, and Seller shall have no further obligations to take, and no liability for a failure to take, such Compliance Actions for the remainder of the Term

; *provided, however,* that Buyer shall have the right to reconsider Compliance Actions that have been rejected or waived pursuant to this paragraph at any time; *provided further,* upon Buyer's written request in connection with such reconsideration*,* Seller shall provide Notice to Buyer with an updated estimate of the anticipated out-of-pocket expenses to take the reconsidered Compliance Action. Within ninety (90) days after Buyer's receipt of Seller's Notice, Buyer shall agree to reimburse Seller for the Accepted Compliance Costs or waive Seller's obligation to take the reconsidered Compliance Actions, or any part thereof, for which Buyer does not agree to reimburse Seller; *provided*, if Buyer does not reply within such ninety (90) day period Buyer shall be deemed to have waived Seller's obligation to take such Compliance Actions.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by Buyer and Buyer shall reimburse Seller for Seller's actual costs to effectuate the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller. If Buyer agrees to reimburse Seller for the Accepted Compliance Costs for less than all of the costs that exceed the Compliance Expenditure Cap, Seller shall only be obligated to take the Compliance Actions covered by the Accepted Compliance Costs.

Notwithstanding anything else in this Agreement, any incremental costs to Seller in excess of Fifteen Thousand Dollars ($15,000) per year to comply with requirements regarding Capacity Attributes (including Non-Resource Adequacy Capacity) established by Buyer, or any Person vested with the authority under applicable Law to require Buyer to procure resource adequacy or other such products, over and above Seller's costs to comply with CAISO and/or CPUC requirements as to Resource Adequacy Benefits as of the Effective Date ("**Buyer Capacity Compliance Costs**"), shall be excluded from the Compliance Expenditure Cap. If Buyer desires Seller to comply with any requirements regarding Capacity Attributes (including Non-Resource Adequacy Capacity) that differ from CAISO and/or CPUC requirements as described in the prior sentence, Buyer shall be responsible for payment of all such Buyer Capacity Compliance Costs.

The terms and conditions of this Section 3.12 with respect to Seller expenses in excess of the Compliance Expenditure Cap shall apply, *mutatis mutandis*, to all Buyer Capacity Compliance Costs.

Notwithstanding anything else in this Agreement: (i) Seller shall be under no obligation to take any action to comply with such requirements as could reasonably be expected to have a material adverse impact upon Seller's ability to own, operate, or maintain the Facility; and (ii) if at any time, pursuant to (a) the then-current CAISO Tariff, (b) the rules or regulations of Buyer or any Person vested with the authority under applicable Law to require Buyer to procure resource adequacy or other such products, or (c) other applicable Law, the transfer and/or delivery to Buyer of Non-Resource Adequacy Capacity associated with the Facility is not permitted, then: Seller shall have no further obligation hereunder to deliver Non-Resource Adequacy Capacity to Buyer; Seller shall not be required to incur any costs or expenses in connection with delivery of Non-Resource Adequacy Capacity to Buyer; such non-delivery of Non-Resource Adequacy Capacity

to Buyer shall not be a breach, default or Event of Default hereunder; and Seller shall have no liability to Buyer as a result of such non-delivery of Non-Resource Adequacy Capacity.

The term "commercially reasonable efforts" as used in Section 3.10 means efforts consistent with and subject to this Section 3.12.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Seller shall be responsible for the delivery of Delivered Energy by securing such arrangements with CAISO, the PTO, and any other Transmission Provider as are necessary in connection therewith.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product.

4.2 **Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

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

4.3 **Scheduling Coordinator Responsibilities.**

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Seller shall not be responsible for any charges or fees associated with the Product that are assessed by the CAISO after the Delivery Point. [redacted]; *provided*, to the extent Seller does curtail deliveries of Energy, Buyer shall pay for Deemed Delivered Energy pursuant to Section 3.3(b); and to the extent Seller does not curtail deliveries of Energy, Seller shall be compensated for Delivered Energy pursuant to Section 3.3(a), and such Delivered Energy shall not be considered to be Deemed Delivered Energy.

(i) Subject to Sections 3.8(c), 3.8(d), 3.8(e), 3.12, and 4.3(a) above, (x) Seller shall follow the requirements prescribed by the CAISO to bid the Facility generation into the Day-Ahead Market and the Real-Time Market in a manner that permits Buyer's use of the Capacity Attributes for Non-Resource Adequacy Capacity (or similar) purposes, including such requirements to establish an appropriate designation (if any) at the Contract Start Date and maintain such designation throughout the Delivery Term, and (y) Seller's failure to appropriately bid or schedule the Facility generation into the CAISO which causes a limitation on Buyer's ability to use the associated Capacity Attributes for Non-Resource Adequacy Capacity (or similar) purposes shall be a Seller breach of the PPA.

(b) Floor Price. Buyer shall have the right to adjust the Floor Price on a monthly basis; *provided, however,* that Buyer shall not have the right to set the Floor Price at a price that is higher than zero dollars per MWh ($0/MWh); *provided*, during any period when Seller is eligible to obtain and is actually obtaining PTCs, Buyer shall not have the right to set the Floor Price at a price that is higher than the Negative PTC Value. In the event that Seller elects to repower the Facility, Seller shall provide to Buyer (x) non-binding estimates of (i) the PTC value that Seller anticipates will be available from the Facility, and (ii) the PTC Amount, in each case in $/MWh, for each remaining calendar year of the Delivery Term, and (y) within fifteen (15) Business Days following the later of (x) publication of any change to the PTC value in the Federal Register, and (y) determination of any change to the "Energy Communities" adder via Notice 2024-48, in each case available from the Facility, such updated PTC value and updated PTC Amount. Seller shall provide to Buyer non-binding PTC values ($/MWh) and PTC Amounts ($/MWh) on a yearly basis if the Facility becomes PTC eligible.

(c) Costs and Revenues. Seller shall be responsible for all costs associated with transmission, scheduling and delivery of Product up to the Delivery Point. Seller shall be responsible for all CAISO costs up to the Delivery Point (including penalties, Imbalance Energy charges, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy payments, and other payments), including costs and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility.

(d) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

4.4 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are consistent with the information actually known by Seller at the time the forecasts are submitted and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practice. Notwithstanding the provisions of Sections 4.4(a), (b), and (c), Seller and Buyer acknowledge that Buyer does not require the submission of Supply Plans by Seller, and

Buyer is not required to submit Resource Adequacy Plans (as defined in the CAISO Tariff) or match such Resource Adequacy Plans to Supply Plans in order to receive or utilize Capacity Attributes or Non-Resource Adequacy Capacity.

(a) Annual Forecast of Available Capacity. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's Available Capacity, by hour, and Seller's projection of scheduled maintenance for the following calendar year in a form reasonably requested by Buyer.

(b) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's average-day Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit D, or as reasonably requested by Buyer.

(c) Monthly Forecast of Energy and Available Capacity. No less than thirty (30) days before the Contract Start Date, and thereafter ten (10) Business Days before the compliance deadline for each monthly Supply Plan during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, and Available Capacity for each day of the following month in a form reasonably requested by Buyer.

(d) Daily Forecast of Available Capacity. By 9:05 AM Pacific Prevailing Time each day on the day immediately preceding the date of delivery, Seller shall provide Buyer with (i) a non-binding forecast of its best estimate of Available Capacity and (ii) the Day-Ahead Forecast, in each case, for each hour of the immediately succeeding day.

(e) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes to the Day-Ahead Forecast resulting from changes of five (5) MW or more in available Guaranteed Capacity , or when the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, differs by more than five (5) MWh, as applicable, of the amount set forth in the Day-Ahead Forecast, in each case, due to Forced Facility Outage or Force Majeure Event (such update, the "**Real-Time Forecast**"), as soon as reasonably possible, but no later than sixty (60) minutes prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the available Guaranteed Capacity or, if applicable, the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, changes by at least five (5) MW or five (5) MWh, as applicable, due to Forced Facility Outage or Force Majeure Event as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts shall be prepared by the Third-Party Forecast Vendor and shall contain information regarding the

beginning date and time of the event resulting in the change in Guaranteed Capacity or hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use reasonable efforts to notify Buyer of such outage within ten (10) minutes of becoming aware of the Forced Facility Outage. Seller shall inform Buyer as soon as reasonably practicable of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These real-time forecasts shall be communicated by email to Buyer unless Buyer requests an alternative method of communications reasonably acceptable to Seller.

4.5 **Dispatch Down/Curtailment.**

(a) General. Seller agrees to reduce deliveries of the Energy produced by the Facility by the amount and for the period set forth in any Curtailment Order; provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

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

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any Planned Outage; *provided* that during each period from June 1 to September 30, unless during a Low Wind Period, Seller shall not schedule any non-emergency maintenance of the Facility which reduces the energy generation capability of the Facility by more than ten percent (10%) unless (i) such maintenance is required to avoid an emergency or damage to the Facility or the Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise in accordance with equipment manufacturer recommendations and cannot reasonably be scheduled outside such period, (iii) such maintenance is in connection with a Force Majeure Event, (iv) such maintenance is required by applicable Law, the requirements of a Transmission Provider and/or any other applicable Governmental Authority, or Prudent Operating Practice, (v) such maintenance is required for safety reasons, or (vi) the Parties agree otherwise in writing. On or before December 1st of each year, Seller shall provide Buyer with the scheduled maintenance for the Facility for the next calendar year.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage and shall keep Buyer reasonably informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of such outage.

(c) System Emergencies and other Events. Seller shall be permitted to reduce deliveries of Product (i) during any period of System Emergency, (ii) pursuant to a Curtailment Order, (iii) during a Market Curtailment Period, (iv) during any Force Majeure Event, (v) due to Prudent Operating Practice, (vi) due to Buyer's failure to perform, or (vii) otherwise pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff or as may be required under a Shared Facilities Agreement. Notwithstanding anything in this Agreement to the

contrary, Seller may, in its sole discretion, sell and deliver some or all of the Product during any Market Curtailment Period to one or more third-party buyers to the extent that Seller may do so in compliance with Law and Prudent Operating Practice.

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

(e) Real-Time Curtailment. Seller shall be permitted to reduce deliveries of Product during any period when the LMP in the Real-Time Market is less than the Floor Price; *provided*, that if some amount of the Day-Ahead Forecast has been awarded a Day-Ahead Schedule, Seller shall not reduce the Delivered Energy, pursuant to this clause, below the amount of the Day-Ahead Forecast that has been awarded a Day-Ahead Schedule, and any such reduction shall not be included in a Market Curtailment Period. Illustrative settlement examples during the foregoing events are provided in Exhibit N.

4.7 **Guaranteed Energy Production**.

(a) Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each period of two (2) consecutive Contract Years during the Delivery Term (such that the first Performance Measurement Period comprises Contract Years 1 and 2, the second Performance Measurement Period comprises Contract years 2 and 3 and so on) ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product for each Performance Measurement Period, as measured in MWh, equal to [redacted]. The calculation will be performed once each Contract Year, beginning with the second anniversary of the Contract Start Date. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Forced Facility Outage (provided Seller has followed Prudent Operating Practices), Force Majeure Events, System Emergencies, Buyer's failure to perform, Curtailment Periods and Market Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall (i) pay Buyer Energy Replacement Damages calculated in accordance with Exhibit E, or (ii) in lieu of paying some or all of the Energy Replacement Damages, at Seller's discretion, provide Replacement Product retrospectively pursuant to and subject to the requirements of Section 4.7(b)(ii).

(b) Seller shall be permitted to deliver Replacement Product (i) prospectively during any Performance Measurement Period if Seller reasonably anticipates that delivery of such Replacement Product is necessary to achieve the Guaranteed Energy Production for such Performance Measurement Period, or (ii) retrospectively during the Contract Year immediately following any Performance Measurement Period in accordance with Section 4.7(a) above; *provided,* Seller's right to deliver Replacement Product shall be expressly subject to Buyer's prior written acceptance of Seller's proposed delivery schedule for such Replacement Product; *provided further*, Replacement Product shall be delivered to at Seller's election, the Delivery Point or the California-Oregon Border (COB) trading hub. Seller shall provide Notice to Buyer of any proposed delivery of Replacement Product, including a proposed schedule of such deliveries, at least thirty (30) days prior to the proposed delivery of such Replacement Product and, solely with respect to retrospective Replacement Product, at least thirty (30) days after the conclusion of any

Performance Measurement Period with respect to which Seller proposes to deliver retrospective Replacement Product. If the Parties cannot reach agreement on a schedule of deliveries, Seller shall have no right to deliver, and Buyer shall have no obligation to pay for, the proposed Replacement Product.

4.8 **WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer such Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall satisfy its obligations pursuant to Section 3.10(d) and Section 4.2(b) by fulfilling its obligations under Sections 4.8(a) through (f) below.

(a) Prior to the Contract Start Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using Recurring Certificate Transfers from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account. Buyer shall be responsible for all expenses associated with establishing and maintaining Buyer's WREGIS account.

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month. Subject to delivery of Replacement Product, Seller shall ensure that no WREGIS Certificates are transferred to Buyer's WREGIS Account unless they are the result of Delivered Energy reflected in the Facility's metered data.

(d) Due to the approximately fourteen (14) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 notwithstanding that the WREGIS Certificates may not have been formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced on a pro rata basis across all Settlement Periods in such Deficient Month by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that after the ninety (90) days attributed to the delay in the creation of WREGIS Certificates for such Deficient Month, Seller either (x) resolves the WREGIS Certificate Deficit within an additional one hundred eighty (180) days or (y) provides Replacement Green Attributes within an additional one hundred eighty (180) days (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. If the amount of Delivered Energy in the Deficient Month is reduced in accordance with the prior sentence and neither (x) nor (y) of the prior sentence apply, Buyer shall pay Seller for any Delivered Energy that is delivered by Seller without corresponding WREGIS Certificates at a price equal to the lesser of (i) the Contract Price, or (ii) the LMP in the Day-Ahead Market at the Delivery Point, and for purposes of the Guaranteed Energy Production, Delivered Energy is reduced by the amount of the WREGIS Certificate Deficit for the applicable Performance Measurement Period. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, Delivered Energy shall not be reduced pursuant to this Section 4.8(e) and the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

4.9 **Standard of Care**. Seller shall be responsible for designing, installing, operating, and maintaining the Facility (including all associated costs) in accordance with all applicable Law, and shall comply with all applicable WECC, RC West, FERC and NERC requirements, and with Prudent Operating Practice, including applicable interconnection and telemetering requirements set forth in the Interconnection Agreement.

Seller shall ensure that: (a) operation and maintenance of the Project is conducted in a safe manner in accordance with the Interconnection Agreement and Prudent Industry Practice; and (b) any governmental authorizations and permits required for the operation thereof are maintained. Consistent with (a) above, Seller shall ensure that any necessary and commercially reasonable repairs are made to the Facility.

Seller acknowledges receipt of SMUD's Principles of Renewable Energy Development as expressed in Exhibit M, attached and incorporated herein. Seller shall use commercially reasonable efforts to abide by the project-specific obligations identified in the "Communities Benefits Plan" as further described in Exhibit M, to the extent applicable to and feasible for the Facility as reasonably determined by Seller.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and delivery of Product to Buyer, that are imposed on Product prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of the Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, the exempted Party shall provide the other Party with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If the exempted Party does not provide such documentation, then such Party shall indemnify, defend, and hold harmless the other Party from any liability with respect to Taxes from which the exempted Party claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit K Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may at some point be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which

certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Delivered Energy produced by the Facility using an Approved Meter. The Approved Meter shall be installed at the switching station PG&E's Pit #3 – Round Mountain 230 kV Line and maintained at Seller's cost. If the Approved Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Operating Practice and CAISO requirements. Seller will be responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Approved Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller, or Seller's Scheduling Coordinator, shall cooperate with Buyer to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRIS-S) (or its successor).

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests at Seller's expense; *provided*, if the meter is tested at Buyer's request and is determined to be accurate, the costs of such test shall be borne by Buyer. If practical, Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during the second half of such period.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer no later than fifteen (15) Business Days after the end of the prior monthly delivery period; *provided* that Seller's failure to deliver an invoice to Buyer by such deadline shall not be a breach hereunder. Each invoice shall provide Buyer (a) records of metered data, including metering and CAISO transaction data sufficient to document and verify the amount of Delivered Energy for each Settlement Period during the preceding month, including the amount of Delivered Energy as set forth in the first CAISO settlement statement for the prior month that includes meter data from the Approved Meter, the applicable Contract Price, deviations between the Scheduled Energy and the Delivered Energy, the LMP in the Real-Time Market at the Delivery Point for each Settlement Period; (b) hourly meter data, plus any additional data as may be reasonably required by Buyer for compliance with CPUC reporting obligations, including pursuant to the CPUC's Energy Division Portfolio Content Category Classification Review Handbook (or successor publication); (c) a statement of

the quantity of WREGIS Certificates transferred during the prior month; (d) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (e) be in a reasonable format covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment**. Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend, local business holiday observed by either Party, or a NERC holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, there is determined to have been a meter inaccuracy sufficient to require a payment adjustment, or if CAISO recalculates amounts due or owing in respect of prior periods. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Other than recalculations by CAISO, adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment

from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all undisputed amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and E, interest, and payments or credits, including pursuant to Section 4.3(c), shall be netted so that only the excess amount remaining due shall be paid by the Party who owes the remaining amount.

8.7 **Seller's Pre-CSD Security**. To secure its obligations under this Agreement, Seller shall deliver Pre-CSD Security to Buyer within forty-five (45) days after the Effective Date. Seller shall maintain the Pre-CSD Security in full force and effect. Upon the earlier of (A) Seller's delivery of the Performance Security, or (B) sixty (60) days after termination of this Agreement, Buyer shall return the Pre-CSD Security to Seller, less the amounts drawn in accordance with this Agreement. If and to the extent that any portion of the Pre-CSD Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Contract Start Date, (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, or (iv) becomes Bankrupt, Seller shall have ten (10) Business Days to post substitute collateral that meets the requirements set forth in the definition of Pre-CSD Security. Seller shall have no obligation to replenish the Pre-CSD Security following any draws thereon by Buyer. Seller's maximum liability for an Event of Default or failure to perform its obligations hereunder prior to the Contract Start Date shall be capped at the amount of the Pre-CSD Security, less any amounts collected by Buyer prior to such Event of Default or failure to perform.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Contract Start Date. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If and to the extent that any portion of the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, or (iii) becomes Bankrupt, Seller shall have ten (10) Business Days to post substitute collateral that meets the requirements set forth in the definition of Performance Security.

8.9 **Financial Statements.**

(a) If requested, Buyer shall provide to Seller (i) within one hundred twenty (120) days following the end of each fiscal year during the Contract Term, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year during the Contract Term, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles or International Financial Reporting Standards ("IFRS"); provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certifications, such unavailability shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification, and delivery of the statements.

8.10 **Buyer's First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest in, and lien on (and right to net against), and assignment of the Pre-CSD Security or Performance Security, any other cash collateral and cash equivalent collateral posted by Seller pursuant to Sections 8.7 and 8.8, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Pre-CSD Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.10 and the provisions of Article 12):

(a) Exercise any of its rights and remedies with respect to the Pre-CSD Security or Performance Security, as applicable, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Pre-CSD Security or Performance Security, as applicable; and

(c) Liquidate all Pre-CSD Security or Performance Security, as applicable then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the physical or electronic addresses set forth on Exhibit K or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including email or other electronic means), at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided in Exhibit K.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, which event or circumstance, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic, including COVID-19 (but only to the extent that new governmental rules or mandates related to COVID-19 are implemented that were not in place as of the Effective Date); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; acts or failure to act by a Governmental Authority; war; blockade; civil insurrection; riot; civil disturbance; Serial Defect; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy generated by the Facility at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement; (iv) a Curtailment Order, except to the extent that a Curtailment Order is caused by an event that otherwise qualifies as a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) except as the Guaranteed Contract Start Date may be extended as a result of a Permitted Extension, Seller's inability to achieve Contract Start following the Guaranteed Contract Start Date.

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder. Any delays caused by a Force Majeure Event will not serve to increase the Contract Term nor Contract Price of this Agreement.

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, the anticipated extent of any delay or interruption in performance, and, to the extent reasonably practicable, a mitigation plan for limiting or overcoming the impacts of the Force Majeure Event and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice as provided in this Section 10.3 shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Contract Start Date that has caused either Party to be unable to perform its material obligations hereunder, and has continued for a consecutive twelve (12) month period, then

the non-claiming Party may terminate this Agreement upon Notice to the other Party experiencing the Force Majeure Event; *provided* that if Seller is the Party claiming such Force Majeure Event and such Force Majeure Event cannot reasonably be cured within such twelve (12) month period, then Seller may provide a plan to Buyer, which must be acceptable to Buyer in its reasonable discretion, to cure such Force Majeure Event within an additional consecutive six (6) month period and Buyer may not terminate this Agreement due to such Force Majeure Event unless Seller has not resumed performance of its material obligations hereunder upon the expiration of such additional consecutive six (6) month period. Upon any such termination, the non-claiming Party shall have no liability to the Party claiming Force Majeure Event, save and except for those obligations specified in Section 2.1(b).

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such representation or warranty is not corrected within thirty (30) days after Notice thereof; provided, that this thirty (30) day period shall be extended by up to an additional sixty (60) days if (a) the breach cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the Defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the breach;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; provided, that this thirty (30) day period shall be extended by an additional sixty (60) days if (a) the breach cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the Defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the breach;

(iv) failure by such Party to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 as applicable;

(v) such Party becomes Bankrupt;

(vi) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2, 14.3, or 14.4, as appropriate; or

(vii) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) except as otherwise provided herein, if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility; or

(ii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a replacement surety bond (solely with respect to the Performance Security), or (3) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

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

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

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

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

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

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

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Contract Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Contract Start Date) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by Seller after the Contract Start Date or by Buyer throughout the Contract Term);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at Law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto. Notwithstanding any other provision of this Agreement, Seller's sole and aggregate liability under or arising out of a termination of this Agreement prior to the Contract Start Date shall be limited to the amount required to be posted as Pre-CSD Security pursuant to Section 8.7, less any amounts collected by Buyer prior to such Early Termination Date.

11.3 **Termination Payment**. The termination payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties (which shall not include Affiliates of the Non-Defaulting Party) supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or

Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative**. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation**. Any Non-Defaulting Party shall use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages**. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO THE PARTIES' LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE

REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

NOTWITHSTANDING ANYTHING ELSE HEREIN TO THE CONTRARY, IF THERE IS AN EARLY TERMINATION DATE PRIOR TO THE CONTRACT START DATE, THE TOTAL LIABILITY OF SELLER UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT REQUIRED TO BE POSTED AS PRE-CSD SECURITY PURSUANT TO SECTION 8.7, LESS ANY AMOUNTS COLLECTED BY BUYER PRIOR TO SUCH EARLY TERMINATION DATE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8(e), 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT E, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

(a) Buyer is a municipal utility district, duly organized, validly existing and in good standing under the Laws of the State of California and the rules, regulations and orders of, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Buyer. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with applicable Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly

authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid, and binding obligation of Buyer enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect Change of Control of a Party (whether voluntary or by operation of Law) will be deemed an assignment and will require the prior written consent of the other Party, except as provided in Section 14.3. Any assignment made without required written consent, or in violation

of the conditions to assignment set out below, shall be null and void. The assigning Party shall be responsible for the other Party's costs associated with the preparation, review, execution, and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility by Seller, Buyer will, upon request, cooperate with Seller and provide a consent to collateral assignment, estoppel and/or similar instrument in favor of the financing parties providing financing to the Facility with reasonable terms and conditions consistent with customary industry practice.

14.3 **Permitted Assignment**. Notwithstanding Section 14.1, and in addition to its rights set forth in Section 14.2, Seller may at any time, without the prior written consent of Buyer, transfer or assign this Agreement (including by a Change of Control) (i) to an Affiliate of Seller, (ii) in connection with a tax equity financing (regardless of whether a Change of Control results from such tax equity financing), or (iii) as part of the sale or transfer of all or substantially all of the membership interests, equity, or assets of an Affiliate of Seller. Seller may also, without the prior written consent of Buyer, transfer or assign this Agreement (including by a Change of Control) to a Permitted Transferee.

14.4 **Buyer Assignment**. At any time during the Contract Term, upon not less than thirty (30) days' written Notice to Seller, Buyer may request that Seller enter into negotiations to permit Buyer to enter into a limited assignment of a portion of Buyer's rights and obligations under this Agreement to J. Aron and Company, LLC ("**J. Aron**"). Following any such Notice from Buyer, (a) Seller, Buyer and J. Aron shall negotiate in good faith the execution of a limited assignment agreement based on the form attached hereto as Exhibit J**/**, and (b) if requested by Seller, Seller and Buyer shall negotiate in good faith an indemnity and/or a legal opinion, to be provided by Buyer for the benefit of Seller in connection with such limited assignment agreement, in form and substance satisfactory to Seller. For the avoidance of doubt, Buyer shall remain responsible for all of its obligations under this Agreement, including those related to all Product that may be assigned to J. Aron under any limited assignment agreement, including (i) the obligation to pay for all Product and (ii) any and all damages, costs and expenses of Seller associated with such assignee's failure to take or pay for any such Product as contemplated by this Agreement. In no event shall any assignment by Buyer to J. Aron purport to limit any rights of Seller under, or cause Seller to incur any additional obligations, costs, or risks under, this Agreement.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or, if such federal courts refuse jurisdiction notwithstanding the Parties' agreement, then in the courts of the State of California, in either case sitting in the County of San Francisco, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees, attorneys, representatives and agents (collectively, the "**Indemnified Party**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses and expert witness fees (collectively "**Indemnifiable Event**"), to the extent such Indemnifiable Event arises out of, results from, or is caused by any of the following: (a) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its or their directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by the Indemnifying Party or any of its subcontractors or anyone that they control; or (b) any violation of applicable Law by the Indemnifying Party, in each case in connection with this Agreement. Upon the Indemnified Party's written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party's indemnity obligations.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting to the extent of its own negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and reasonably satisfactory to the Indemnified Party, *provided*, *however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

Notwithstanding the preceding sentence if the settlement consists solely of a monetary payment by the Indemnifying Party, such settlement shall not require the consent of the Indemnifying Party. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 **Insurance.**

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance against claims for personal injury (including bodily injury and death) and property damage with a limit of liability of One Million Dollars ($1,000,000) per occurrence, and a general aggregate of not less than Two Million Dollars ($2,000,000) for combined bodily injury and property damage; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). The amounts of liability insurance described in this Article 17 may be satisfied by primary insurance or by any combination of primary and excess/umbrella insurance. Such insurance shall contain standard cross-liability and severability of interest provisions such that each person is protected in the same manner as though a separate policy has been issued to each but nothing therein shall operate to increase the insurance company's liability beyond the amount the insurance company would have been liable if only one Person or interest had been named as insured. The liability insurance policies referenced in this Article 17 shall (x) provide an endorsement waiving rights of subrogation against Buyer, (y) name Buyer as additional insured on all required liability insurance (except workers compensation) , and (z) be primary to any insurance of Buyer that may apply to such occurrence, accident or claim and no "other insurance" provision shall be applicable to Buyer or any additional insureds, by virtue of having been named an additional insured under any policy of insurance.

(b) Workers Compensation and Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars ($1,000,000) providing statutory benefits as required by Law (if any exposure exists) for injury, sickness, disability or death of the employees.

(c) Business Auto Liability Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) combined single limit. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired motor vehicles in the performance of the Agreement.

(d) Property Insurance. Seller shall maintain or cause to be maintained property insurance covering the Facility against physical loss or damage, including coverage for natural perils including but not limited to flood, earthquake, windstorm, severe convective storm, and wildfire, all with limits in accordance with industry standard recognizing that natural perils may

be subject to a lower sublimit. Coverage will be on an "all-risk" basis including mechanical and electrical breakdown.

(e) Documentation. Before commencing work under this Agreement, Seller's broker or agent shall provide certificates of insurance verifying that at least the minimum insurance coverages required above are in effect with additional insured, waiver of subrogation and any other policy provisions or endorsements include, as applicable. Acceptance of the evidence of coverage by Buyer shall not relieve or decrease the extent to which Seller may be held responsible for payment of damages resulting from Seller's services or operations pursuant to this Agreement, nor shall it be deemed a waiver of Buyer's rights to insurance coverage hereunder. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Seller from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

ARTICLE 18
CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality**. Except as permitted in this Article 18, neither Party shall disclose Confidential Information to a third party, except upon the written consent of the Disclosing Party. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce or implement this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy.

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

18.4 **Permitted Disclosures**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by either Party to such Party's counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, Affiliates or actual or prospective owners, investors, lenders, directors, underwriters, contractors, suppliers or others involved in the construction, operation and financing transactions and arrangements for a Party or its affiliates, or any of its or their agents, consultants or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party, or is bound by substantially similar confidentiality requirements.

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

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

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

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

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

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, including electronic signatures, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

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

19.10 **Change in Electric Market Design.**

(a) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such

negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Signatures on following page]

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

Hatchet Ridge Wind, LLC	**Sacramento Municipal Utility District**
By:_____	By:_____
Name:	Name:
Title:	Title:

EXHIBIT A
FACILITY DESCRIPTION

Except as otherwise provided in the Agreement, Seller shall not make any alteration or modification to the Facility which results in a change to the Guaranteed Capacity or the anticipated output of the Facility without Buyer's prior written consent; *provided*, Seller shall be permitted to repower the Facility during the Contract Term so long as Seller continues to be obligated to deliver the Guaranteed Energy Production and Capacity Attributes associated with the Guaranteed Capacity during such repower; upon any such repower that changes the Installed Capacity, Seller shall deliver an updated certificate in the form of Exhibit G.

Facility Name: Hatchet Ridge Wind Project

Site Map:

[to be provided]

Site Location: Shasta County, CA

Technology: Utility Scale Wind Technology

Guaranteed Capacity: 101.2 MW

Delivery Point: CAISO Price Node POD_HATRDGE_2_WIND-APND

Participating Transmission Owner: Pacific Gas and Electric Company

EXHIBIT B
CONTRACT START DATE

1. **Reserved**.

2. **Contract Start**. "**Contract Start**" means the condition existing when (i) Seller has fulfilled all of the conditions in Section 2.3 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Contract Start has been achieved.

The "**Contract Start Date**" shall be the date on which Contract Start is achieved.

a. Seller shall use good faith efforts to cause the Contract Start Date to occur by the Guaranteed Contract Start Date. Seller shall notify Buyer at least thirty (30) days before the anticipated Contract Start Date.

b. If Seller does not anticipate achieving Contract Start by the Guaranteed Contract Start Date, Seller may elect to extend the Guaranteed Contract Start Date by paying Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Contract Start Date. If Seller elects to extend the Guaranteed Contract Start Date, on or before the date that is five (5) Business Days prior to the then-current Guaranteed Contract Start Date, Seller shall provide Notice and payment to Buyer of the Delay Damages for the number of days of extension to the Guaranteed Contract Start Date ("**Delay Damages Payment**"); *provided* such Delay Damages Payment may, at Seller's option, be in the form of cash or an irrevocable, standby letter of credit issued by a U.S. commercial bank, or a foreign bank with a U.S. branch, with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, which letter of credit Buyer may draw on to receive such Delay Damages Payment. If Seller achieves Contract Start prior to the Guaranteed Contract Start Date as extended by the payment of the Delay Damages Payment, Buyer shall refund to Seller in cash the Delay Damages for each day Seller achieves Contract Start prior to the Guaranteed Contract Start Date, as extended, times the Delay Damages, not to exceed the total amount of the Delay Damages Payment paid by Seller pursuant to this Section 2(b). The Parties agree that Buyer's receipt of Delay Damages shall not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1.

3. **Termination for Failure to Achieve Contract Start**. If the Facility has not achieved Contract Start by the Outside Contract Start Date, either Party may elect to terminate this Agreement in accordance with Section 2.6.

4. **Extension of the Guaranteed Dates**. The Guaranteed Contract Start Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Permitted Extension**") for the following delays:

a. delays due to a Force Majeure Event;

b. delays caused by a Transmission Provider not caused by the Seller's action or inaction; or

c. delay due to a Buyer breach or default under this Agreement.

The cumulative extensions granted under clauses 4(a) and 4(b) above shall not exceed [redacted] for any reason, including a Force Majeure Event. The extension granted under clause 4(c) above shall have no termination. Except to the extent Seller has paid Delay Damages, or due to a delay clause 4(c) above, no extension due to a Permitted Extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide Notice to Buyer as required in the next sentence. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller becomes aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Contract Start Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

EXHIBIT C
RESERVED

EXHIBIT D
FORM OF AVERAGE FORECAST OF ENERGY (MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table (i) is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement, and (ii) reflects expected P50 delivered volumes taking into account estimated X% physical losses from the Facility to the Delivery Point.

EXHIBIT E
ENERGY REPLACEMENT DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, and Seller elects to not provide Replacement Product, a liquidated damages ("**Energy Replacement Damages**") payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)] – E

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the LMP in the Day-Ahead Market at the Delivery Point for all of the hours in the Performance Measurement Period, plus (b) the simple average REC Price for the applicable Performance Measurement Period.

D = the Contract Price, in $/MWh

E = the value of any Replacement Product provided retrospectively by Seller with respect to such Performance Measurement Period

[redacted]

"**Adjusted Energy Production**" shall mean the sum of the following: (i) the greater of (a) if Seller provided Replacement Product or paid Energy Replacement Damages during the prior Performance Measurement Period, seventy percent (70%) of the Expected Energy for the first Contract Year of the current Performance Measurement Period or (b) the Delivered Energy plus Lost Output plus Deemed Delivered Energy in the first Contract Year of the current Performance Measurement Period, plus (ii) Delivered Energy plus Lost Output plus Deemed Delivered Energy in the second Contract Year of the current Performance Measurement Period.

"**Lost Output**" means the sum of electric energy in MWh that would have been generated and delivered, but was not, on account of any Forced Facility Outage (not caused by Seller's fault or negligence), Force Majeure Events, System Emergencies, Buyer's failure to perform, and Curtailment Order. The additional MWh comprising Lost Output shall be calculated in the same manner as Deemed Delivered Energy.

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

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Contract Year.

EXHIBIT F

[RESERVED]

EXHIBIT G
FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to [____] ("**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("Seller") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of the date set forth below, [___] wind turbines with an aggregate nameplate capacity of [__], which is the Installed Capacity as of the date hereof, have been installed at the Facility, and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By:_____
[NAME], P.E.
[TITLE]
California License No. [##]
Exp. [DATE]

EXHIBIT H

RESERVED

EXHIBIT I
FORM OF LETTER OF CREDIT

[NTD: subject to review and comment by Seller's financing parties]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [●]

DATE: [●]

BENEFICIARY:

APPLICANT:

[NAME, ADDRESS, CONTACT]

EXPIRATION DATE: [●]

AMOUNT/CURRENCY: [●]

AT THE REQUEST OF AND FOR THE ACCOUNT OF APPLICANT, WE, [INSERT BANK NAME AND ADDRESS] ("ISSUER"), HEREBY ESTABLISH IN YOUR FAVOR IN RESPECT OF OBLIGATIONS OF APPLICANT OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ("LETTER OF CREDIT") IN FAVOR OF [____] ("BENEFICIARY"), [BENEFICIARY ADDRESS], WHEREBY, SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, BENEFICIARY IS HEREBY AUTHORIZED TO DRAW ON US, BY SIGHT, BY ITS DRAWING STATEMENT AS PROVIDED HEREIN, FOR AN AGGREGATE AMOUNT UP TO BUT NOT EXCEEDING [●] (THE "FACE AMOUNT").

WE ARE ADVISED THIS LETTER OF CREDIT IS IRREVOCABLE AND IS ESTABLISHED AS PRE-CSD SECURITY PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2024 BETWEEN APPLICANT AND BENEFICIARY (THE "AGREEMENT").

THIS LETTER OF CREDIT SHALL BE EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [●], WHICH IS ONE YEAR AFTER THE ISSUE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE "EXPIRATION DATE").

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ADDITIONAL TWELVE (12) MONTH PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, BUT IN NO EVENT TO AN EXPIRATION DATE LATER THAN [●], UNLESS AT LEAST NINETY (90) DAYS PRIOR TO THE EXPIRATION DATE WE SEND NOTICE IN WRITING TO YOU VIA HAND DELIVERY OR OVERNIGHT COURIER AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD.

ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT YOU MAY DRAW ON US HEREUNDER FOR UP TO THE FULL UNUTILIZED AMOUNT AVAILABLE AS OF THE DATE OF DRAWING ON THIS LETTER OF CREDIT.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS LETTER OF CREDIT (PROVIDED THAT THE CUMULATIVE AGGREGATE AMOUNT THAT MAY BE DEMANDED UNDER THIS LETTER OF CREDIT SHALL NOT EXCEED THE FACE AMOUNT), AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ANY CONTINUING BALANCE.

FUNDS UNDER THIS LETTER OF CREDIT SHALL BE AVAILABLE TO THE BENEFICIARY UPON PRESENTATION TO US OF A DATED DRAWING CERTIFICATE IN THE FORM OF EXHIBIT A HERETO (WHICH IS AN INTEGRAL PART OF THIS LETTER OF CREDIT) PURPORTEDLY SIGNED BY THE BENEFICIARY'S DULY AUTHORIZED REPRESENTATIVE.

THE DRAWING CERTIFICATE MAY BE PRESENTED BY (A) PHYSICAL DELIVERY TO [ADDRESS] OR (B) BY FACSIMILE TO [FAX NUMBER].

ALL PAYMENTS MADE UNDER THIS LETTER OF CREDIT SHALL BE MADE WITH ISSUER'S OWN IMMEDIATELY AVAILABLE FUNDS BY MEANS OF WIRE TRANSFER IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS TO BENEFICIARY'S ACCOUNT AS INDICATED BY BENEFICIARY IN ITS DRAWING CERTIFICATE OR IN A COMMUNICATION ACCOMPANYING ITS DRAWING CERTIFICATE.

WE HEREBY AGREE THAT THE DRAWING DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED BY US UPON DELIVERY OF THE ABOVE SPECIFIED DRAWING CERTIFICATE, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED HEREIN.

AS STIPULATED HEREIN, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF _____ ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. IF ANY DRAWING OR THE DOCUMENTATION PRESENTED IN CONNECTION THEREWITH, DOES NOT CONFORM TO THE TERMS AND CONDITIONS HEREOF, WE WILL ADVISE YOU OF THE SAME BY TELEPHONE OR FACSIMILE AND GIVE THE REASONS FOR SUCH NON-CONFORMANCE.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE RULES OF THE 'INTERNATIONAL STANDBY PRACTICES 1998', INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ('ISP98') AND AS TO MATTERS NOT ADDRESSED BY ISP98 SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF STATE OF _____.

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS (OTHER THAN AS SET FORTH IN THE

IMMEDIATELY PRIOR PARAGRAPH), THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

OTHER THAN AS PROVIDED HEREIN, COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING, SHALL SPECIFICALLY REFER TO BENEFICIARY AND TO OUR LETTER OF CREDIT NO. [●], AND SHALL BE ADDRESSED TO: [●]

ALL NOTICES TO BENEFICIARY SHALL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED LETTER, OVERNIGHT COURIER OR DELIVERED IN PERSON TO: [BENEFICIARY], ATTN: [BENEFICIARY ADDRESS]. ONLY NOTICES TO BENEFICIARY MEETING THE REQUIREMENTS OF THIS PARAGRAPH SHALL BE CONSIDERED VALID. ANY NOTICE TO BENEFICIARY WHICH IS NOT IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE VOID AND OF NO FORCE OR EFFECT.

ALL COSTS RELATED TO THIS LETTER OF CREDIT SHALL BE PAID BY THE APPLICANT.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. ISSUER ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

EXHIBIT "A"

DRAWING CERTIFICATE

TO: [ISSUING BANK]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ISSUED BY [ISSUING BANK] TO [BENEFICIARY] ("LETTER OF CREDIT"); CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DRAWING CERTIFICATE HAVE THE MEANINGS ASCRIBED TO THEM IN THE LETTER OF CREDIT)

THIS IS A DRAWING CERTIFICATE UNDER THE ABOVE-MENTIONED LETTER OF CREDIT.

I,_____, AN AUTHORIZED REPRESENTATIVE OF [BENEFICIARY], DO HEREBY CERTIFY THAT:

APPLICANT AND BENEFICIARY ARE PARTY TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2024 (THE "AGREEMENT").

[CHOOSE ONLY ONE OF THE FOLLOWING]

(1) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. $_____ BECAUSE [A SELLER EVENT OF DEFAULT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) HAS OCCURRED OR OTHER OCCASION PROVIDED FOR IN THE AGREEMENT WHERE BENEFICIARY IS AUTHORIZED TO DRAW ON THE LETTER OF CREDIT HAS OCCURRED][OR][A DELAY DAMAGES PAYMENT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) IS DUE UNDER THE AGREEMENT].

(2) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. $_____, WHICH EQUALS THE FULL AVAILABLE AMOUNT UNDER THE LETTER OF CREDIT, BECAUSE APPLICANT IS REQUIRED TO MAINTAIN THE LETTER OF CREDIT IN FORCE AND EFFECT BEYOND THE EXPIRATION DATE OF THE LETTER OF CREDIT BUT HAS FAILED TO PROVIDE BENEFICIARY WITH A REPLACEMENT LETTER OF CREDIT OR OTHER ACCEPTABLE INSTRUMENT WITHIN SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE.

IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT , [BENEFICIARY] IS ENTITLED TO AND HEREBY DEMANDS PAYMENT OF USD _____, SUCH AMOUNT TO BE PAID TO [BENEFICIARY] BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE

FUNDS TO: (INSERT WIRE INSTRUCTIONS),WHICH, [____] CERTIFIES IT IS ENTITLED TO UNDER THE AGREEMENT.

COMMUNICATIONS TO ME CONCERNING THIS DRAWING CERTIFICATE MAY BE MADE AT FOLLOWING TELEPHONE AND FACSIMILE NUMBERS: _____; _____.

IN WITNESS WHEREOF, [BENEFICIARY] THROUGH ITS AUTHORIZED REPRESENTATIVE HAS EXECUTED AND DELIVERED THIS DRAWING CERTIFICATE THIS DAY OF , 20 _.

[____]

BY:_____

NAME:_____

TITLE:_____.

EXHIBIT J
FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this "**Assignment Agreement**" or "**Agreement**") is entered into as of [____], by and among [____], a [____] ("**PPA Seller**"), Sacramento Municipal Utility District, a municipal utility district organized under the provisions of the Municipal Utility District Act (Division 6, Chapter 2, Articles 2 and 3, Sections 11581 through 11614 of the California Public Utilities Code, as amended) ("**PPA Buyer**"), and J. Aron & Company LLC, a New York limited liability company ("**J. Aron**"), and relates to that certain power purchase agreement between PPA Buyer and PPA Seller as further described in Appendix 1 (the "**PPA**"). Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and J. Aron (the "**Parties**" hereto; each is a "**Party**") agree as follows:

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers and conveys to J. Aron all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the "**Assigned Products**") during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the "Further Information" section on Appendix 1 (the "**Assigned Product Rights**"). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer. The Parties agree that the assignment, transfer and/or conveyance of all or any portion of the Assigned Products in accordance with this Agreement and the Parties' performance of any obligation in accordance with this Agreement shall not constitute a failure to meet the requirements of the PPA, or a breach of any covenant, representation or warranty under the PPA (and in no event shall PPA Seller be responsible for any failure of any portion of the Assigned Products to satisfy the requirements of the PPA, to the extent such failure results from the assignment, transfer and/or conveyance of such Assigned Products in accordance with this Agreement).

(b) PPA Buyer hereby delegates to J. Aron the obligation to pay the APC Contract Price set forth in Appendix 1 for all Assigned Products that are actually delivered to J. Aron pursuant to the Assigned Product Rights during the Assignment Period (the "**Delivered Product Payment Obligation**" and together with the Assigned Product Rights, collectively the "**Assigned Rights and Obligations**"); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products; and (ii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to J. Aron consistent with Section 1(d) hereof). To the extent J. Aron fails to pay for any Assigned Products by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it will remain jointly and severally responsible as a primary obligor (and not as a surety) for such payment and that it will be an Event of Default pursuant to Section 11.1(a) if PPA Buyer does not make such payment within five (5) Business Days (as

defined in the PPA) of receiving notice of such non-payment from PPA Seller, and that PPA Buyer shall remain liable for, and indemnify and hold PPA Seller harmless from, any and all losses, damages, costs and expenses of PPA Seller of any kind as a result of or arising from (x) the assignment, transfer, conveyance, and delegation described in Section 1(a) and this Section 1(b), or (y) J. Aron's failure to take or pay for any such Assigned Product or make any payment in respect of the Delivered Product Payment Obligation as and when due under the PPA and disregarding the effects of any stay or other suspension rights, including without limitation under sections 362 or 365 of the Bankruptcy Code or similar laws), whether due to bankruptcy, insolvency or any other cause.

(c) J. Aron hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass from PPA Seller to J. Aron upon delivery by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer will provide copies to J. Aron of any Notice of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iii) PPA Buyer will provide copies to J. Aron of any forecasts of Energy generation provided by PPA Seller under the PPA; (iv) PPA Seller will provide copies to J. Aron of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1 of the PPA, provided that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4 of the PPA, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (v) PPA Buyer and PPA Seller, as applicable, will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products.

(e) PPA Seller acknowledges that (i) J. Aron intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer; and (ii) in the event that PPA Buyer fails to pay the relevant intermediary entity for any such Assigned Products, the receivables owed by PPA Buyer for such Assigned Products ("PPA Buyer Receivables") may be transferred to J. Aron. To the extent any such PPA Buyer Receivables are transferred to J. Aron, J. Aron may transfer such PPA Buyer Receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation, and PPA Buyer waives all rights to dispute or claim any defence in respect of such PPA Buyer Receivables other than a defence that would have arisen under the PPA if this Agreement were not in effect. To effect such transfer, J. Aron shall deliver to PPA Seller a notice of intent to transfer PPA Buyer Receivables not later than the payment due date for the Delivered Product Payment Obligation and shall deliver to PPA Seller a bill of sale signed by J. Aron not later than five Business Days thereafter, provided that no such transfer or application shall reduce or limit PPA Buyer's obligations under Section 1(b) above. Such transfer of PPA Buyer Receivables shall immediately be deemed an Event of Default under Section 11.1(a) of the PPA, without regard to any cure periods set forth therein, and PPA Seller shall be

entitled to pursue collection on such PPA Buyer Receivables directly against PPA Buyer pursuant to the remedies set forth in the PPA for such Event of Default.

(f) On or before the commencement of the Assignment Period, The Goldman Sachs Group, Inc. ("Guarantor") will issue, in favor of PPA Seller, a guaranty of J. Aron's payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto ("Guaranty").

(g) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between J. Aron and PPA Buyer and has no impact on PPA Seller's rights and obligations under the PPA.

(h) In the event that the PPA or the Assigned Rights and obligations are either or both rejected or terminated in or as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting J. Aron, PPA Buyer shall, at the option of PPA Seller exercised within thirty (30) days after such rejection or termination, enter into a new agreement with PPA Seller having identical terms as the PPA (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), *provided*, that the term under such new agreement shall be no longer than the remaining balance of the term specified in the PPA.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination specifying a termination date by either J. Aron or PPA Buyer to each of the other Parties;

(2) delivery of a written notice of termination specifying a termination date by PPA Seller to each of J. Aron and PPA Buyer following J. Aron's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such payment is not made by J. Aron within one (1) business day following receipt by J. Aron and PPA Buyer of written notice;

(3) delivery of a written notice by PPA Seller if any of the events described in the definition of "Bankrupt" in the PPA occurs with respect to J. Aron; or

(4) delivery of a written notice by J. Aron if any of the events described in in the definition of "Bankrupt" in the PPA occurs with respect to PPA Seller.

(b) The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause 2(a)(1) or 2(a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

(c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the expiration of or early termination of the PPA, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

(d) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty or if the Guarantor otherwise repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The PPA Seller and the PPA Buyer represent and warrant to J. Aron that (a) the PPA is in full force and effect; (b) to the best of its knowledge, no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

4. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with [Article]/[Section] [__] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify J. Aron of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to J. Aron shall be provided to the following address, as such address may be updated by J. Aron from time to time by notice to the other Parties:

J. Aron & Company LLC
200 West Street
New York, New York 10282-2198
Email:

5. Miscellaneous. Section [__] (Buyer's Representations and Warranties), Article [__] (Confidential Information), Section [__] (No Consequential Damages), Section [__] (Severability), Section [__] (Counterparts), Section [__] (Amendments), Section [__] (No Agency, Partnership, Joint Venture or Lease), Section [__] (Mobile-Sierra), Section [__] (Electronic Delivery), Section [__] (Limitations on Damages), Section [__] (Binding Effect) and Section [__] (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

1.1 **6. U.S. Resolution Stay Provisions.**

(a) As between J. Aron and PPA Buyer, J. Aron and PPA Buyer hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay

Protocol"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a part of this Assignment Agreement, and for the purposes of such incorporation, (i) J. Aron shall be deemed to be a Regulated Entity, (ii) PPA Buyer shall be deemed to be an Adhering Party, and (iii) this Assignment Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Assignment Agreement and the ISDA U.S. Stay Protocol, as between J. Aron and PPA Buyer, the ISDA U.S. Stay Protocol will prevail.

(b) As between J. Aron and PPA Seller:

(i) In the event that J. Aron becomes subject to a proceeding under (A) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (B) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a "U.S. Special Resolution Regime") the transfer from J. Aron of this Agreement, and any interest and obligation in or under, and any property securing, this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any interest and obligation in or under, and any property securing, this Agreement were governed by the laws of the United States or a state of the United States.

(ii) In the event that J. Aron or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable and as amended ("Default Right")) under this Agreement that may be exercised against J. Aron are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(iii) Notwithstanding anything to the contrary in this Agreement, J. Aron and PPA Seller expressly acknowledge and agree that:

(1) PPA Seller shall not be permitted to exercise any Default Right with respect to this Agreement or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of J. Aron becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an "Insolvency Proceeding"), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable and as amended; and

(2) Nothing in this Agreement shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of J. Aron becoming subject to an Insolvency Proceeding, unless the transfer would result in PPA Seller being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to PPA Seller.

(iv) If PPA Seller adheres to the ISDA U.S. Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018, after the date of this Agreement, the terms of the ISDA U.S. Protocol will supersede and replace the terms of this Section 6(b).

(v) For purposes of this Section 6(b):

(1) "**Affiliate**" is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k); and

(2) "**Credit Enhancement**" means any credit enhancement or credit support arrangement in support of the obligations of J. Aron under or with respect to this Agreement, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

7. Governing Law, Jurisdiction, Waiver of Jury Trial.

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (i) the courts of the State of New York located in the Borough of Manhattan and (ii) the federal courts of the United States of America for the Southern District of New York.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[PPA SELLER]

By: _____

Name: _____

Title: _____

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By:_____

Name: _____

Title: _____

J. ARON & COMPANY LLC

By:_____

Name:
Title:

Appendix 1

Assigned Rights and Obligations

PPA: "**PPA**" means that certain [Power Purchase and Sale Agreement] dated [____], 20[_] by and between [____] and [____], as amended from time to time.

"**Assignment Period**" means the period beginning on [_____] and extending until [_____], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

APC Contract Price: $[redacted]/MWh (flat) with no escalation

Assigned Product: "**Assigned Products**" include [____].

Further Information: [____]

Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]

Appendix 3

Form of GSG Guaranty

, 2024

NAME
ADDRESS

Attention:

Ladies and Gentlemen:

For value received, The Goldman Sachs Group, Inc. (the "Guarantor"), a corporation duly organized under the laws of the State of Delaware, hereby unconditionally guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of J. Aron & Company LLC, a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of New York (the "Company"), to **COUNTERPARTY NAME** (the "Counterparty") arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and [PPA Seller] dated as of [ ], 202[_]. This Guaranty is one of payment and not of collection.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Counterparty against, and any other notice to, the Company, the Guarantor or others.

Counterparty may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Counterparty, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Counterparty, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any obligation or liability of the Company to Counterparty including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the opening of business on the fifth business day after Counterparty receives written notice of termination from the Guarantor. It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the obligations and liabilities set forth above which shall have been incurred prior to such termination.

The Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the guaranteed obligations, or interest thereon is rescinded or must otherwise be restored or returned by the Counterparty upon the bankruptcy, insolvency, dissolution or reorganization of the Company. No failure on the part of the Counterparty to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Counterparty of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time, either before or after the termination hereof, payment of the obligations or liabilities guaranteed pursuant to this Guaranty, or any part thereof, is rescinded or must otherwise be returned by Counterparty for any reason, including without limitation upon the insolvency, bankruptcy or reorganization of the Company or the Guarantor, all as though such payment had not been made.

Except as to applicable statutes of limitation, Guarantor hereby agrees that no delay of Counterparty in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

The Guarantor hereby represents as follows:

(a) The Guarantor is duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Guaranty.

(b) The execution and delivery of this Guaranty have been and remain duly authorized by all necessary action and do not contravene any provision of the Guarantor's certificate of incorporation or by-laws, as amended to date, or any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on the Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder.

(c) All consents, licenses, clearances, authorizations, and approvals of, and registration and declarations with, any governmental or regulatory authority necessary for the due execution and delivery of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental or regulatory authority is required in connection with the execution or delivery of this Guaranty.

(d) This Guaranty constitutes the legal, valid, and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with all of its terms and conditions (subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally). The enforceability of the Guarantor's obligations is also

subject to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without prior written consent of the Counterparty, and any purported assignment or delegation absent such consent is void, except for (i) an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, and (ii) the Guarantor may transfer this Guaranty or any interest or obligation of the Guarantor in or under this Guaranty, or any property securing this Guaranty, to another entity as transferee as part of the resolution, restructuring or reorganization of the Guarantor upon or following the Guarantor becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. Upon any such delegation and assumption or transfer of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption or transfer.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

In the event the Guarantor becomes subject to a proceeding under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together, the "U.S. Special Resolution Regimes"), the transfer of this Guaranty, and any interest and obligation in or under, and any property securing, this Guaranty, from the Guarantor will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if this Guaranty, and any interest and obligation in or under this Guaranty, were governed by the laws of the United States or a state of the United States. In the event the Company or the Guarantor, or any of their affiliates, becomes subject to a U.S. Special Resolution Regime, default rights against the Company or the Guarantor with respect to this Guaranty are permitted to be exercised to no greater extent than such default rights could be exercised under such U.S. Special Resolution Regime if this Guaranty was governed by the laws of the United States or a state of the United States.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: _____
Authorized Officer

EXHIBIT K
NOTICES

HATCHET RIDGE WIND, LLC ("Seller")	**SACRAMENTA MUNICIPAL UTILITY DISTRICT** ("Buyer")
All Notices: Street: City: Attn: Phone: Email:	**All Notices:** Street: City: Mail Stop: Attn: Phone: Email:
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: Federal Tax ID Number:
Invoices: Attn: Phone: Email:	**Invoices:** Phone: Email:
Scheduling: Attn: Email: Phone: Facsimile:	**Scheduling:** Attn: Phone: Email: Attn: Phone: Email:
Confirmations: Attn: Phone: Email:	**Confirmations:** Attn: Phone: Email:
Payments: Attn: Phone: Email:	**Payments:** Attn: Phone: Email:

HATCHET RIDGE WIND, LLC ("Seller")	**SACRAMENTA MUNICIPAL UTILITY DISTRICT** ("Buyer")
Wire Transfer:[1] ABA: BBK: BNF: A/C: OBI:	**Wire Transfer:** BNK: ABA: ACCT:
Emergency Contact: Attn: Phone: Email:	**With additional Notices of an Event of Default to:** Attn: Phone: Email:
	Emergency Contact: Attn: Phone: Email:

[1] Note: All information must be included for wire transfer, including OBI field information.

EXHIBIT L
OPERATING RESTRICTIONS

Operating restrictions of the Facility for Market Curtailment Periods are as follows:

- Interconnection Capacity (Maximum Injection Amount): 102 MW
- Minimum operating capacity: 0.0 MW
- Maximum number of start-ups per calendar day (if any such operational limitations exist): N/A
- Ramp Rate: To be provided by Seller upon Notice to Buyer prior to Contract Start
- Minimum Down Time: N/A

EXHIBIT M

PRINCIPLES OF RENEWABLE ENERGY DEVELOPMENT

SMUD is committed to developing carbon free renewable energy in a manner that supports the community, protects the environment, and respects human rights. This document provides guidance on the key objectives that SMUD expects to achieve associated with this commitment. Renewable energy projects engaged in a commercial relationship with SMUD such as a power purchase agreement will use commercially reasonable efforts to provide, implement, and maintain throughout the associated term, a "Community Benefits Plan" that addresses how the project will achieve the key objectives identified herein.

Key objectives:

1. Land Use: Prioritize previously developed lands. Avoid or minimize impacts on sensitive environmental resources, including but not limited to cultural resources, tribal cultural resources, and biological resources such as endangered species habitat, vernal pools and other sensitive habitats, "Waters of the US", "Waters of the State" and waters identified by California Department of Fish and Wildlife as "Streambed". Provide additional mitigation measures if avoidance and minimization measures cannot fully eliminate impacts. Applicants are expected to discuss these topics with both SMUD and the lead agency as early as possible to identify potential associated issues in advance of the purchase power agreement being finalized.

2. Land Use: All projects should employ techniques for maintaining and/or restoring ecosystem function to the site in conjunction with renewable energy outcomes, including establishment of native vegetation, restricting use of herbicides and pesticides, use of grazing for vegetation management and seasonally appropriate maintenance practices. Where development is on or surrounded by agricultural lands the project should also employ agricultural practices on the property during operations including sheep grazing, dry crop farming and irrigated food production where feasible.

3. Land Use: Employ design and construction practices that minimize ground disturbance to the maximum extent possible. This is especially critical in areas where cultural, tribal cultural and biological resources are of significant concern.

4. Sustainable Life Cycle Management: Include plans for sustainable life cycle management of construction materials and project components during construction and operation that provides for recycling and reuse of construction waste and waste during operation including but not limited to the solar panels.

5. Community Benefits:

    (a) Inclusive Economic Development: Leverage SMUD's Supplier Education & Economic Development (SEED) team to connect with certified small business vendors/contractors in SMUD's service territory to support the project. Submit requests to seed.mgr@smud.org.

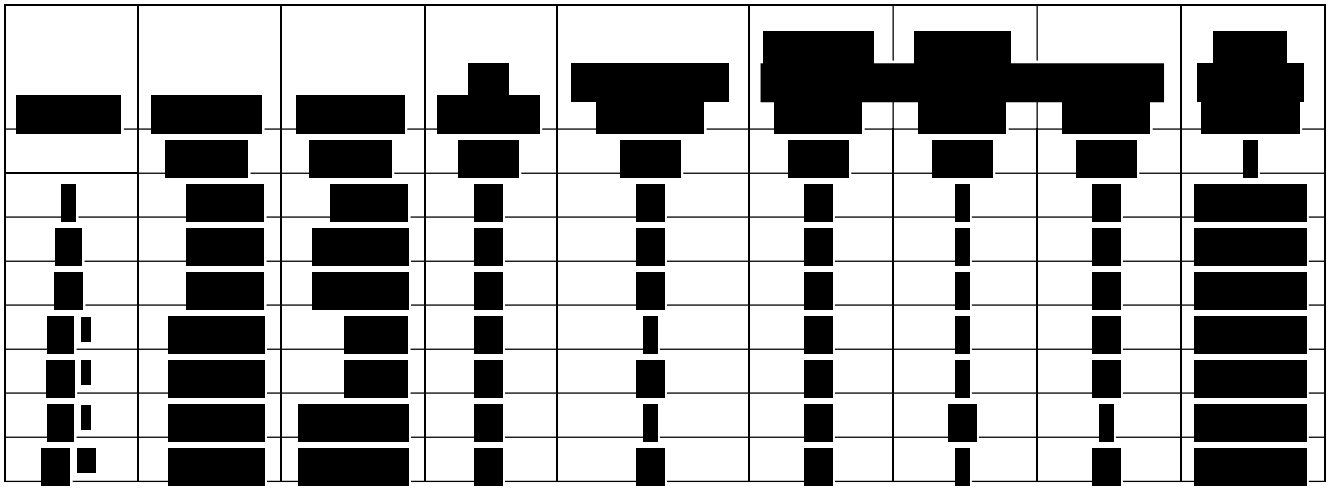
6. Zero Carbon Workforce Development: SMUD seeks to galvanize and prepare the region for an inclusive, diverse, creative, and empowered future workforce. Leverage SMUD's existing workforce development agreements, programs, and partnerships throughout the Project to support the development of a clean energy labor force. The Project Team will work with SMUD to engage various elements of the labor supply chain via pre-apprentice and apprenticeship programs, internships, informational sessions, and mentorship opportunities.

7. Sustainable Materials & Equipment: Sourcing materials and equipment from companies that have a human rights policy and statement of supply chain ethics commitment that expresses the corporation's commitment to meet the responsibility to respect human rights and uphold ethical business practices in their operations and value chains.

EXHIBIT N
SETTLEMENT EXAMPLES

In accordance with Sections 3.3(a) and 4.6(e), Product delivered to Buyer will be calculated consistent with the illustrative examples below:

[redacted]



[redacted]

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: SunZia Wind PowerCo LLC

Buyer: Sacramento Municipal Utility District (SMUD)

Description of Facility: A wind-powered electricity generating facility with a nameplate capacity of up to 3,515 MW, as described in Exhibit A, as such facility may be modified under the terms of this Agreement. During any part of the Delivery Term that is prior to the occurrence of the SPTO Date, the Facility shall qualify as a Resource-Specific System Resource.

Milestones:

Milestone	Date for Completion
Executed Interconnection Agreement	3/27/2023
Expected Commercial Operation Date	4/30/2026
Guaranteed Commercial Operation Date	10/31/2026
Outside Commercial Operation Date	[redacted]

Delivery Term: The period for Product delivery will be for fifteen (15) Contract Years.

Guaranteed Capacity: 150 MW.

Contract Price: $[redacted]/MWh (flat) with no escalation.

Expected Energy: [redacted] MWh per Contract Year, as such amount may be adjusted by Seller in accordance with the definition of "Expected Energy" below.

Product:

- ☒ Delivered Energy
- ☒ Green Attributes/Renewable Energy Credits (Portfolio Content Category 1) attributable to the Delivered Energy
- ☒ Capacity Attributes

Scheduling Coordinator: Seller/Seller Third Party.

Development Security and Performance Security

Development Security: $[redacted]/kW of Guaranteed Capacity.

Performance Security: $[redacted]/kW of Guaranteed Capacity.

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Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Progress Reporting Form
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Exhibit E	Energy Replacement Damages Calculation
Exhibit F	Form of Commercial Operation Date Certificate
Exhibit G	Form of Installed Capacity Certificate
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Exhibit I	Form of Letter of Credit
Exhibit J	Form of Buyer Limited Assignment Agreement
Exhibit K	Notices
Exhibit L	Operating Restrictions
Exhibit M	Principles of Renewable Energy Development
Exhibit N	Non-Binding Estimates of Production Tax Credit
Exhibit O	Sample Settlements Worksheet (Pattern to fix formatting)

RENEWABLE POWER PURCHASE AND SALE AGREEMENT

This Renewable Power Purchase and Sale Agreement ("**Agreement**") is entered into as of _____, 2024 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**."

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility;

WHEREAS, (i) Seller has been informed by the manufacturer of the wind turbines to be used in SunZia Wind South that Seller has the option to receive wind turbines with a nameplate capacity of 3.8 MW each, in lieu of the nameplate capacity of 3.6 MW for each such wind turbine originally contemplated under the supply agreement with such manufacturer ("**South Turbine Uprate**"), and (ii) Buyer and Seller agree that Seller shall have the option under this Agreement, through January 31, 2025, to implement the South Turbine Uprate, and thereby increase (x) the maximum Installed Capacity of the Facility up to an amount equal to 3,800 MW and (y) the Expected Energy under this Agreement to reflect the increased generating capacity resulting from the South Turbine Uprate; and

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

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.12.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit E.

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

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

"**Alternative Delivery Point**" means a Scheduling Point, as defined in the CAISO Tariff, other than the Delivery Point, that is agreed upon by Buyer and Seller.

"**Approved Meter**" means a CAISO-approved revenue quality meter or meters, or if a CAISO approved meter is not consistent with PTO requirements, then a PTO-approved meter or meters, together with a CAISO-approved or PTO-approved, as the case may be, data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility net of Electrical Losses and Station Use; *provided*, that from and after the SPTO Date the Approved Meter shall be CAISO-approved without regard to any PTO metering requirements.

"**Available Capacity**" means the capacity from Buyer's Share of the Facility, expressed in whole MWs, that is available to generate Energy.

"**Balancing Authority**" has the meaning set forth in the CAISO Tariff.

"**Balancing Authority Area**" has the meaning set forth in the CAISO Tariff.

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

"**Buyer**" has the meaning set forth on the Cover Sheet.

"**Buyer's Share**" means the percentage that is equal to the quotient of the Guaranteed Capacity divided by the Installed Capacity (or, prior to the Commercial Operation Date, the total expected installed nameplate capacity of the Facility), as such percentage may change from time to time with changes to the Installed Capacity, if applicable; *provided*, in no event shall the Buyer's Share exceed 100% (whether before or after establishment of the final Installed Capacity); *provided further*, for purposes of determining the amount of Test Energy, if any, available to Buyer, Buyer's Share shall mean the percentage that is equal to the quotient of the Guaranteed Capacity divided by the total nameplate capacity of the Facility in operation at the time of delivery of such Test Energy.

"**Buyer's WREGIS Account**" has the meaning set forth in Section 4.8(a).

"**CAISO**" means the California Independent System Operator Corporation or any successor entity performing similar functions.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Instruction**" has the same meaning as "Operating Instruction" as defined in the CAISO Tariff.

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

"**California Renewables Portfolio Standard**" or "**RPS**" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with Buyer's Share of the Installed Capacity that may be used to satisfy resource adequacy obligations, including Resource Adequacy Benefits and Non-Resource Adequacy Capacity.

"**Capacity Attribute Shortfall**" means, for any calendar month, the difference, expressed in kW, between (i) the Guaranteed Capacity Attributes, *minus* (ii) the Capacity Attributes of the Facility that are delivered to Buyer with respect to such month, *minus* (iii) any Deemed Delivered Capacity Attributes with respect to such month.

"**Capacity Attribute Damage Amount**" has the meaning set forth in Section 3.8(f).

"**Capacity Attributes Guarantee Date**" shall mean the date that, in the CAISO's determination, the Facility is capable of delivering Capacity Attributes to Buyer.

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

"**Capacity Increase Deadline**" has the meaning set forth in Section 4.9.

"**Capacity Replacement Price**" means (a) the price actually paid for any replacement Capacity Attributes purchased by Buyer to mitigate a Capacity Attribute Shortfall, plus costs reasonably incurred by Buyer in purchasing such replacement Capacity Attributes, or (b) absent a purchase of any replacement Capacity Attributes, the prevailing market price for such Capacity Attributes. The Buyer shall determine such market price by averaging quotes from three (3) unaffiliated brokers; *provided, however*, if three (3) broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the Capacity Replacement

Price shall be determined by averaging quotes provided by Buyer from two (2) unaffiliated brokers.

"**CEC**" means the California Energy Commission, or its successor agency.

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that the facility is fully certified, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

"**Change of Control**" means any circumstance in which (a) in respect of Buyer, the Person that has ultimate control over Buyer ceases to have such ultimate control, and (b) in the case of Seller, the Ultimate Parent ceases to have control over Seller; provided that, for the avoidance of doubt, it shall not be a Change of Control of Seller if the Ultimate Parent, itself or together with other Persons that would meet the requirements of the definition of Permitted Transferee, retains either (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of Seller or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in Seller, or (b) the right to direct the policies or operations of Seller.

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

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

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

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

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

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

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

"**Contract Price**" has the meaning set forth on the Cover Sheet.

"**Contract Revenues**" has the meaning set forth in Section 4.5(b).

"**Contract Term**" has the meaning set forth in Section 2.1.

"**Contract Year**" means a period of twelve (12) consecutive months, with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the Commercial Operation Date.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into

new arrangements which replace the Agreement, and all reasonable expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement, excluding attorneys' fees.

"**Cover Sheet**" means the cover sheet to this Agreement.

"**COVID-19**" means the pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, or the efforts of a Governmental Authority to combat or mitigate such disease.

"**CPUC**" means the California Public Utilities Commission, or successor entity.

"**CPUC Decisions**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 19-02-022, 20-06-002, 20-06-031, and any other existing or subsequent decisions, resolutions or rulings related to the resource adequacy program or any successor program, as may be amended from time to time by the CPUC.

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

"**Curtailment Order**" means any of the following:

(a) the CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Instruction, to curtail deliveries of Energy from the Facility for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by a Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by a Transmission Provider due to scheduled or unscheduled maintenance on the Transmission Provider's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy at the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation or deliveries of Delivered Energy from the

Facility pursuant to a Curtailment Order. Curtailment Period shall not include periods during which Seller reduces generation as a result of a Market Curtailment Period.

"**Damage Payment**" means the dollar amount that equals the amount of the Development Security as set forth on the Cover Sheet less the amount of any Delay Damages or Capacity Damages paid by Seller to Buyer hereunder.

"**Day-Ahead Forecast**" means a non-binding estimate of the hourly amount of Energy expected to be produced by the Facility and delivered to Buyer at the Delivery Point in accordance with Seller's obligations under this Agreement, for each hour of the immediately succeeding day, based upon, at Seller's option, (i) the CAISO VER forecast or (ii) a forecast prepared by the Third-Party Forecast Vendor using an industry-standard methodology that utilizes the potential generation of the Facility as a function of Available Capacity, wind speed and direction, wind turbine power curves and other pertinent data for the period of time, consistent with Prudent Operating Practice; provided that, for the avoidance of doubt, market conditions and pricing shall not be factored in such determination of the potential generation of the Facility.

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

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

"**Deemed Delivered Capacity Attributes**" has the meaning set forth in Section 3.8(e).

"**Deemed Delivered Energy**" means the amount of Energy, expressed in [redacted], from the Facility that would have been produced and delivered to Buyer at the Delivery Point, using only Firm Transmission Rights, but that is not produced by the Facility and delivered to Buyer at the Delivery Point due to Seller's reduction of generation during a Market Curtailment Period, which shall be determined by Seller in a commercially reasonable manner using an industry-standard methodology that calculates the potential generation of the Facility delivered to the Delivery Point as a function of available capacity, actual meteorological conditions on the Site, including wind speed and direction, and wind turbine power curves and other pertinent data for the period of time[redacted], consistent with Prudent Operating Practice (with supporting information provided to Buyer).

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

"**Deficient Month**" has the meaning set forth in Section 4.8(e).

"**Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) three hundred sixty five (365).

"**Delay Damages Payment**" has the meaning set forth in Exhibit B.

"**Delivered Energy**" means, in any Settlement Interval or Settlement Period, as applicable, the amount of Energy generated by the Facility and delivered to Buyer at the Delivery Point in accordance with Seller's obligations under this Agreement, which amount shall equal (i) (a) Buyer's Share of the Energy that is produced by the Facility and delivered to the Point of Interconnection, as measured in MWh by the Approved Meter, as such amount may be reduced as

a result of a Curtailment Order and/or by Seller's delivery of Energy to the Delivery Point using any transmission rights other than Firm Transmission Rights, net of all Electrical Losses and Station Use, or (b) if the Facility output is reduced, at Seller's direction in any Settlement Interval or Settlement Period, as applicable, due to a Market Curtailment Period, then Delivered Energy for such Settlement Interval or Settlement Period, as applicable, will instead be equal to the amount of Energy delivered to Buyer at the Delivery Point during such Market Curtailment Period, or (c) if the Facility output is reduced, at Seller's direction (and not, for example, as a result of a Forced Facility Outage) in any Settlement Interval or Settlement Period, as applicable, not due to a Force Majeure Event, Curtailment Period or Market Curtailment Period, then Delivered Energy for such Settlement Interval or Settlement Period, as applicable, will instead be equal to Buyer's Share of the Energy that the Facility would have been able to produce and deliver to the Point of Interconnection, if the Facility output was not so reduced, as such amount may be reduced as a result of Seller's delivery of Energy to the Delivery Point using any transmission rights other than Firm Transmission Rights; and, in each case of (a), (b) and (c), [redacted] *plus* (ii) all Replacement Energy delivered as part of prospectively delivered Replacement Product pursuant to Section 4.7(b)(i). For the avoidance of doubt, (i) no Energy shall be delivered to Buyer using transmission rights other than Firm Transmission Rights, and (ii) to the extent that Seller delivers Energy from the Facility to the Delivery Point using transmission rights other than Firm Transmission Rights, Buyer shall not have any right or obligation to receive such Energy.

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

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

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

"**Development Security**" means, at Seller's option (a) cash and/or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"**Disclosing Party**" has the meaning set forth in Section 18.2.

"**Dynamic Schedule**" has the meaning set forth in the CAISO Tariff.

"**Dynamic Transfer**" means either a Pseudo-Tie or a Dynamic Schedule.

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

"**EDAM**" has the meaning set forth in Section 4.3(e).

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

"**Electrical Losses**" means all transmission or transformation losses between the Facility and the Delivery Point, other than losses that are financially settled by Seller.

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

"**Energy**" means electrical energy, measured in MWh.

"**Energy Replacement Damages**" has the meaning set forth in Exhibit E.

"**EPC Contract**" means Seller's engineering, procurement and construction contract for the Facility.

"**E-Tag**" has the meaning set forth in the CAISO Tariff.

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

"**Excess MWh**" has the meaning set forth in Section 3.3(d).

"**Expected Commercial Operation Date**" has the meaning set forth on the Cover Sheet.

"**Expected Energy**" means the quantity of Delivered Energy (with associated Green Attributes) that Seller expects to be able to deliver to Buyer during each Contract Year in the quantity specified on the Cover Sheet (subject to Section 4.9), as such amount may be revised by Seller in a Notice to Buyer indicating the final amount by sixty (60) days after Seller's delivery of the final certificate stating the Installed Capacity, substantially in the form attached as Exhibit G hereto.

"**Facility**" means the energy generating facility described on the Cover Sheet and in Exhibit A.

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

"**Firm Transmission Rights**" means, with respect to any given Transmission Provider, the highest level of transmission service available from such Transmission Provider.

"**Fitch**" means Fitch Ratings Ltd., or its successor.

"**Floor Price**" means (a) for the period during which Seller is eligible to obtain PTCs, the Negative PTC Value, or (b) for all other periods, zero dollars per MWh ($0/MWh); *provided* the Floor Price may be set lower than the amount set forth in this definition pursuant to Section 4.3(b).

"**Force Majeure Event**" has the meaning set forth in Section 10.1.

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Future Environmental Attributes**" means Buyer's Share of any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other Law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by a wind generation facility as opposed to from a conventional generation resource.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and WREGIS; *provided*, *however*, that "Governmental Authority," as such term is used in this Agreement in connection with Seller's obligations to comply with Law or bear Taxes, shall not include Buyer to the extent that Buyer's acts or omissions would impose incremental burdens on Seller or Seller's performance under this Agreement or limit or deprive Seller of any of Seller's rights or benefits under this Agreement.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Delivered Energy or Test Energy. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives associated therewith, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental

benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

"**Green Tag**" means a certificate or other instrument recognized by a Governmental Authority, with one Green Tag representing the Green Attributes associated with one (1) MWh of Energy generated by the Facility.

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

"**Guaranteed Capacity**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Capacity Attributes**" means the Capacity Attributes available from the Facility, expressed in kW, subject to reductions that may result from Planned Outages, Forced Facility Outages (not caused by Seller's fault or negligence), System Emergencies, Curtailment Orders, Force Majeure Event, or operation of the Facility consistent with the Operating Restrictions and Prudent Operating Practice.

"**Guaranteed Commercial Operation Date**" has the meaning set forth on the Cover Sheet.

"**Guaranteed Energy Production**" has the meaning set forth in Section 4.7(a).

[redacted]

"**Imbalance Energy**" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Delivered Energy deviates from the amount of Scheduled Energy.

"**Import Capability**" means that portion of the Maximum Import Capability at the Delivery Point or Alternative Delivery Point, if applicable, allocated by the CAISO that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market in an amount equal to the Guaranteed Capacity Attributes.

"**Indemnifiable Event**" has the meaning set forth in Section 16.1(a).

"**Indemnified Party**" has the meaning set forth in Section 16.1(a).

"**Indemnifying Party**" has the meaning set forth in Section 16.1(a).

"**Installed Capacity**" means the nameplate capacity of the Facility at the point of interconnection (which point of interconnection is specified in the Interconnection Agreement), as

evidenced by a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto, as it may be updated from time to time by delivery of a subsequent certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto.

"**Inter-SC Trade**" has the meaning set forth in the CAISO Tariff.

"**Interconnection Agreement**" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the PTO's Transmission System, and pursuant to which any Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the PTO's Transmission System in order to meet the terms and conditions of this Agreement.

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

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

"**Lender**" means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit (a) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, and (b) in a form substantially similar to the letter of credit set forth in Exhibit I, or as otherwise reasonably acceptable to the Party that is the beneficiary of the Letter of Credit.

"**Licensed Professional Engineer**" means either (i) DNV Energy USA, Inc., (ii) the independent engineer retained by the Lenders, or on their behalf under customary terms and conditions, in connection with a financing of the Facility, which engineer, or employee or principal thereof (a) is licensed to practice engineering in New Mexico, (b) has training and experience in the power industry specific to the technology of the Facility, (c) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility other than as the independent engineer for the Lenders, and (d) is licensed in an appropriate engineering

discipline for the required certification being made, or (ii) a person acceptable to Buyer in its reasonable judgment.

"**LMP**" means "Locational Marginal Price," which has the meaning set forth in CAISO Tariff.

"**Losses**" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" has the meaning set forth in Exhibit E.

"**Market Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which both the LMP in the Day-Ahead Market and the LMP in the Real-Time Market at the Delivery Point are less than the Floor Price; *provided* that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

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

"**Maximum Import Capability**" has the meaning set forth in the CAISO Tariff, and includes any replacement or successor metric used by the CAISO with respect to the ability of electricity off-takers to import Resource Adequacy Benefits produced by generating units that are external to the CAISO Balancing Authority Area into the CAISO Balancing Authority Area.

"**Milestones**" means the development activities and dates associated therewith set forth on the Cover Sheet.

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MW**" means megawatts measured in alternating current.

"**MWh**" means megawatt-hour measured in alternating current.

"**Negative PTC Value**" means the amount, on a dollar per MWh basis, equal to the PTC value that Seller is eligible to earn in respect of Delivered Energy from the Facility at the time of calculation, *multiplied by* negative one (-1).

"**NERC**" means the North American Electric Reliability Corporation or any successor entity.

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

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

"**Non-Resource Adequacy Capacity**" means the resource adequacy benefits of a unit/resource that is qualified to provide resource adequacy (including Resource Adequacy Benefits) to Buyer in accordance with the resource adequacy rules established by the CAISO and the CPUC or Buyer's governing board, as applicable, but which resource adequacy benefits have not been committed to any other entity for Resource Adequacy Benefits counting purposes as part of a Supply Plan or for other applicable compliance reporting. For the avoidance of doubt, Non-Resource Adequacy Capacity is utilized by Buyer to serve as a supporting resource to firm Buyer's self-scheduled export transactions from the CAISO Balancing Authority Area in order for such Non-Resource Adequacy Capacity to meet Buyer's resource adequacy obligations to its customers, as set by Buyer's governing board.

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service or electronic communication (including email or other electronic means).

"**Operating Restrictions**" means the operational characteristics of the Facility set forth in Exhibit L.

"**Outside Commercial Operation Date**" has the meaning set forth on the Cover Sheet; *provided*, the Outside Commercial Operation Date may be extended on a day-for-day basis for each day of delay to Commercial Operation caused by Buyer breach of or default under this Agreement.

"**Owner**" has the meaning set forth in Section 2.2.

"**Pacific Prevailing Time**" means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

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

"**Parties**" has the meaning set forth in the Preamble.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Measurement Period**" has the meaning set forth in Section 4.7(a).

"**Performance Security**" means, at Seller's option (i) cash (ii) a Letter of Credit, and/or (iii) a surety bond, in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means an entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a) A tangible net worth plus unfunded capital commitments of not less than [redacted] or a Credit Rating of at least [redacted] from S&P, [redacted] from Fitch, or [redacted] from Moody's; and

(b) At least [redacted] of experience in the ownership and operations of power generation facilities with an aggregate nameplate capacity of at least [redacted] MW, or has retained a third-party with such experience to operate the Facility.

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

"**Planned Outage**" means any planned outage or derate of the Facility undertaken by Seller in its sole discretion and consistent with Prudent Operating Practice.

"**Point of Interconnection**" has the meaning set forth for "Point of Interconnection" in the Interconnection Agreement.

"**Portfolio Content Category 1**" or "**PCC1**" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"**Pre-EDAM Buyer Self-Schedule**" has the meaning set forth in Section 4.3(e).

"**Product**" has the meaning set forth on the Cover Sheet.

"**Production Tax Credits**" or "**PTCs**" means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Facility, is eligible.

"**Progress Report**" means a progress report including the items set forth in Exhibit C.

"**Project**" has the same meaning as "Facility".

"**Prudent Operating Practice**" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the utility-scale wind energy industry for facilities of similar size, type and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to

accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practice is not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"**Pseudo-Tie**" has the meaning set forth in the CAISO Tariff.

"**PTC Amount**" means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of energy from the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Market Curtailment Period or Buyer breach or default.

"**QRE**" has the meaning set forth for "Qualified Reporting Entity" in the WREGIS Operating Rules.

"**Real-Time Forecast**" has the meaning set forth in Section 4.4(e).

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

"**REC Price**" means the prevailing market price (expressed in $/MWh) for RECs meeting the requirements for Portfolio Content Category 1, determined by Buyer in a commercially reasonable manner by averaging quotes from three (3) unaffiliated brokers; *provided, however*, if three (3) broker quotes are not available to Buyer after making commercially reasonable efforts to obtain such quotes, then the REC Price shall be determined by averaging quotes provided by Buyer from two (2) unaffiliated brokers.

"**Receiving Party**" has the meaning set forth in Section 18.2

"**Recurring Certificate Transfers**" has the meaning set forth in the WREGIS Operating Rules.

"**Remedial Action Plan**" has the meaning in Section 2.5.

"**Renewable Energy Credit**" or **"REC"** has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

"**Renewable Energy Incentives**" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

"**Replacement Energy**" means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has green attributes that have the same or comparable value as the energy produced by the Facility.

"**Replacement Green Attributes**" means Renewable Energy Credits meeting the RPS requirements for Portfolio Content Category 1.

"**Replacement PPA**" means each power purchase agreement entered into by Buyer, as purchaser thereunder, and the applicable Owner, as seller thereunder, pursuant to the terms of Section 2.7.

"**Replacement Product**" means (a) Replacement Energy and (b) Replacement Green Attributes provided pursuant to Section 4.7.

"**Resource-Specific System Resource**" has the meaning set forth in the CAISO Tariff.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the capacity attributes available from the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in the CAISO Tariff or CPUC Decisions and any subsequent CAISO Tariff or CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility, if any.

"**Resource Data Template**" has the meaning set forth in the CAISO Tariff.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"**Schedule**" means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered in any given hour on any given day or days at a specified Delivery Point.

"**Scheduled Energy**" means the Energy from Buyer's Share of the Facility that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

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

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller's WREGIS Account**" has the meaning set forth in Section 4.8(a).

"**Serial Defect**" means failures or malfunctions of the Facility, or any portion thereof, arising from a failure or malfunction of no less than fifteen percent (15%) of the same or similar Facility equipment (or any portion thereof).

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

"**Settlement Period**" has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

"**Shared Facilities Agreement**" has the meaning set forth in Section 6.3.

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as may be updated by Seller no later than sixty (60) days after Seller's delivery of the final certificate stating the Installed Capacity, substantially in the form attached as Exhibit G hereto.

"**South Turbine Uprate**" has the meaning set forth in the Recitals hereto.

"**SPTO Process**" means the CAISO Subscribed Participating Transmission Owner process through which Seller intends that the Facility, the Point of Interconnection, and the portion of the Transmission System providing transmission service to the Delivery Point shall become part of the CAISO Balancing Authority Area.

"**SPTO Date**" means the date on which the Point of Interconnection becomes part of the CAISO Balancing Authority Area through the SPTO Process.

"**Station Use**" means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility's electric energy distribution system as losses.

"SunZia Transmission Line" means that certain 3,000-MW high-voltage (+/-525-kV) transmission line originating at the Point of Interconnection (as defined in the Interconnection Agreement) in New Mexico and terminating near Phoenix, Arizona. The western terminus of the line will connect to the 500-kV Pinal Central Substation.

"**SunZia Wind North**" means the portion of the Facility known as SunZia Wind North.

"**SunZia Wind South**" means the portion of the Facility known as SunZia Wind South.

"**Supply Plan**" has the meaning set forth in the CAISO Tariff.

"**System Emergency**" means any condition that: (a) requires, as determined and declared by a Transmission Provider (including the CAISO and the PTO), automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

"**Tax**" or "**Taxes**" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

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

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

"**Test Energy**" means (1) the amount of Energy generated by the Facility and delivered to Buyer at the Delivery Point, equal to Buyer's Share of Energy delivered from the Facility to the Point of Interconnection, [redacted], as measured in MWh by the Approved Meter, as such amount may be reduced as a result of a Curtailment Order and/or Seller's delivery of Energy to the Delivery Point using any transmission rights other than Firm Transmission Rights, (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date; and (2) associated Green Attributes, including RECs that meet the RPS requirements for Portfolio Content Category 1.

"**Third-Party Forecast Vendor**" means (a) ENFOR A/S, UL Services Group LLC, Underwriters Laboratories LLC, Vaisala Group, Meteologica S.A., or (b) any other reputable third-party vendor that is registered to do business in California, experienced in providing and verifying wind energy generation forecasts, and not an Affiliate of Seller.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point, including CAISO, the Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company, the Desert Southwest Region of the Western Area Power Administration, and the Participating Transmission Owner.

"**Transmission System**" means the transmission facilities operated by the Transmission Provider(s), now or hereafter in existence, which provide energy transmission service upstream to or downstream from the Delivery Point.

"**Ultimate Parent**" means Pattern Energy Group LP.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8(e).

"**WREGIS Certificates**" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.**

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or

reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. In addition, the confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, all indemnity obligations shall remain in full force and effect for one (1) year following termination of this Agreement, all audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement, and Buyer's obligation to return to Seller the Development Security and/or Performance Security less any amounts drawn in accordance with this Agreement shall remain in full force and effect following the termination of this Agreement.

2.2 **Facility Ownership**. Buyer acknowledges that, as of the Commercial Operation Date, the Facility will be owned by one or more of Seller's Affiliates (each an "**Owner**") that will be, in turn, owned by Seller, and the Facility will not be owned directly by Seller. As of the

Commercial Operation Date, Seller will have, and throughout the Delivery Term Seller shall maintain, such agreements with Seller's Affiliates and other instruments as are necessary for Seller to perform its obligations under this Agreement. References to Seller in this Agreement will include, as the context requires, Owners (including in respect of Seller performing the obligation or causing Owners to perform the obligation). Seller will maintain its ownership of the Owners throughout the Delivery Term and will not sell or transfer Owners without Buyer's consent, which consent shall not be withheld or delayed unreasonably.

2.3 **Obligations Prior to Delivery Term**. Prior to commencement of the Delivery Term, Seller shall complete each of the following:

(a) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibit F and Exhibit G;

(b) (i) A Pseudo-Tie Participating Generator Agreement (as defined in the CAISO Tariff) between Seller and CAISO and an agreement governing the terms of Dynamic Transfers between CAISO and the host Balancing Authority for the Facility (or, if the SPTO Date has occurred, only a Participating Generator Agreement (as defined in the CAISO Tariff) between Seller and CAISO), and (ii) a Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) between CAISO and Seller, if, with respect to each such agreement, it is required under the CAISO Tariff or for Seller to meet its obligations under this Agreement, shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within ninety (90) days) and all conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has received the requisite pre-certification of the CEC Certification and Verification;

(f) Installed Capacity equal to at least ninety percent (90%) of the Guaranteed Capacity has been completed and is ready to produce and deliver Product to Buyer, as stated in the certificate in the form of Exhibit F delivered pursuant to clause (a) of this Section 2.3;

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements pursuant to the WREGIS Operating Rules (that are reasonably capable of being completed prior to the Commercial Operation Date under the WREGIS Operating Rules), including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all Delay Damages due and owing under this Agreement, if any.

(j) Seller shall provide to Buyer, read-only access to all CAISO Scheduling Coordinator interfaces, including but not limited to Scheduling Infrastructure Business Rules (SIBR) and Customer Market Results Interface (CMRI).

Upon request from Seller from time to time, Buyer shall confirm in writing the completion of those of the foregoing conditions that have been completed by Seller as of such request.

2.4 **Progress Reports**.

(a) The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) Business Days after the close of each calendar month following the Effective Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and have regular meetings between representatives of Buyer and Seller to review such monthly reports and discuss the Facility's development and construction progress. The content of the Progress Report is set forth in Exhibit C. Seller shall also provide Buyer with any reasonably requested documentation (subject to availability and confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request. Buyer shall be entitled to provide such Progress Reports to any purchaser to whom Buyer resells the Product (or parts thereof); provided such purchaser shall have first executed a commercially reasonable non-disclosure agreement with Seller containing terms consistent with those in Article 18.

(b) Seller shall provide to Buyer regular updates as to the status of the implementation of the SPTO Process and prompt Notice of the occurrence of the SPTO Date.

2.5 **Remedial Action Plan**. If Seller misses any one (1) Milestone by more than ninety (90) days, except as the result of a Force Majeure Event or Buyer default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date (as it may be extended) in accordance with the terms of this Agreement. So long as Seller is in compliance with its obligations under this Section 2.5, its failure to meet any Milestone shall not be a default under this Agreement.

2.6 **Outside Commercial Operation Date**.

(a) If, due to a Development Cure Period, Commercial Operation is not achieved by the Outside Commercial Operation Date (as it may be extended), either Party may terminate this Agreement upon Notice to the other Party, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party except for those obligations that survive termination as described in Section 2.1(b).

(b) If Commercial Operation is not achieved by the Guaranteed Commercial Operation Date, as it may be extended due to a Development Cure Period, either Party may terminate this Agreement upon Notice to the other Party, it shall not be an Event of Default by either Party, and neither Party shall have any liability to the other Party except for the payment by Seller, as liquidated damages, of the full amount of the Development Security less any Delay Damages (as described in Exhibit B) paid as of the date of such termination, if any, and those obligations that survive termination as described in Section 2.1(b).

2.7 **Project Bifurcation or Transition**. Notwithstanding the provisions of Section 2.2, Seller may, at any time during the Contract Term, elect by Notice to Buyer to both terminate this Agreement and either (x) cause each Owner to simultaneously enter into a Replacement PPA with Buyer in respect of the portion of the Facility (i.e., SunZia Wind North or SunZia Wind South) owned by such Owner (a "**Project Bifurcation**"), or (y) cause the Owner of either (i) SunZia Wind South, or (ii) SunZia Wind North, to enter into a Replacement PPA with Buyer solely in respect of its portion of the Facility (a "**Project Transition**"). Each Replacement PPA will be on the same terms and conditions as those set forth in this PPA, except for the following administrative changes that are necessary to effectuate the separation or transition of this Agreement into Replacement PPA(s) with the Owner or Owners (and such other administrative changes as may be necessary), as applicable:

(a) the identity of Seller throughout shall be changed to reflect the identity of the applicable Owner;

(b) subject to the potential adjustment of the Installed Capacity pursuant to the terms of this Agreement or any Replacement PPA, the nameplate capacity of (i) each Owner's portion of the Facility, in the case of a Project Bifurcation, or (ii) SunZia Wind South or SunZia Wind North, as applicable, in the case of a Project Transition (either the actual Installed Capacity, if the transition to the Replacement PPA(s) occurs after the final Installed Capacities have been determined under this Agreement, or the anticipated installed capacity at the time of the Project Bifurcation or Project Transition, as applicable, if otherwise) shall be inserted in "Description of Facility" in the Cover Sheet;

(c) Exhibit A (Facility Description) shall be revised to reflect (i) each Owner's portion of the Facility in the case of a Project Bifurcation, or (ii) a description of SunZia Wind South or SunZia Wind North, as applicable, in the case of a Project Transition;

(d) Exhibit K (Notices) shall be revised to reflect the appropriate information for each Owner signatory to the relevant Replacement PPA, as applicable; and

(e) All instances of [redacted] in this Agreement shall be changed in each Replacement PPA, on a pro rata basis, to reflect the installed capacity of each Owner's portion of

the Facility relative to, as applicable, either the actual Installed Capacity, if the Project Bifurcation or Project Transition, as applicable, occurs after the final Installed Capacity has been determined, or the anticipated installed capacity of the Facility at the time of the Project Bifurcation or Project Transition, as applicable, if otherwise.

(f) In the case of a Project Bifurcation:

(i) the amount of the "Guaranteed Capacity" in the Cover Sheet of each Replacement PPA (as defined therein) shall be changed to reflect the guaranteed capacity under each Replacement PPA; *provided* that, for the avoidance of doubt, the sum of the "Guaranteed Capacities" in the Cover Sheet in the Replacement PPAs shall equal the Guaranteed Capacity in the Cover Sheet in this Agreement, subject to the potential adjustment of the Guaranteed Capacity pursuant to the terms of this Agreement or any Replacement PPA;

(ii) the amount of the "Expected Energy" in the Cover Sheet of each Replacement PPA shall be reduced to reflect the "Guaranteed Capacity" and net capacity factor applicable to the "Facility" associated with each Replacement PPA (in each case, as defined therein) ; *provided* that, for the avoidance of doubt, the sum of the "Expected Energy" amounts in the Cover Sheet in each Replacement PPA shall equal the Expected Energy amount in the Cover Sheet in this Agreement, subject to the potential adjustment of the Guaranteed Capacity and/or Expected Energy pursuant to the terms of this Agreement or any Replacement PPA;

(g) In the case of a Project Transition:

(i) subject to the potential adjustment of the Guaranteed Capacity pursuant to the terms of this Agreement or any Replacement PPA, the amount of the "Guaranteed Capacity" in the Cover Sheet of the Replacement PPA shall equal the amount of the Guaranteed Capacity in the Cover Sheet in this Agreement;

(ii) subject to the potential adjustment of the Expected Energy pursuant to the terms of this Agreement or any Replacement PPA, the amount of the "Expected Energy" in the Cover Sheet of the Replacement PPA shall equal the amount of the Expected Energy in the Cover Sheet in this Agreement.

In addition: (1) subject to the potential adjustment of the Installed Capacity pursuant to the terms of this Agreement or any Replacement PPA, if the Installed Capacity has been determined in accordance with this Agreement as of the effective date of the Replacement PPA(s), the "Installed Capacity" (as defined therein) shall be revised to reflect the corresponding amount of installed nameplate capacity associated with (i) each Owner's portion of the Facility in the case of a Project Bifurcation, or (ii) the installed nameplate capacity of SunZia Wind South or SunZia Wind North, as applicable, in the case of a Project Transition, (2) in the case of Project Bifurcation, contract values or requirements that are based on determinants that are changing as a result of such Project Bifurcation shall be adjusted on a pro rata basis under the Replacement PPAs to correspond to the changed determinants, including the amount of the Guaranteed Energy Production (which is set based on the Expected Energy) and the amount of required Development Security and Performance Security (which are each set based on the Guaranteed

Capacity), and (3) Section 2.2 and Section 2.7 shall no longer apply and shall not be included in the Replacement PPA(s).

If Seller elects to consummate a Project Bifurcation or a Project Transition, Seller shall include in its Notice to Buyer drafts of each Replacement PPA, as applicable, and a draft agreement providing for the termination of this Agreement. Buyer shall use reasonable efforts to provide comments to Seller within [redacted] Business Days of its receipt of Seller's Notice on the draft Replacement PPA(s), as applicable, and the termination agreement. Buyer shall cooperate reasonably with Seller and the Owners to resolve any issues and enter into the Replacement PPA(s) and the termination agreement within [redacted] days of Seller's Notice. If the Replacement PPA(s) and termination agreement are not executed within such [redacted] day period, either Party shall have the right to resolve any remaining issues pursuant to the dispute resolution procedures set forth in Article 15 and shall execute the Replacement PPA(s) and termination agreement promptly upon such resolution. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with a Project Bifurcation or a Project Transition, including without limitation reasonable attorneys' fees.

Upon execution of the Replacement PPA(s) and termination of this Agreement: (A) each Owner shall deliver to Buyer substitute Development Security or Performance Security, as applicable, and as may be necessary or convenient; (B) upon receipt of the substitute Development Security or Performance Security referenced in item (A) of this sentence (if any), Buyer shall return to Seller the Development Security or Performance Security, as applicable, less any amounts drawn in accordance with this Agreement; (C) Buyer and the Owners shall, and the Owners shall cause Seller to, reasonably cooperate to implement any additional administrative actions that may be necessary to effectuate the Project Bifurcation or Project Transition (including, for example, in connection with WREGIS or CAISO); and (D) Seller shall have no further obligations to Buyer and Buyer shall have no further obligations to Seller, except for those obligations associated with the period of time prior to the termination of this Agreement.

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**

(a) Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all the Product produced by or associated with the Installed Capacity of the Facility, [redacted]. The sale by Seller and purchase by Buyer of Delivered Energy hereunder shall be for resale. Subject to Buyer's obligations to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point or Alternative Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

(b) Remarketing Rights. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any

and all related revenues. Seller shall use good faith efforts to work with Buyer to finalize remarketing arrangements that will allow Buyer to remarket Product to third parties during the Delivery Term if Buyer so desires; *provided* that Buyer shall reimburse Seller for any costs associated with such efforts and any remarketing or reselling of Product, and Seller shall incur no liabilities pursuant to the terms of any remarketing arrangement in excess of what Seller would bear or incur, as applicable, under the terms of this Agreement had such remarketed Product not been remarketed.

3.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes.

3.3 **Compensation.**

(a) Delivered Energy. For each MWh of Delivered Energy in each Settlement Period or Settlement Interval, as applicable, Buyer shall pay Seller [redacted]

(b) Deemed Delivered Energy. For each Settlement Period or Settlement Interval, as applicable, during the Delivery Term, Buyer shall pay Seller the Contract Price for each MWh of Deemed Delivered Energy. In addition, during the period in which Seller is receiving the PTC for the Delivered Energy, Buyer shall also pay the PTC Amount for all Deemed Delivered Energy; *provided*, however, Buyer shall not pay the PTC Amount for Deemed Delivered Energy that was generated by the Facility and sold to a third party pursuant to Section 4.5(b). Notwithstanding the foregoing, Seller shall receive no compensation from Buyer, including for the PTC Amount, for Deemed Delivered Energy to the extent that Seller is required to reduce delivery of Delivered Energy as a result of any Curtailment Period.

(c) Excess Deliveries. [redacted]

(d) Excess Settlement Interval Deliveries. If, during any Settlement Interval, Seller delivers Product amounts to Buyer, as measured by the amount of Delivered Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then Buyer shall not be obligated to pay for any such Excess MWh. If the LMP in the Real-Time Market at the Delivery Point is negative for a Settlement Interval with Excess MWh, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the LMP in the Real-Time Market at the Delivery Point, *times* (ii) Excess MWh for such Settlement Interval.

3.4 **Imbalance Energy**. Buyer and Seller recognize that from time to time the amount of Delivered Energy will deviate from the amount of Scheduled Energy. Seller shall be responsible for all CAISO costs, and shall be entitled to all CAISO revenues, associated with Imbalance Energy.

3.5 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. The Parties shall promptly notify each other upon becoming aware of the existence of Future Environmental Attributes and, subject to the final sentence of this Section 3.6(a), in such event, Buyer shall have the exclusive right to claim such Future Environmental Attributes by providing Notice to Seller. If Buyer provides such Notice, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or its operations unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) the determination of any additional costs to be borne by

Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy**. If and to the extent the Facility generates Test Energy, Seller may, at its option, provide Notice to Buyer of the availability of Test Energy; such Notice shall be provided no less than ten (10) days prior to the first day that Seller proposes to sell Test Energy to Buyer. Upon receipt of such Notice, Buyer may, at its option, elect to purchase Test Energy at [redacted] of the Contract Price, and Buyer shall Notify Seller within five (5) days after receipt of such Notice if Buyer agrees to purchase Test Energy. If Buyer fails to respond within five (5) days after receipt of such Notice, Buyer shall be deemed to have agreed not to purchase Test Energy. If Buyer does not agree to purchase Test Energy as set forth in this Section 3.7, Seller may sell such Test Energy, and any related products or attributes, to third parties and keep any and all revenues (and bear any and all costs) associated with such sales. The conditions precedent in Section 2.3 are not applicable to the Parties' obligations under this Section 3.7.

3.8 **Capacity Attributes.**

(a) From and after the Capacity Attributes Guarantee Date, Seller sells, grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes.

(b) Subject to the provisions of this Section 3.8 and Section 3.12, throughout the Delivery Term, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility is eligible to provide Capacity Attributes at the Delivery Point. From and after the Capacity Attributes Guarantee Date, subject to the provisions of this Section 3.8 and Section 3.12, Seller hereby covenants and agrees to transfer all Capacity Attributes to Buyer. Seller shall not commit or encumber any portion of Buyer's Share of the output of the Facility so as to prevent the entire Buyer's Share from serving as Buyer's Supporting Resource (as defined in the CAISO Scheduling Infrastructure Business Rules) and delivering the Guaranteed Capacity Attributes.

(c) Subject to Section 3.12, for the duration of the Delivery Term, Seller shall use good faith efforts, including as set forth in this Section 3.8(c), to comply with requirements in connection with Non-Resource Adequacy Capacity that (i) are instituted by the governing body of Buyer or the CAISO, and (ii) differ from CAISO or CPUC rules applicable to Resource Adequacy Benefits. Seller shall provide to Buyer an attestation, in a form reasonably acceptable to Buyer, stating that Buyer has procured the Capacity Attributes.

(d) Subject to the provisions of this Section 3.8, at Buyer's reasonable request, Seller shall execute such documents and instruments and take all steps and actions as may be reasonably required to effect recognition and transfer of the Capacity Attributes as belonging to Buyer; provided that no such request may impose any material additional third-party costs (other than those reimbursed by Buyer pursuant to Section 3.12) or obligations on Seller, or reduce Seller's compensation hereunder.

(e) Buyer acknowledges that it may be required to take action and obtain certain rights at the Delivery Point in order to make use of the Capacity Attributes, including

obtaining and maintaining Import Capability and/or other rights as may be required under applicable Law to import energy and capacity into the CAISO Balancing Authority Area and make use of the Capacity Attributes. If applicable, Seller shall use commercially reasonable efforts to support Buyer's efforts to (i) obtain such Import Capability, (ii) obtain any other rights that Buyer is required to obtain, or (iii) take any other actions that Buyer is required to take, in each case in order for Buyer to make use of the Capacity Attributes, and in each case as may be required under applicable law and as may change from time to time. Buyer's failure to obtain or maintain Import Capability or any other rights or capacities, or take any other actions, necessary to support the importation of the Capacity Attributes or otherwise receive or utilize the Capacity Attributes, for reasons other than a Seller failure under this Agreement, shall not be a Seller breach hereunder; any Capacity Attributes, expressed in kW, not delivered to Buyer due to such failure of Buyer shall be defined as "**Deemed Delivered Capacity Attributes**". In addition, if any action or inaction of the governing board of Buyer (x) prevents Seller from delivering any Capacity Attributes to Buyer using commercially reasonable efforts consistent with and limited to Seller's obligations hereunder with respect to Capacity Attributes as of the Effective Date, or (y) disqualifies the Facility from providing Capacity Attributes to Buyer, in whole or in part, all such undelivered or ineligible Capacity Attributes shall constitute Deemed Delivered Capacity Attributes.

(f) From and after the Capacity Attributes Guarantee Date, for any calendar month in which there is a Capacity Attribute Shortfall greater than zero (0) kW:

(i) Seller shall be liable for liquidated damages ("**Capacity Attribute Damage Amount**") in the amount of [redacted]

3.9 **CEC Certification and Verification**. Seller shall (i) file an application with the CEC for CEC Certification and Verification of the Facility as soon as possible after the Commercial Operation Date, and (ii) provide to the CEC all information necessary to verify the contents of such application and maintain CEC Certification and Verification for the Facility throughout the Delivery Term; *provided*, Seller shall be deemed to have complied with the requirements of this sentence if Seller applies for CEC Certification and Verification within sixty (60) days after the Commercial Operation Date, and thereafter timely responds to any questions from the CEC.

Subject to the terms of this Section 3.9 and Section 3.12, Seller shall ensure that throughout the Delivery Term, the Product meet the criteria defined by the CEC Renewables Portfolio Standard Eligibility Guidebook for PCC-1.

3.10 **Non-Modifiable Terms.**

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is

defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6]

(b) Applicable Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

(c) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028 or the California Energy Commission's *Renewables Portfolio Standard Eligibility Guidebook*, which may be modified by subsequent decisions of the California Public Utilities Commission, updates by the California Energy Commission, or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

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

(e) Each of Buyer and Seller acknowledge that this Agreement does not conform to the non-modifiable standard contract term requirements of CPUC decisions 08-04-009, 08-08-028, 10-03-021, 13-11-024, or any successor CPUC decisions thereto. Buyer represents that deliveries of Product under this Agreement are not required to comply with such requirements.

3.11 **California Renewables Portfolio Standard**. Upon request of Buyer, Seller shall provide records or other information reasonably required to demonstrate that the Product has been conveyed and delivered in accordance with the terms and conditions of this Agreement, including, subject to Section 3.12, scheduling or delivery information necessary to meet the requirements of the California Renewables Portfolio Standard for the Product. Subject to Section 3.12, Seller represents and warrants the Product meets the requirements set forth in PUC Code 399.16(b)(1) and the RPS compliance requirements for Portfolio Content Category 1 as set forth in CPUC Decision 11-12-052.

3.12 **Compliance Expenditure Cap**. Notwithstanding anything herein to the contrary, if Seller establishes to Buyer's reasonable satisfaction that a change in Law occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations

under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed below, then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during any Contract Year shall be capped at [redacted] ("**Compliance Expenditure Cap**")

(a) CEC Certification and Verification;

(b) Green Attributes;

(c) WREGIS; and

(d) Capacity Attributes.

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

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have ninety (90) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof, for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within ninety (90) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligations to take, and no liability for a failure to take, such Compliance Actions for the remainder of the Term; *provided, however,* that Buyer shall have the right to reconsider Compliance Actions that have been rejected or waived pursuant to this paragraph at any time; *provided further,* upon Buyer's written request in connection with such reconsideration, Seller shall provide Notice to Buyer with an updated estimate of the anticipated out-of-pocket expenses to take the reconsidered Compliance Action. Within ninety (90) days after Buyer's receipt of Seller's Notice, Buyer shall agree to reimburse Seller for the Accepted Compliance Costs or waive Seller's obligation to take the reconsidered Compliance Actions, or any part thereof, for which Buyer does not agree to reimburse Seller; *provided*, if Buyer does not reply within such ninety (90) day period Buyer shall be deemed to have waived Seller's obligation to take such Compliance Actions.

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

reimburse Seller for the Accepted Compliance Costs for less than all of the costs that exceed the Compliance Expenditure Cap, Seller shall only be obligated to take the Compliance Actions covered by the Accepted Compliance Costs.

Notwithstanding anything else in this Agreement, any incremental costs to Seller in excess of Fifteen Thousand Dollars ($15,000) per year to comply with requirements regarding Capacity Attributes (including Non-Resource Adequacy Capacity) established by Buyer, or any Person vested with the authority under applicable Law to require Buyer to procure resource adequacy or other such products, over and above Seller's costs to comply with CAISO and/or CPUC requirements as to Resource Adequacy Benefits as of the Effective Date ("**Buyer Capacity Compliance Costs**"), shall be excluded from the Compliance Expenditure Cap. If Buyer desires Seller to comply with any requirements regarding Capacity Attributes (including Non-Resource Adequacy Capacity) that differ from CAISO and/or CPUC requirements as described in the prior sentence, Buyer shall be responsible for payment of all such Buyer Capacity Compliance Costs.

The terms and conditions of this Section 3.12 with respect to Seller expenses in excess of the Compliance Expenditure Cap shall apply, *mutatis mutandis*, to all Buyer Capacity Compliance Costs.

Notwithstanding anything else in this Agreement: (i) Seller shall be under no obligation to take any action to comply with such requirements as could reasonably be expected to have a material adverse impact upon Seller's ability to own, operate, or maintain the Facility or to sell or transfer to third parties the non-Buyer's Share portion of the Facility's output, or any products associated therewith (including all Resource Adequacy Benefits and other capacity attributes that are, or that would have been in the absence of this Agreement, associated with the non-Buyer's Share portion of the Installed Capacity); and (ii) if at any time, pursuant to (a) the then-current CAISO Tariff, (b) the rules or regulations of Buyer or any Person vested with the authority under applicable Law to require Buyer to procure resource adequacy or other such products, or (c) other applicable Law, the transfer and/or delivery to Buyer of Non-Resource Adequacy Capacity associated with the Facility is not permitted, then: Seller shall have no further obligation hereunder to deliver Non-Resource Adequacy Capacity to Buyer; Seller shall not be required to incur any costs or expenses in connection with delivery of Non-Resource Adequacy Capacity to Buyer; such non-delivery of Non-Resource Adequacy Capacity to Buyer shall not be a breach, default or Event of Default hereunder; and Seller shall have no liability to Buyer as a result of such non-delivery of Non-Resource Adequacy Capacity.

The term "commercially reasonable efforts" as used in Section 3.10 means efforts consistent with and subject to this Section 3.12.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Seller shall effectuate the delivery of Delivered Energy through Dynamic

Transfers, and shall be responsible for securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith; *provided*, for any portion of the Delivery Term after the SPTO Date, Seller shall no longer effectuate the delivery of Delivered Energy through Dynamic Transfers.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product.

(c) Transmission Rights. Seller shall maintain Firm Transmission Rights sufficient to deliver [redacted] to the Delivery Point throughout the Delivery Term, unless Seller can reasonably demonstrate to Buyer in advance that the Product can be delivered to Buyer at the Delivery Point as contemplated by this Agreement without such Firm Transmission Rights.

4.2 **Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

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

4.3 **Scheduling Coordinator Responsibilities.**

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Seller shall not be responsible for any charges or fees associated with the Product that are assessed by the CAISO after the Delivery Point. [redacted] *provided*, to the extent Seller does curtail deliveries of Energy, Buyer shall pay for Deemed Delivered Energy pursuant to Section 3.3(b); and to the extent Seller does not curtail deliveries of Energy, Seller shall be compensated for Delivered Energy pursuant to Section 3.3(a), and such Delivered Energy shall not be considered to be Deemed Delivered Energy.

(i) Subject to Sections 3.8(c), 3.8(d), 3.8(e), 3.12, 4.3(a), and 4.3(e), (x) Seller shall follow the requirements prescribed by the CAISO to bid the Delivered Energy into the Day-Ahead Market and the Real-Time Market in a manner that permits Buyer's use of

the Capacity Attributes for Non-Resource Adequacy Capacity (or similar purposes), including such requirements to establish an appropriate designation (if any) at COD and maintain such designation throughout the Delivery Term, and (y) Seller's failure to appropriately bid or schedule the Delivered Energy into the CAISO which causes a limitation on Buyer's ability to use the associated Capacity Attributes for Non-Resource Adequacy Capacity (or similar purposes)shall be a Seller breach of the PPA.

[redacted]

(ii) Exhibit N sets forth non-binding estimates of (i) the PTC value that Seller anticipates will be available from the Facility, and (ii) the PTC Amount, in each case in $/MWh, for each calendar year of the Delivery Term. As of the Effective Date, the PTC value is $[redacted]/MWh, and the PTC Amount is $[redacted]/MWh. Each calendar year, within fifteen (15) Business Days following the later of (x) publication of any change to the PTC value in the Federal Register, and (y) determination of any change to the "Energy Communities" adder via Notice 2024-48, in each case available from the Facility, Seller shall provide Notice to Buyer of such updated PTC value and updated PTC Amount.

(c) Costs and Revenues. Seller shall be responsible for all costs associated with transmission, scheduling and delivery of Product up to the Delivery Point. Seller shall be responsible for all CAISO costs up to the Delivery Point (including penalties, Imbalance Energy charges, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy payments, and other payments), including costs and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility.

(d) Master File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

(e) Pre-EDAM Self-Schedule Deliveries. Seller and Buyer acknowledge that it is Buyer's intention to join the CAISO extended day-ahead market or a similar CAISO energy market ("**EDAM**") during the Delivery Term. [redacted]

(v) Notwithstanding the other provisions of this Section 4.3, if the terms and conditions set forth in this Section 4.3(e), (x) are not consistent with the CAISO Tariff or other applicable Law, or (y) as reasonably determined by either Party in good faith will not fully or efficiently support the delivery of Non-Resource Adequacy Capacity to Buyer or are not reasonably practicable for a Party to implement, the Parties agree to negotiate in good faith, subject to Sections 3.8(c), 3.8(d), 3.8(e), and 3.12, to modify the terms and conditions of this

Section 4.3(e) or determine alternative arrangements, as necessary, to support the full and efficient delivery of Non-Resource Adequacy Capacity to Buyer during the Delivery Term prior to Buyer's entry into the EDAM that provide for the same balance of benefits, burdens, and obligations as contemplated in this Section 4.3(e). Notwithstanding the other provisions of this Section 4.3(e), if the terms and conditions set forth in this Section 4.3(e) or the Parties' performance hereunder result in the curtailment of Delivered Energy, or costs to Seller, that would not otherwise occur in the absence of the terms and conditions of this Section 4.3(e) or the Parties' performance hereunder, Buyer will hold Seller harmless against and costs or losses resulting therefrom.

4.4 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are consistent with the information actually known by Seller at the time the forecasts are submitted and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practice. Notwithstanding the provisions of Sections 4.4(a), (b), and (c), Seller and Buyer acknowledge that Buyer does not require the submission of Supply Plans by Seller, and Buyer is not required to submit Resource Adequacy Plans (as defined in the CAISO Tariff) or match such Resource Adequacy Plans to Supply Plans in order to receive or utilize Capacity Attributes or Non-Resource Adequacy Capacity.

(a) Annual Forecast of Available Capacity. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's Available Capacity, by hour, and Seller's projection of scheduled maintenance for the following calendar year in a form reasonably requested by Buyer.

(b) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's average-day Energy expected to be produced by the Facility and delivered to Buyer at the Delivery Point, net of all Electrical Losses, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit D, or as reasonably requested by Buyer.

(c) Monthly Forecast of Energy and Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the compliance deadline for each monthly Supply Plan during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Energy expected to be produced by the Facility and delivered to Buyer at the Delivery Point, net of all Electrical Losses, and Available Capacity for each day of the following month in a form reasonably requested by Buyer.

(d) Daily Forecast of Available Capacity. By 5:30 AM Pacific Prevailing Time each day on the day immediately preceding the date of delivery, Seller shall provide Buyer with (i) a non-binding forecast of its best estimate of Available Capacity and (ii) the Day-Ahead Forecast, in each case, for each hour of the immediately succeeding day.

(e) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes to the Day-Ahead Forecast resulting from changes of fifteen (15) MW or more in available Installed Capacity, or when the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, differs by more than fifteen (15) MWh, as applicable, of the amount set forth in the Day-Ahead Forecast, in each case, due to Forced Facility Outage or Force Majeure Event (such update, the "**Real-Time Forecast**"), as soon as reasonably possible, but no later than sixty (60) minutes prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the available Installed Capacity or, if applicable, the hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, changes by at least fifteen (15) MW or 15 MWh, as applicable, due to Forced Facility Outage or Force Majeure Event as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts shall be prepared by the Third-Party Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Installed Capacity or hourly Energy expected to be produced by the Facility and delivered to the Delivery Point, net of all Electrical Losses, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use reasonable efforts to notify Buyer of such outage within ten (10) minutes of becoming aware of the Forced Facility Outage. Seller shall inform Buyer as soon as reasonably practicable of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These real-time forecasts shall be communicated by email to Buyer unless Buyer requests an alternative method of communications reasonably acceptable to Seller.

4.5 **Dispatch Down/Curtailment.**

(a) General. Subject to Section 4.5(b), Seller agrees to reduce deliveries of the Energy produced by the Facility by the amount and for the period set forth in any Curtailment Order; provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Alternative Delivery Point/Third-Party Sales. In the event that, and for so long as, Seller is unable to deliver all or a portion of the Product to Buyer at the Delivery Point, but Seller is able to deliver Product to Buyer at one or more Alternative Delivery Points, such Alternative Delivery Points shall be considered the Delivery Point under this Agreement. If Buyer and Seller fail to agree upon an Alternative Delivery Point, (i) Seller may, in its sole discretion, sell and deliver some or all of the Product during any Curtailment Period to one or more third party buyers to the extent that Seller may do so in compliance with Law and Prudent Operating Practice, and (ii)

Seller shall use commercially reasonable efforts to sell and deliver some or all of the Product during Market Curtailment Periods at a positive price to the extent that Seller may do so in compliance with Law and Prudent Operating Practice. If and to the extent that Seller makes sales pursuant to the preceding sentence, (i) no PTC Amount shall be paid for Deemed Delivered Energy to the extent that Seller delivers Energy to a third party and (ii) Seller shall credit to Buyer all revenues, net of Seller's incremental costs associated with such sales, up to the product of (A) the Contract Price *multiplied by* (B) the amount of Product sold ("**Contract Revenues**"), and Seller shall be entitled to all revenues in excess of the Contract Revenues.

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

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any Planned Outage; *provided* that during each period from June 1 to September 30, Seller shall not schedule any non-emergency maintenance of the Facility which reduces the energy generation capability of the Facility by more than ten percent (10%) unless (i) such maintenance is required to avoid an emergency or damage to the Facility or the Interconnection Facilities, (ii) such maintenance is necessary to maintain equipment warranties or is otherwise in accordance with equipment manufacturer recommendations and cannot reasonably be scheduled outside such period, (iii) such maintenance is in connection with a Force Majeure Event, (iv) such maintenance is required by applicable Law, the requirements of a Transmission Provider and/or any other applicable Governmental Authority, or Prudent Operating Practice, (v) such maintenance is required for safety reasons, or (vi) the Parties agree otherwise in writing. On or before December 1st each year, Seller shall provide Buyer with the scheduled maintenance for the Facility for the next calendar year.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage and shall keep Buyer reasonably informed of any developments that will affect either the duration of the outage or the availability of the Facility during and after the end of such outage.

(c) System Emergencies and other Events. Seller shall be permitted to reduce deliveries of Product (i) during any period of System Emergency, (ii) pursuant to a Curtailment Order, (iii) during a Market Curtailment Period, (iv) during any Force Majeure Event, (v) due to Prudent Operating Practice, (vi) due to Buyer's failure to perform, or (vii) otherwise pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff or as may be required under a Shared Facilities Agreement. Notwithstanding anything in this Agreement to the contrary, Seller may, in its sole discretion, sell and deliver some or all of the Product during any Curtailment Period or Market Curtailment Period to one or more third-party buyers to the extent that Seller may do so in compliance with Law and Prudent Operating Practice.

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

(e) Real-Time Curtailment. Seller shall be permitted to reduce deliveries of Product during any period when the LMP in the Real-Time Market is less than the Floor Price;

provided, that if some amount of the Day-Ahead Forecast has been awarded a Day-Ahead Schedule, Seller shall not reduce the Delivered Energy, pursuant to this clause, below the amount of the Day-Ahead Forecast that has been awarded a Day-Ahead Schedule, and any such reduction shall not be included in a Market Curtailment Period. Seller shall also be permitted in its sole discretion to reduce a portion of Facility generation and/or deliveries of Facility generation to the Delivery Point not including Buyer's Share during any Settlement Period that is not a Curtailment Period nor Market Curtailment Period. During such curtailments, Seller shall deliver Delivered Energy to Buyer in accordance with clause (c) of the definition of "Delivered Energy". Illustrative settlement examples during the foregoing events are provided in Exhibit O.

4.7 **Guaranteed Energy Production**.

(a) After the first Contract Year, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each period of two (2) consecutive Contract Years during the Delivery Term (such that the first Performance Measurement Period comprises Contract Years 2 and 3, the second Performance Measurement Period comprises Contract years 3 and 4 and so on) ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Product for each Performance Measurement Period, as measured in MWh, equal to [redacted] in such Performance Measurement Period. The calculation will be performed once each Contract Year, beginning with the third anniversary of the Commercial Operation Date. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Forced Facility Outage (provided Seller has followed Prudent Operating Practices), Force Majeure Events, System Emergencies, Buyer's failure to perform, Curtailment Periods and Market Curtailment Periods. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall (i) pay Buyer Energy Replacement Damages calculated in accordance with Exhibit E, or (ii) in lieu of paying some or all of the Energy Replacement Damages, at Seller's discretion, provide Replacement Product retrospectively pursuant to and subject to the requirements of Section 4.7(b)(ii).

(b) Seller shall be permitted to deliver Replacement Product (i) prospectively during any Performance Measurement Period if Seller reasonably anticipates that delivery of such Replacement Product is necessary to achieve the Guaranteed Energy Production for such Performance Measurement Period, or (ii) retrospectively during the Contract Year immediately following any Performance Measurement Period in accordance with Section 4.7(a) above; *provided,* Seller's right to deliver Replacement Product shall be expressly subject to Buyer's prior written acceptance of Seller's proposed delivery schedule for such Replacement Product; *provided further*, Replacement Product shall be delivered to (x) at Seller's election, the Delivery Point or the California-Oregon Border (COB) trading hub or (y) an Alternative Delivery Point. Seller shall provide Notice to Buyer of any proposed delivery of Replacement Product, including a proposed schedule of such deliveries, at least thirty (30) days prior to the proposed delivery of such Replacement Product and, solely with respect to retrospective Replacement Product, at least thirty (30) days after the conclusion of any Performance Measurement Period with respect to which Seller proposes to deliver retrospective Replacement Product. If the Parties cannot reach agreement on a schedule of deliveries, Seller shall have no right to deliver, and Buyer shall have no obligation to pay for, the proposed Replacement Product.

4.8 **WREGIS**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer such Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall satisfy its obligations pursuant to Section 3.10(d) and Section 4.2(b) by fulfilling its obligations under Sections 4.8(a) through (f) below. Notwithstanding the provisions of this Section 4.8, following the occurrence of the SPTO Date, Seller shall not be required to generate E-Tags associated with Delivered Energy and/or Replacement Energy unless required (i) pursuant to the CAISO Tariff, or (ii) by WREGIS, the CPUC, the CEC, or other applicable Law for matching E-Tags with Delivered Energy and/or Replacement Energy in order to validate RPS claims.

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using Recurring Certificate Transfers from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account. Buyer shall be responsible for all expenses associated with establishing and maintaining Buyer's WREGIS account.

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate. WREGIS Certificates must be matched with E-Tags associated with the Dynamic Transfers (or, if the SPTO Date has occurred and the CEC does not require E-Tag matching in order to validate RPS claims, with the Delivered Energy and Replacement Energy). WREGIS Certificates without matching E-Tags associated with Dynamic Transfers (or, if the SPTO Date has occurred and the CEC does not require E-Tag matching in order to validate RPS claims, with the Delivered Energy and Replacement Energy) will be rejected.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the amounts corresponding to the Facility's metered data that match E-Tags associated with the Dynamic Transfers (or, if the SPTO Date has occurred and the CEC does not require E-Tag matching in order to validate RPS claims, with the Delivered Energy and Replacement Energy). Subject to delivery of Replacement Product, Seller shall ensure that no WREGIS Certificates are transferred to Buyer's WREGIS Account unless they are the result of Delivered Energy reflected in the Facility's metered data and matched with E-Tags associated

with the Dynamic Transfers (or, if the SPTO Date has occurred and the CEC does not require E-Tag matching in order to validate RPS claims, with the Delivered Energy and Replacement Energy).

(d) Due to the approximately fourteen (14) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 notwithstanding that the WREGIS Certificates may not have been formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced on a pro rata basis across all Settlement Periods in such Deficient Month by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that after the ninety (90) days attributed to the delay in the creation of WREGIS Certificates for such Deficient Month, Seller either (x) resolves the WREGIS Certificate Deficit within an additional one hundred eighty (180) days or (y) provides Replacement Green Attributes within an additional one hundred eighty (180) days (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. If the amount of Delivered Energy in the Deficient Month is reduced in accordance with the prior sentence and neither (x) nor (y) of the prior sentence apply, Buyer shall pay Seller for any Delivered Energy that is delivered by Seller without corresponding WREGIS Certificates at a price equal to the lesser of (i) the Contract Price, or (ii) the LMP in the Day-Ahead Market at the Delivery Point, and for purposes of the Guaranteed Energy Production, Delivered Energy is reduced by the amount of the WREGIS Certificate Deficit for the applicable Performance Measurement Period. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, Delivered Energy shall not be reduced pursuant to this Section 4.8(e) and the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

4.9 **Modification of Installed Capacity**. At any time prior to January 31, 2025 ("**Capacity Increase Deadline**"), Seller shall have the option to elect to implement the South Turbine Uprate, and in connection therewith to (i) increase the maximum Installed Capacity of

the Facility listed on the Cover Sheet of this Agreement up to an amount equal to 3,800 MW, and (ii) increase the Expected Energy under this Agreement to reflect the increased generating capacity resulting from the South Turbine Uprate. Seller shall deliver Notice to Buyer of its election to implement the South Turbine Uprate no later than the Capacity Increase Deadline, which Notice shall include the increased maximum Installed Capacity of the Facility and increased Expected Energy under this Agreement. Upon receipt of such Notice by Buyer, this Agreement shall be deemed automatically amended as follows:

(a) The text "3,515 MW" in the section "Description of Facility" on the Cover Sheet of this Agreement shall be replaced with the maximum Installed Capacity amount set forth in Seller's Notice to Buyer delivered pursuant to this Section 4.9; and

(b) The text "[redacted] MWh" in the section "Expected Energy" on the Cover Sheet of this Agreement shall be replaced with the Expected Energy amount set forth in Seller's Notice to Buyer delivered pursuant to this Section 4.9.

4.10 **Standard of Care**. Seller shall be responsible for designing, installing, operating, and maintaining the Facility (including all associated costs) in accordance with applicable Law, and shall comply with all applicable WECC, RC West, FERC and NERC requirements, and with Prudent Operating Practice, including applicable interconnection and telemetering requirements set forth in the Interconnection Agreement.

Seller shall ensure that: (a) operation and maintenance of the Facility is conducted in a safe manner in accordance with the Interconnection Agreement and Prudent Operating Practice; and (b) any governmental authorizations and permits required for the construction and operation thereof are maintained. Consistent with (a) above, Seller shall ensure that any necessary and commercially reasonable repairs are made to the Facility.

Seller acknowledges receipt of SMUD's Principles of Renewable Energy Development as expressed in Exhibit M, attached and incorporated herein. Seller shall use commercially reasonable efforts to abide by the project-specific obligations identified in the "Community Benefits Plan" as described in Exhibit M, to the extent applicable to and feasible for the Facility as reasonably determined by Seller.

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and delivery of Product to Buyer, that are imposed on Product prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of the Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, the exempted Party shall provide the other Party with all necessary documentation within thirty (30) days after

the Effective Date to evidence such exemption or exclusion. If the exempted Party does not provide such documentation, then such Party shall indemnify, defend, and hold harmless the other Party from any liability with respect to Taxes from which the exempted Party claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit K Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Delivered Energy produced by the Facility using an Approved Meter. The Approved Meter shall be installed at the switching station adjacent to the SunZia East Converter Station and maintained at Seller's cost. If the Approved Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Operating Practice and CAISO or PTO requirements, as applicable (or, if the SPTO Date has occurred, in accordance with CAISO requirements only). Seller will be

responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified and/or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Approved Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO or the PTO, as applicable (or, if the SPTO Date has occurred, in accordance with CAISO requirements only), the meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller, or Seller's Scheduling Coordinator, shall cooperate with Buyer to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRIS-S) (or its successor).

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests at Seller's expense; *provided*, if the meter is tested at Buyer's request and is determined to be accurate, the costs of such test shall be borne by Buyer. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during the second half of such period.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer no later than fifteen (15) Business Days after the end of the prior monthly delivery period; *provided* that Seller's failure to deliver an invoice to Buyer by such deadline shall not be a breach hereunder. Each invoice shall provide Buyer (a) records of metered data, including metering and CAISO transaction data sufficient to document and verify the amount of Delivered Energy for each Settlement Period during the preceding month, including the amount of Delivered Energy as set forth in the first CAISO settlement statement for the prior month that includes meter data from the Approved Meter, the applicable Contract Price, deviations between the Scheduled Energy and the Delivered Energy, the LMP in the Real-Time Market at the Delivery Point for each Settlement Period; (b) a reconciliation of hourly meter data, E-Tag data (to the extent required under the CAISO Tariff) and associated calculations, including the lesser of each by hour, plus any additional data as may be reasonably required by Buyer for compliance with CPUC reporting obligations, including pursuant to the CPUC's Energy Division Portfolio Content Category Classification Review Handbook (or successor publication); (c) a statement of the quantity of WREGIS Certificates transferred during the prior month that have been matched with E-Tags associated with the Dynamic Transfers (or, if the SPTO Date has occurred, with the Delivered Energy and Replacement Energy, to the extent required by WREGIS, the CPUC, the CEC, or other applicable Law); (d) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (e) be in a reasonable format covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment**. Buyer shall make payment to Seller by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend, local business holiday observed by either Party, or a NERC holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, there is determined to have been a meter inaccuracy sufficient to require a payment adjustment, or if CAISO recalculates amounts due or owing in respect of prior periods. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Other than recalculations by CAISO, adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the

invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all undisputed amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and E, interest, and payments or credits, including pursuant to Section 4.3(c), shall be netted so that only the excess amount remaining due shall be paid by the Party who owes the remaining amount.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within forty-five (45) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (A) Seller's delivery of the Performance Security, or (B) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If and to the extent that any portion of the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, or (iv) becomes Bankrupt, Seller shall have ten (10) Business Days to post substitute collateral that meets the requirements set forth in the definition of Development Security. Seller shall have no obligation to replenish the Development Security following any draws thereon by Buyer. Seller's maximum liability for an Event of Default or failure to perform its obligations hereunder prior to the Commercial Operation Date shall be capped at the amount of the Development Security, less any amounts collected by Buyer prior to such Event of Default or failure to perform.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If and to the extent that any portion of the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's, (ii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, or (iii) becomes Bankrupt, Seller shall have ten (10) Business Days to post substitute collateral that meets the requirements set forth in the definition of Performance Security.

8.9 **Financial Statements.**

(a) If requested, Buyer shall provide to Seller (i) within one hundred twenty (120) days following the end of each fiscal year during the Contract Term, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year during the Contract Term, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles or International Financial Reporting Standards ("IFRS"); provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certifications, such unavailability shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification, and delivery of the statements.

8.10 **Buyer's First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest in, and lien on (and right to net against), and assignment of the Development Security or Performance Security, any other cash collateral and cash equivalent collateral posted by Seller pursuant to Sections 8.7 and 8.8, and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's first-priority security interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.10 and the provisions of Article 12):

(a) Exercise any of its rights and remedies with respect to the Development Security or Performance Security, as applicable, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security, as applicable; and

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

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the physical or electronic addresses set forth on Exhibit K or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including email or other electronic means), at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided in Exhibit K.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, which event or circumstance, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic, including COVID-19 (but only to the extent that new governmental rules or mandates related to COVID-19 are implemented that were not in place as of the Effective Date); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; acts or failure to act by a Governmental Authority; war; blockade; civil insurrection; riot; civil

disturbance; Serial Defect; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy generated by the Facility at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement; (iv) a Curtailment Order, except to the extent that a Curtailment Order is caused by an event that otherwise qualifies as a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) except as the Guaranteed Commercial Operation Date may be extended as a result of a Development Cure Period, Seller's inability to achieve Commercial Operation following the Guaranteed Commercial Operation Date.

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder. Any delays caused by a Force Majeure Event will not serve to increase the Contract Term nor Contract Price of this Agreement.

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, the anticipated extent of any delay or interruption in performance, and, to the extent reasonably practicable, a mitigation plan for limiting or overcoming the impacts of the Force Majeure Event and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice as provided in this Section 10.3 shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be unable to perform its material obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party experiencing the Force Majeure Event; *provided* that if Seller is the Party claiming such Force Majeure Event and such Force Majeure Event cannot reasonably be cured within such twelve (12) month period, then Seller may provide a plan to Buyer, which must be acceptable to Buyer in its reasonable discretion, to cure such Force Majeure Event within an additional consecutive six (6) month period and Buyer may not terminate this Agreement due to such Force Majeure Event unless Seller has not resumed performance of its material obligations hereunder upon the expiration of such additional consecutive six (6) month period. Upon any such termination, the non-claiming Party shall have no liability to the Party claiming Force Majeure Event, save and except for those obligations specified in Section 2.1(b).

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such representation or warranty is not corrected within thirty (30) days after Notice thereof; provided, that this thirty (30) day period shall be extended by up to an additional sixty (60) days if (a) the breach cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the Defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the breach;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; provided, that this thirty (30) day period shall be extended by an additional sixty (60) days if (a) the breach cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the Defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the breach;

(iv) failure by such Party to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 as applicable;

(v) such Party becomes Bankrupt;

(vi) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2, 14.3, or 14.4, as appropriate; or

(vii) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) except as otherwise provided herein, if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Facility; or

(ii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement surety bond (solely with respect to the Performance Security), or (3) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

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

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

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

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

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

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

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

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Contract Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by Seller after the Commercial Operation Date or by Buyer throughout the Contract Term);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at Law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto. Notwithstanding any other provision of this Agreement, Seller's sole and aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to the amount required to be posted as Development Security pursuant to Section 8.7, less any amounts collected by Buyer prior to such Early Termination Date.

11.3 **Termination Payment**. The termination payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties (which shall not include Affiliates of the Non-Defaulting Party) supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into

replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative**. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.7 **Mitigation**. Any Non-Defaulting Party shall use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages**. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO THE PARTIES' LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

NOTWITHSTANDING ANYTHING ELSE HEREIN TO THE CONTRARY, IF THERE IS AN EARLY TERMINATION DATE PRIOR TO THE COMMERCIAL OPERATION DATE, THE TOTAL LIABILITY OF SELLER UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT REQUIRED TO BE POSTED AS DEVELOPMENT SECURITY PURSUANT TO SECTION 8.7, LESS ANY AMOUNTS COLLECTED BY BUYER PRIOR TO SUCH EARLY TERMINATION DATE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8(e), 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT E, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH

PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

(a) Buyer is a municipal utility district, duly organized, validly existing and in good standing under the Laws of the State of California and the rules, regulations and orders of, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Buyer. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with applicable Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and

performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid, and binding obligation of Buyer enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without

the written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect Change of Control of a Party (whether voluntary or by operation of Law) will be deemed an assignment and will require the prior written consent of the other Party, except as provided in Section 14.3. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. The assigning Party shall be responsible for the other Party's costs associated with the preparation, review, execution, and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility without the consent of Buyer. In connection with any financing or refinancing of the Facility by Seller, Buyer shall work in good faith with Seller (and its Affiliate(s)) and Lender to agree upon and execute a consent to collateral assignment of this Agreement substantially in the form set forth in Exhibit H.

14.3 **Permitted Assignment**. Notwithstanding Section 14.1, and in addition to its rights set forth in Section 14.2, Seller may at any time, without the prior written consent of Buyer, transfer or assign this Agreement (including by a Change of Control) (i) to an Affiliate of Seller, (ii) in connection with a tax equity financing (regardless of whether a Change of Control results from such tax equity financing), or (iii) as part of the sale or transfer of all or substantially all of the membership interests, equity, or assets of an Affiliate of Seller. Seller may also, without the prior written consent of Buyer, transfer or assign this Agreement (including by a Change of Control) to a Permitted Transferee.

14.4 **Buyer Assignment**. At any time during the Contract Term, upon not less than thirty (30) days' written Notice to Seller, Buyer may request that Seller enter into negotiations to permit Buyer to enter into a limited assignment of a portion of Buyer's rights and obligations under this Agreement to J. Aron and Company, LLC ("**J. Aron**"). Following any such Notice from Buyer, (a) Seller, Buyer and J. Aron shall negotiate in good faith the execution of a limited assignment agreement based on the form attached hereto as Exhibit J , and (b) if requested by Seller, Seller and Buyer shall negotiate in good faith an indemnity and/or a legal opinion, to be provided by Buyer for the benefit of Seller in connection with such limited assignment agreement, in form and substance satisfactory to Seller. For the avoidance of doubt, Buyer shall remain responsible for all of its obligations under this Agreement, including those related to all Product that may be assigned to J. Aron under any limited assignment agreement, including (i) the obligation to pay for all Product and (ii) any and all damages, costs and expenses of Seller associated with such assignee's failure to take or pay for any such Product as contemplated by this Agreement. In no event shall any assignment by Buyer to J. Aron purport to limit any rights of Seller under, or cause Seller to incur any additional obligations, costs, or risks under, this Agreement.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Venue.** The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement

shall be brought in the federal courts of the United States or, if such federal courts refuse jurisdiction notwithstanding the Parties' agreement, then in the courts of the State of California, in either case sitting in the County of San Francisco, California.

15.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees, attorneys, representatives and agents (collectively, the "**Indemnified Party**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses and expert witness fees (collectively "**Indemnifiable Event**"), to the extent such Indemnifiable Event arises out of, results from, or is caused by any of the following: (a) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its or their directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by the Indemnifying Party or any of its subcontractors or anyone that they control; or (b) any violation of applicable Law by the Indemnifying Party, in each case in connection with this Agreement. Upon the Indemnified Party's written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party's indemnity obligations.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting to the extent of its own negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims**. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and reasonably satisfactory to the Indemnified Party, *provided*, *however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume

the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Notwithstanding the preceding sentence if the settlement consists solely of a monetary payment by the Indemnifying Party, such settlement shall not require the consent of the Indemnifying Party. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 **Insurance.**

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance against claims for personal injury (including bodily injury and death) and property damage with a limit of liability of One Million Dollars ($1,000,000) per occurrence, and a general aggregate of not less than Two Million Dollars ($2,000,000) for combined bodily injury and property damage; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). The amounts of liability insurance described in this Article 17 may be satisfied by primary insurance or by any combination of primary and excess/umbrella insurance. Such insurance shall contain standard cross-liability and severability of interest provisions such that each person is protected in the same manner as though a separate policy has been issued to each but nothing therein shall operate to increase the insurance company's liability beyond the amount the insurance company would have been liable if only one Person or interest had been named as insured. The liability insurance policies referenced in this Article 17 shall (x) provide an endorsement waiving rights of subrogation against Buyer, (y) name Buyer as additional insured on all required liability insurance (except workers compensation), and (z) be primary to any insurance of Buyer that may apply to such occurrence, accident or claim and no "other insurance" provision shall be applicable to Buyer or any additional insureds, by virtue of having been named an additional insured under any policy of insurance.

(b) Workers Compensation and Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars ($1,000,000) providing statutory benefits as required by Law (if any exposure exists) for injury, sickness, disability or death of the employees.

(c) Business Auto Liability Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) combined single limit. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired motor vehicles in the performance of the Agreement.

(d) Property Insurance. Seller shall maintain or cause to be maintained property insurance covering the Facility against physical loss or damage, including coverage for natural perils including but not limited to flood, earthquake, windstorm, severe convective storm, and wildfire, all with limits in accordance with industry standard recognizing that natural perils may be subject to a lower sublimit. Coverage will be on an "all-risk" basis including mechanical and electrical breakdown.

(e) Documentation. Before commencing work under this Agreement, Seller's broker or agent shall provide certificates of insurance verifying that at least the minimum insurance coverages required above are in effect with additional insured, waiver of subrogation and any other policy provisions or endorsements included, as applicable. Acceptance of the evidence of coverage by Buyer shall not relieve or decrease the extent to which Seller may be held responsible for payment of damages resulting from Seller's services or operations pursuant to this Agreement, nor shall it be deemed a waiver of Buyer's rights to insurance coverage hereunder. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Seller from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

ARTICLE 18
CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality**. Except as permitted in this Article 18, neither Party shall disclose Confidential Information to a third party, except upon the written consent of the Disclosing Party. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce or implement this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or

independent system operator rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy.

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

18.4 **Permitted Disclosures**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by either Party to such Party's counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, Affiliates or actual or prospective owners, investors, lenders, directors, underwriters, contractors, suppliers or others involved in the construction, operation and financing transactions and arrangements for a Party or its affiliates, or any of its or their agents, consultants or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party, or is bound by substantially similar confidentiality requirements.

18.5 **Press Releases**. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

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

19.2 **Amendments**. Except as set forth in Section 4.9, this Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer.

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

19.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

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

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

19.7 **Counterparts**. This Agreement may be executed in one or more counterparts, including electronic signatures, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

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

19.10 **Change in Electric Market Design.**

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

(b) If the Point of Interconnection and/or any of the Transmission Systems utilized to deliver Product to the Delivery Point under this Agreement are (i) integrated into a new or existing regional transmission organization or independent system operator (other than the CAISO Balancing Authority), or (ii) leave a regional transmission organization or independent system operator, and such integration has a material and adverse impact on either Party's performance under this Agreement, including the costs of either Party to perform, then the affected Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to restore the balance of benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith; provided, that neither Party shall be obligated to amend this Agreement if such amendment(s) would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of such Party's rights, benefits, risks and/or obligations under this Agreement.

[Signatures on following page]

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

SunZia Wind PowerCo LLC	**Sacramento Municipal Utility District**
By:_____	By:_____
Name:	Name:
Title:	Title:

EXHIBIT A
FACILITY DESCRIPTION

The Facility description provided herein reflects Seller's expectation for the Facility and the Site as of the Effective Date. Seller may, by Notice to Buyer no later than sixty (60) days after Seller's delivery of the final certificate stating the Installed Capacity, substantially in the form attached as Exhibit G hereto, modify the Site name and Site location within the counties set forth below. Except as otherwise provided in the Agreement, Seller shall not make any alteration or modification to the Facility which results in a change to the Guaranteed Capacity or the anticipated output of the Facility without Buyer's prior written consent; provided that Seller shall be permitted to repower the Facility after the tenth (10^{th}) Contract Year so long as Seller continues to be obligated to deliver Guaranteed Energy Production and Capacity Attributes associated with the Guaranteed Capacity during such repower; upon any such repower that changes the Installed Capacity, Seller shall deliver an updated certificate in the form of Exhibit G.

Site Name: SunZia Wind North and SunZia Wind South

Site Map: Pattern to provide Site Map

Site Location: Lincoln, Torrance and San Miguel Counties, New Mexico

Technology: Utility Scale Wind Technology

Guaranteed Capacity: 150 MW

Delivery Point: CAISO scheduling point-intertie combination at PALOVRDE_ASR-APND and PVWEST, or an Alternative Delivery Point as mutually agreed by the Parties

Participating Transmission Owner: SunZia Transmission, LLC

EXHIBIT B
FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Reserved**.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions in Section 2.3 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved.

The "**Commercial Operation Date**" shall be the date on which Commercial Operation is achieved.

a. Seller shall use good faith efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least thirty (30) days before the anticipated Commercial Operation Date. For the avoidance of doubt, Seller may continue to increase the Installed Capacity of the Facility after the Commercial Operation Date and will notify Buyer from time to time of such increases by delivering a certificate from a Licensed Professional Engineer substantially in the form attached as Exhibit G hereto; when the Installed Capacity is complete, Seller shall include a statement to that effect in a Notice accompanying the final such certificate.

b. If Seller does not anticipate achieving Commercial Operation by the Guaranteed Commercial Operation Date, Seller may elect to extend the Guaranteed Commercial Operation Date by paying Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date. If Seller elects to extend the Guaranteed Commercial Operation Date, on or before the date that is five (5) Business Days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date ("**Delay Damages Payment**"); *provided* such Delay Damages Payment may, at Seller's option, be in the form of cash or an irrevocable, standby letter of credit issued by a U.S. commercial bank, or a foreign bank with a U.S. branch, with such bank having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, which letter of credit Buyer may draw on to receive such Delay Damages Payment. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of the Delay Damages Payment, Buyer shall refund to Seller in cash the Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended, times the Delay Damages, not to exceed the total amount of the Delay Damages Payment paid by Seller pursuant to this Section 2(b). The Parties agree that Buyer's receipt of Delay Damages shall not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1.

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation by the Outside Commercial Operation Date, either Party may elect to terminate this Agreement in accordance with Section 2.6.

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

   a. delays due to a Force Majeure Event;

   b. delays caused by a Transmission Provider not caused by the Seller's action or inaction;

   c. delays in the completion of the Interconnection Facilities or the commercial operation date of the SunZia Transmission Line, in each case not caused by Seller's action or inaction; or

   d. delay due to a Buyer breach or default under this Agreement.

   The cumulative extensions granted under clauses 4(a), 4(b) and 4(c) of the Development Cure Period shall not exceed [redacted] for any reason, including a Force Majeure Event. The extension granted under clause 4(d) of the Development Cure Period shall have no termination. Except to the extent Seller has paid Delay Damages, or due to a delay clause 4(d) of the Development Cure Period, no extension under the Development Cure Period, no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide Notice to Buyer as required in the next sentence. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller becomes aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity**. If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have one hundred eighty (180) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to at least the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any planned changes to the Facility or the site.

5. Schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar month/quarter.

7. Forecast of activities scheduled for the current calendar month/quarter.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones, and evidence of completion of Milestones, upon reasonable request from Buyer.

9. List of issues that could reasonably foreseeably affect Seller's Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

11. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the PTO's Transmission System and all other interconnection utility services.

13. Any other documentation, including copies of the Interconnection Agreement, transmission agreements and permits, as reasonably requested by Buyer, as such documentation may be redacted by Seller as necessary.

EXHIBIT D
FORM OF AVERAGE FORECAST OF ENERGY (MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table (i) is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement, and (ii) reflects expected P50 delivered volumes taking into account estimated X% physical losses from the Facility to the Delivery Point.

EXHIBIT E
ENERGY REPLACEMENT DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, and Seller elects to not provide Replacement Product, a liquidated damages ("**Energy Replacement Damages**") payment shall be due from Seller to Buyer, calculated as follows:

[(A – B) * (C – D)] – E

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the LMP in the Day-Ahead Market at the Delivery Point for all of the hours in the Performance Measurement Period, plus (b) the simple average REC Price for the applicable Performance Measurement Period.

D = the Contract Price, in $/MWh

E = the value of any Replacement Product provided retrospectively by Seller with respect to such Performance Measurement Period

[redacted]

"**Adjusted Energy Production**" shall mean the sum of the following: (i) the greater of (a) if Seller provided Replacement Product or paid Energy Replacement Damages during the prior Performance Measurement Period, seventy five percent (75%) of the Expected Energy for the first Contract Year of the current Performance Measurement Period or (b) the Delivered Energy plus Lost Output plus Deemed Delivered Energy in the first Contract Year of the current Performance Measurement Period, plus (ii) Delivered Energy plus Lost Output plus Deemed Delivered Energy in the second Contract Year of the current Performance Measurement Period.

"**Lost Output**" means the sum of electric energy in MWh that would have been generated and delivered, but was not, on account of Forced Facility Outage (not caused by Seller's fault or negligence), Force Majeure Events, System Emergencies, Buyer's failure to perform, and Curtailment Order. The additional MWh comprising Lost Output shall be calculated in the same manner as Deemed Delivered Energy.

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

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Contract Year.

EXHIBIT F
FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to [____] **(**"**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

(1) Wind turbines with a nameplate capacity at least equal to 90% of the Guaranteed Capacity have been installed at the Facility.

(2) Testing and commissioning of each wind turbine referred to in paragraph (1) above has been completed in accordance with the applicable turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

(3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner on _____[DATE]_____.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By:_____
[NAME], P.E.
[TITLE]
New Mexico License No. [##]

EXHIBIT G
FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by the undersigned, a licensed professional engineer and duly authorized representative of _____ in its capacity as independent engineer ("**Engineer**") for purposes of this certification, to [____] ("**Buyer**"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase and Sale Agreement dated _____ ("**Agreement**") by and between [Pattern Entity] ("Seller") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of the date set forth below, [___] wind turbines with an aggregate nameplate capacity of [__], which is the Installed Capacity as of the date hereof, have been installed at the Facility, and testing and commissioning of each such wind turbines has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

EXECUTED on this _____ day of _____, 20__.

Sincerely,

By:_____
[NAME], P.E.
[TITLE]
New Mexico License No. [##]
Exp. [DATE]

EXHIBIT H

FORM OF CONSENT TO COLLATERAL ASSIGNMENT
(WIND PROJECT COMPANY & SUNZIA POWERCO)

CONSENT AND AGREEMENT
([_____])

This **CONSENT AND AGREEMENT** (as amended, amended and restated, supplemented or otherwise modified from time to time, this "Consent and Agreement"), dated as of [_____], is made by and among **[_____]**, a [_____] (together with its successors and permitted assigns, "Company"), [**SUNZIA WIND POWERCO LLC**, a Delaware limited liability company (together with its successors and permitted assigns, "SunZia PowerCo"), **SUNZIA WIND NORTH LLC**, a Delaware limited liability company (together with its successors and permitted assigns, "SunZia North") and **SUNZIA WIND SOUTH LLC**, a Delaware limited liability company (together with its successors and permitted assigns, "SunZia South" and, together with SunZia PowerCo and SunZia North, the "Assignors" and each, an "Assignor")][1], [_____] in its capacity as collateral agent for the Construction Secured Parties (in each case used herein, as has the meaning given to "Secured Parties" in the below defined Construction Security Agreement) (together with its successors, designees and permitted assigns in such capacity, the "Construction Collateral Agent"), and **[_____]**, in its separate capacity as collateral agent for the LCRA Secured Parties (in each case used herein, as has the meaning given to "Secured Parties" in the LCRA (as defined below) and, together with the Construction Secured Parties, the "Secured Parties") (together with its successors, designees and permitted assigns in such capacity, the "LCRA Collateral Agent" and, together with the Construction Collateral Agent, the "Collateral Agents")][2]. Company, the Collateral Agents and the Assignors shall be referred to hereunder as the "Parties" and, individually, as a "Party".

A. [(i) SunZia North is building an approximately 1,089 MW nameplate capacity wind generating facility located in central New Mexico (the "SunZia North Project") and (ii) SunZia South is building an approximately 2,426 MW nameplate capacity wind generating facility located in central New Mexico (the "SunZia South Project" and, together with the SunZia North Project, the "Projects")][3].

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[1] Include each applicable Assignor, which in the case of a power purchase agreement, transmission services agreement or interconnection agreement to which SunZia PowerCo is a party, shall be each of SunZia PowerCo, SunZia North and SunZia South.

[2] Include the LCRA Collateral Agent if the Assigned Agreement(s) extend beyond the LCRA's Closing Date and either (i) SunZia South is a party to the Assigned Agreement or (ii) SunZia PowerCo is a party to the Assigned Agreement and the Assigned Agreement is a power purchase agreement, a transmission services agreement or an interconnection agreement.

[3] Include each applicable Project.

B. Pursuant to that certain Financing Agreement, dated as of December 27, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement" and, together with the other Financing Documents (as defined in the Financing Agreement), the "Construction Secured Agreements"), by and among Sunzia Finco LLC, a Delaware limited liability company ("Borrower"), Assignors, the financial institutions from time to time party thereto as lenders (collectively, the "Financing Agreement Lenders"), [_____]., as Administrative Agent (as defined in the Financing Agreement), and the other agents, guarantors and Persons party thereto, the Financing Agreement Lenders have agreed to extend financing to Borrower with respect to the development and construction of the Projects on the terms and subject to the conditions set forth in the Financing Agreement.

C. [SunZia South has entered into that certain Letter of Credit, Reimbursement and Loan Agreement, dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "LCRA", and together with the other LC Documents (as defined therein), the "LCRA Secured Agreements", and, together with the Construction Secured Agreements, the "Secured Agreements"), by and among SunZia South and SunZia Wind South Investments LLC, the financial institutions from time to time party thereto as letter of credit issuers and lenders, the LCRA Collateral Agent and[_____], as administrative agent thereunder (the "LC Administrative Agent").][4]

D. [Company and SunZia PowerCo are parties to that certain [_____], dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "SunZia PowerCo Assigned Agreement", and together with any assignment of, or replacement for, such agreement that may be entered into in accordance with the terms of the Financing Agreement and the LCRA (as any such assignment or replacement agreement may be amended, amended and restated, supplemented or otherwise modified from time to time pursuant to the terms thereof and the terms of the Financing Agreement and the LCRA), collectively the "Assigned Agreements")][5].

E. In connection with the Financing Agreement, the Assignors have entered into that certain Collateral Agency, Pledge and Security Agreement, dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Construction Security Agreement"), with the Construction Collateral Agent, the other grantors party thereto and the Administrative Agent, pursuant to which each Assignor has agreed, among other things, to assign as collateral security for its and its affiliates' obligations under the Construction Secured Agreements, a first-priority security interest in all of its right, title and interest in, to and under the Assigned Agreements (the "Construction Assigned Interest") to the Construction

[4] Include the LCRA if the Assigned Agreement(s) extend beyond the LCRA's Closing Date and either (i) SunZia South is a party to the Assigned Agreement or (ii) SunZia PowerCo is a party to the Assigned Agreement and the Assigned Agreement is a power purchase agreement, a transmission services agreement or an interconnection agreement.

Collateral Agent for the benefit of the Construction Secured Parties, in each case on and subject to the terms and conditions therein.

F. [In connection with the LCRA, SunZia South has agreed to, on the Closing Date (as defined in the LCRA, which Closing Date shall not occur prior to the Construction Loan Discharge Date, as hereinafter defined), enter into a Pledge and Security Agreement with the LCRA Collateral Agent and the other grantors to be party thereto (as amended, amended and restated, supplemented or otherwise modified from time to time, the "LCRA Security Agreement" and, together with the Construction Security Agreements, the "Security Agreements"), pursuant to which SunZia South will, among other things, assign as collateral security for its and its affiliates' obligations under the LCRA Secured Agreements, a first-priority security interest in all of its right, title and interest in, to and under the Assigned Agreements (the "LCRA Assigned Interest" and, together with the Construction Assigned Interests, the "Assigned Interests"), if any, to the LCRA Collateral Agent, for the benefit of the LCRA Secured Parties.][6]

G. It is a requirement under the Secured Agreements that Company and the other Parties shall have executed this Consent and Agreement.

H. [SunZia Wind Holdings LLC, a Delaware limited liability company (the "Tax Equity Partnership"), is the indirect owner of the Assignors and has entered into that certain Equity Capital Contribution Agreement (the "ECCA"), dated as of [_____], by and among, the Tax Equity Partnership, SunZia B Member LLC, a Delaware limited liability company, Pattern Sunzia A Member LLC and any other Class A Equity Investors (as defined in the ECCA) from time to time party thereto (collectively, and together with Pattern Sunzia A Member LLC, the "ECCA Tax Equity Investors").

I. As of the date hereof, Sunzia Finco Holdings LLC, a Delaware limited liability company ("Sunzia Finco Holdings"), is the indirect owner of Tax Equity Partnership and has entered into that certain Financing Agreement, dated as of the date hereof, by and among Sunzia Finco Holdings, the lenders from time to time party thereto and [_____], as administrative agent thereunder (the "TE Administrative Agent", and together with the [_____], the "Tax Equity Investors") and the other persons party thereto.][7]

[6] Include the LCRA Security Agreement if the Assigned Agreement(s) extend beyond Term Conversion and either (i) SunZia South is a party to the Assigned Agreement or (ii) SunZia PowerCo is a party to the Assigned Agreement and the Assigned Agreement is a power purchase agreement, a transmission services agreement or an interconnection agreement.

[7] Include where tax equity investor are to receive an estoppel certificate.

J. Capitalized terms used herein but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Assigned Agreements.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Consent to Assignment.

(a) Company hereby irrevocably acknowledges and consents to:

i. Prior to the Construction Loan Discharge Date (A) the assignment of the Construction Assigned Interest by the Assignors to the Construction Collateral Agent as collateral security for any and all Obligations (as defined in the Financing Agreement) of the Assignors and their affiliates under the Construction Secured Agreements whether now existing or arising after the date of this Consent and Agreement, including, without limitation, the obligation of the Assignors to promptly repay in accordance with the Construction Secured Agreements any indebtedness, liabilities and other obligations of the Assignors to the Construction Collateral Agent and the other Construction Secured Parties under the applicable Construction Secured Agreements (such obligations, collectively, the "Construction Secured Obligations") and the grant of a security interest in all of their respective property to the Construction Collateral Agent for the benefit of the Construction Secured Parties (including, without limitation, the Assigned Agreements) as and to the extent provided in the Construction Security Agreement, (B) subject to Section 1(c), any subsequent assignments by the Construction Collateral Agent following the occurrence and during the continuation of an Assignors' Default (as defined below) and (C) the exercise by the Construction Collateral Agent of its rights and the enforcement of its remedies under the Construction Secured Agreements, at law, in equity, or otherwise.

ii. [On and following the Construction Loan Discharge Date (A) the assignment of the LCRA Assigned Interest by SunZia South to the LCRA Collateral Agent as collateral security for any and all Obligations (as defined in the LCRA) of SunZia South and its affiliates under the LCRA Secured Agreements, whether now existing or arising after the date of this Consent and Agreement, including, without limitation, the obligation of SunZia South to promptly repay in accordance with the LCRA Secured Agreements any indebtedness, liabilities and other obligations of SunZia South to the LCRA Collateral Agent and the other LCRA Secured Parties under the applicable LCRA Secured Agreements (such obligations, collectively, the "LCRA Secured Obligations") and to grant a security interest in all of its property to the LCRA Collateral Agent for the benefit of the LCRA Secured Parties (including, without

limitation, to the extent SunZia South is a party thereto, the Assigned Agreements) as and to the extent provided in the LCRA Security Agreement, (B) subject to Section 1(c), any subsequent assignments by the LCRA Collateral Agent following the occurrence and during the continuation of an Assignors' Default, and (C) the exercise by the LCRA Collateral Agent of its rights and the enforcement of its remedies under the LCRA Secured Agreements, at law, in equity, or otherwise.][8]

(b) Except as otherwise provided herein, each Assignor agrees that it shall remain liable to Company for all obligations of such Assignor under the Assigned Agreement to which it is party. Company hereby agrees that, except as otherwise provided herein, (i) it shall look only to such Assignor for the performance of such obligations and (ii) it shall be and remain obligated to such Assignor to perform all of its obligations and agreements under the applicable Assigned Agreement.

(c) Company acknowledges hereby the right of (i) (A) prior to the Construction Loan Discharge Date, the Construction Collateral Agent, upon the occurrence and during the continuation of an Event of Default (as defined in the Financing Agreement)[, and (B) on and following the Construction Loan Discharge Date, the LCRA Collateral Agent, upon the occurrence and during the continuation of an Event of Default (as defined in the LCRA)][9] or (ii) (A) prior to the Construction Loan Discharge Date, the Construction Collateral Agent[and (B) on and following the Construction Loan Discharge Date, the LCRA Collateral Agent, in each case of clauses (ii)(A) and (B),][10] upon the occurrence or non-occurrence of any event or condition under any Assigned Agreement that would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Company to cancel, terminate or suspend such Assigned Agreement (each of clauses (i) and (ii) above, an "Assignors' Default"), to exercise and enforce all of the Assignors' rights and remedies under the Assigned Agreements, in accordance with the terms of the Assigned Agreements. Subject to the foregoing, upon the occurrence and during the continuation of an Assignors' Default and subject to the terms of the applicable Security Agreement, (x) prior to the Construction Loan Discharge Date, the Construction Collateral Agent may assign all of the Assignors' right, title and interest in, to and under the Assigned Agreements to any assignee or designee that becomes the owner of the Projects and agrees to be bound by the obligations of the Assignors under the Assigned Agreements[, and (y) on and following the Construction Loan Discharge Date, the LCRA Collateral Agent may assign all of SunZia South's right, title and interest in, to and under the

[8] Include this LCRA Secured Obligations section if the Assigned Agreement(s) extend beyond the LCRA's Closing Date and either (i) SunZia South is a party to the Assigned Agreement or (ii) SunZia PowerCo is a party to the Assigned Agreement and the Assigned Agreement is a power purchase agreement, a transmission services agreement or an interconnection agreement.

[9] Include as applicable.

[10] Include as applicable.

applicable Assigned Agreements to any assignee or designee that becomes the owner of the SunZia South Project and agrees to be bound by the obligations of such Assignor under such Assigned Agreements][11].

(d) Company acknowledges and agrees, notwithstanding anything to the contrary contained in the Assigned Agreements, that none of the following shall constitute, in and of itself, a default by the Assignors under the Assigned Agreements or shall result in a termination thereof following the occurrence and during the continuation of an Assignors' Default, but subject to the terms and conditions of this Consent and Agreement: (i) the assignment of the Assigned Agreements pursuant to this Consent and Agreement and the other Secured Agreements; (ii) the development, construction, ownership and management of any of the Projects by any of the Collateral Agents, as applicable, or by its designee, as applicable; (iii) foreclosure or the enforcement of any other remedies under the Secured Agreements by the Collateral Agents, as applicable; (iv) acquisition of the rights of the Assignors under the Assigned Agreements in foreclosure by the Collateral Agents, as applicable, or any third party (or acceptance of an absolute assignment of the Assigned Agreements in lieu of foreclosure); or (v) assignment of the Assigned Agreements by the Collateral Agents, as applicable, following a purchase in foreclosure or following an absolute assignment thereof in lieu of foreclosure.

(e) Except, in each case, if Assignor certifies that such action is permitted under the Financing Agreement (prior to the Construction Loan Discharge Date) or LCRA (after the Construction Loan Discharge Date), Company agrees not to (i) cancel or terminate the Assigned Agreements or suspend performance thereunder, except (A) as provided in [*Insert Applicable Section or Article*] of the Assigned Agreements and, in each case, in accordance with Section 3(e) of this Consent and Agreement, (B) by operation of law, or (C) (x) prior to the Construction Loan Discharge Date, with the prior written consent of the Construction Collateral Agent[, or (y) on and following the Construction Loan Discharge Date, with the prior written consent of the LCRA Collateral Agent][12]; (ii) except as provided in [*Insert Applicable Section or Article*] of the Assigned Agreements, consent to or accept any cancellation or termination thereof by the Assignors to the extent any such action is dependent on Company's consent or acceptance under the applicable Assigned Agreement (and Company shall be entitled to treat the Assigned Agreements as not having been canceled or terminated by Assignors unless and until the applicable Collateral Agent has delivered to Company written consent to such cancellation or termination); or (iii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its right, title or interest in any Assigned Agreement, except as permitted by the applicable Assigned Agreement, in each case without the prior written consent of the applicable Collateral Agent.

[11] Include as applicable.
[12] Include as applicable.

2. Representations and Warranties. Company hereby represents and warrants to the Collateral Agents (for the benefit of the Secured Parties) and the Assignors, as of the date hereof, that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and in all other jurisdictions where failure to be in good standing could materially adversely affect the ability of it to perform its obligations under this Consent and Agreement and the Assigned Agreements and has all requisite organizational power and authority to conduct its business, to own its property, and to execute and deliver, and to perform its obligations under, this Consent and Agreement and the Assigned Agreements.

(b) The execution, delivery and performance by Company of this Consent and Agreement and the Assigned Agreements have been duly authorized by all necessary [limited liability company][corporate] action on the part of Company, and do not and will not (i) require any consent or approval by Company or any other Person which has not been obtained, (ii) violate any provision of Company's organizational documents or any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award having applicability to Company, this Consent and Agreement or the Assigned Agreements, (iii) result in a breach of or constitute a default under any material agreement, lease or instrument to which Company is a party or by which it or its property may be bound or affected, or (iv) result in, or require, the creation or imposition of any lien upon or with respect to the Assigned Agreements or any of Company's property related thereto now owned or hereafter acquired by Company.

(c) Each of this Consent and Agreement and each Assigned Agreement is in full force and effect and is a legal, valid and binding obligation of Company, enforceable against it in accordance with its terms, except as limited by bankruptcy, insolvency or other similar laws affecting the enforcement of a party's rights generally and by general principles of equity.

(d) There is no pending or, to the best knowledge of Company, threatened action or proceeding affecting Company before any Governmental Authority or arbitrator, which, if adversely determined, could reasonably be expected to materially adversely affect the ability of Company to perform its obligations under, or which purports to affect the legality, validity or enforceability of, this Consent and Agreement or the Assigned Agreements.

(e) After giving effect to the assignment by the Assignors of the Assigned Agreements to the Construction Collateral Agent as collateral security for all Construction Secured Obligations of the Assignors under the Construction Secured Agreements, and after giving effect to the acknowledgment of and consent to such assignment by Company as provided by this Consent and Agreement, Company has no

actual knowledge of the existence of any default by any of the Assignors under any material covenant or obligation under the Assigned Agreements or the existence of any event or condition which, with the giving of notice or lapse of time or both, would constitute such a default by any of the Assignors under the Assigned Agreements. As of the date hereof, Company has no actual knowledge of any event, act, circumstance or condition that could constitute a breach or default of any of the Assignors under the Assigned Agreements. As of the date hereof, none of the Assignors owes any payments that are due and payable to Company under the Assigned Agreements.

(f) (i) Company has duly performed and complied in all material respects with all covenants, agreements and conditions contained in the Assigned Agreements and this Consent and Agreement required to be performed or complied with by it on or before the date hereof, (ii) each Assigned Agreement, as of the date hereof, is in full force and effect and has not been amended[, except as set forth in Schedule 1 hereto][13], and (iii) no rights of the Assignors under the Assigned Agreements have been waived.

3. Consent and Agreement. Company hereby agrees that as long as the Secured Agreements remain in effect:

(a) (i) Prior to the Construction Loan Discharge Date, the Construction Collateral Agent and any designee or assignee of the Construction Collateral Agent[, and (ii) on or following the Construction Loan Discharge Date, the LCRA Collateral Agent and any designee of the LCRA Collateral Agent][14], shall be entitled, upon the occurrence and during the continuance of an Assignors' Default, to exercise and enforce any and all rights of the applicable Assignors under the applicable Assigned Agreements in accordance with the terms of such Assigned Agreements, including, to demand, collect and receive payments due to such Assignors from Company and to demand and enforce the performance of Company of its covenants and obligations in accordance with and subject to such Assigned Agreements, and Company shall comply as required by the terms of such Assigned Agreements with such exercise or enforcement. Upon the occurrence and during the continuation of an Assignors' Default, (A) prior to the Construction Loan Discharge Date, the Construction Collateral Agent or any designee or assignee of the Construction Collateral Agent[, and (B) on or following the Construction Loan Discharge Date, the LCRA Collateral Agent and any designee or assignee of the LCRA Collateral Agent][15], shall provide written notice to Company in the event the applicable Collateral Agent or such designee or assignee elects to exercise and enforce the rights of the applicable Assignors under the applicable Assigned Agreements, and Company shall take instructions only from the applicable Collateral Agent or such designee or assignee (which has become the owner of all of the rights the applicable Assignors have in the Projects or applicable Project, as applicable, and has assumed all of

[13] This footnote and the corresponding Schedule 1 are to be included if applicable.
[14] Include as applicable.
[15] Include as applicable.

such Assignors' obligations under such Assigned Agreements) providing such notice (and not from such Assignors) in connection with the performance of such Assigned Agreements, unless otherwise requested by such Collateral Agent or such designee or assignee. Company may rely fully on any such notice and shall have no obligation to verify the existence or continuance of an Assignors' Default specified in any such notice. Without limiting the generality of the foregoing, the Collateral Agents and any such designee or assignee of the Collateral Agents shall, during the period applicable to such Collateral Agent and any of its designees and assigns, have the full right and power to enforce directly against Company all obligations of Company under the applicable Assigned Agreements and otherwise to exercise all remedies thereunder and to make all demands and give all notices and make all requests required or permitted to be made by the applicable Assignors under such Assigned Agreements.

(b) A foreclosure or other exercise of remedies under the Secured Agreements or any sale thereunder by the Collateral Agents or any designee or assignee of the Collateral Agents, whether by judicial proceedings or under any power of sale contained therein, or any conveyance from the Assignors to the Collateral Agents or any designee or assignee of the Collateral Agents, in lieu thereof, shall not in any event require the consent of Company.

(c) Company acknowledges and agrees that, until a Collateral Agent or its successor(s), assignee(s) and/or designee(s) has expressly assumed all rights and obligations of the applicable Assignors pursuant to the notice set forth in Section 3(a) above, none of the Collateral Agents or any Secured Party (nor any successor(s), permitted assignee(s), designee(s) or other representative of the Collateral Agents or any Secured Party) shall have any liability or obligation under the Assigned Agreements as a result of exercising its rights under the applicable Secured Agreements, and none of the Collateral Agents or any Secured Party (nor any successor(s), assignee(s), designee(s) or other representative of the Collateral Agents or any Secured Party) shall be obligated or required to perform any of the Assignors' obligations under the Assigned Agreements or to take any action to collect or enforce any claim for payment assigned under any document executed in connection with the applicable Secured Agreements. Company acknowledges that, if a Collateral Agent or its successor(s), assignee(s) or designee(s) has expressly assumed all rights and obligations of the applicable Assignors pursuant to Section 3(a), or become party to or beneficiary of a New Assigned Agreement pursuant to Section 3(d), (i) the obligations of such Collateral Agent or its successor(s), assignee(s) or designee(s) shall be no more than that of the applicable Assignors under the applicable Assigned Agreements, (ii) such Collateral Agent, its successor(s), assignee(s) or designee(s) shall have no personal liability to Company under the Assigned Agreements or such New Assigned Agreement and (iii) the sole recourse of Company in seeking enforcement of such obligations shall be to the interest of such Collateral Agent or its successor(s), assignee(s) or designee(s) in the Projects or applicable Project, as applicable.

(d) In the event that (i) an Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving the Assignors or (ii) an Assigned Agreement is terminated as a result of any bankruptcy or insolvency proceeding involving the Assignors, and if after such rejection or termination, (A) prior to the Construction Loan Discharge Date, the Construction Collateral Agent[, or (B) on or following the Construction Loan Discharge Date, the LCRA Collateral Agent][16], or, in each case, any designee of such Collateral Agent that has become the owner of the rights of the applicable Assignors in the Projects or applicable Project, as applicable, shall so request and shall certify in writing to Company, not more than sixty (60) days after the date when such rejection or termination, as applicable, occurs, that it will perform the obligations of the applicable Assignors as and to the extent required under the applicable Assigned Agreements, Company and such Collateral Agent or such designee shall execute and deliver to one another a new agreement(s) (a "New Assigned Agreement"), pursuant to which New Assigned Agreement, Company shall agree to perform the remaining obligations contemplated to be performed by Company under the applicable original Assigned Agreements, and the applicable Collateral Agent or such designee shall agree to perform the remaining obligations contemplated to be performed by such Assignors under such original Assigned Agreements, and which shall be for the balance of the remaining term under such original Assigned Agreements before giving effect to such rejection or termination and shall contain the same conditions, agreements, terms, provisions and limitations as such original Assigned Agreements (except for any requirements which have been fulfilled by such Assignors or Company prior to such rejection or termination).

(e) In the event of a default or breach by an Assignor in the performance of any of its obligations under the applicable Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under such Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Company to cancel, suspend or terminate such Assigned Agreement (hereinafter, a "Default"), Company shall not cancel, suspend or terminate such Assigned Agreement or its performance thereunder until it first gives written notice of such Default to (i) prior to the Construction Loan Discharge Date, the Construction Collateral Agent, [or (ii) on or following the Construction Loan Discharge Date, the LCRA Collateral Agent][17] and affords such Collateral Agent (A) a period of thirty (30) days from the later to occur of (I) receipt of such notice and (II) the expiration of the cure period provided to such Assignor under such Assigned Agreement to cure such Default, if such Default is the failure to pay amounts to Company which are due and payable under such Assigned Agreement or (B) with respect to any other Default (which is not a Non-Curable Default, as defined below), a reasonable opportunity, but no fewer than sixty (60) days, as may be extended by force majeure, from the later to occur of (I)

[16] Include as applicable.
[17] Include as applicable.

receipt of such written notice to cure such Default and (II) the expiration of the cure period provided to the Assignor under such Assigned Agreement, to cure such non-payment Default (provided that during such cure period such Collateral Agent or such Assignor, as applicable, continues to perform each of such Assignor's other obligations under such Assigned Agreement). Notwithstanding anything to the contrary herein, if the Default is peculiar to an Assignor and not curable by the Collateral Agent (each, a "Non-Curable Default"), such as the insolvency, bankruptcy, general assignment for the benefit of the creditors, or appointment of a receiver, trustee, custodian or liquidator of an Assignor or its properties, then, notwithstanding any right that Company may have to terminate the applicable Assigned Agreement, the Collateral Agent, in accordance with the applicable Secured Agreements, shall be entitled to assume the rights and obligations of such Assignor under the applicable Assigned Agreement within the cure period provided in Section 3(e)(ii) above plus an additional ninety (90) days, and provided such assumption has occurred within such aggregate period, Company shall not be entitled to terminate the applicable Assigned Agreement as a result of such Default. If the applicable Collateral Agent or its successor(s), assignee(s), or designee(s) is prohibited by any court order, stay or injunction, or bankruptcy or insolvency proceedings of the applicable Assignor from curing the Default or from commencing or prosecuting such proceedings, then the foregoing time periods shall be extended by the period of such prohibition.

4. Arrangements Regarding Payments.

(a) All payments to be made by Company to the Assignors under the Assigned Agreements shall be made in U.S. dollars and in immediately available funds, directly to (i) until payment in full of the Obligations (as defined in the Financing Agreement) and the Construction Collateral Agent's release of collateral therefor (the "Construction Loan Discharge Date") (upon the occurrence of the Construction Loan Discharge Date, Assignors shall give written notice to Company thereof), [_____], as Depository Bank (as defined in the Financing Agreement) for the benefit of the Construction Collateral Agent, acting for the benefit of the Construction Secured Parties, for deposit with [_____], or such other account, as designated by the Construction Collateral Agent in writing from time to time[and (ii) from and after the occurrence of the Construction Loan Discharge Date, with respect to SunZia South's rights and obligations under the Assigned Agreements to the extent SunZia South is party thereto, Company agrees to make all payments (if any) to be made by it to SunZia South under such Assigned Agreement directly to the account designated by the LCRA Collateral Agent pursuant to a written notice delivered to Company by the LCRA Collateral Agent on or after the Construction Loan Discharge Date][18].

[18] Include as applicable.

(b) Notwithstanding the foregoing, (i) if any Collateral Agent shall notify Company in writing that an Assignors' Default has occurred and is continuing, Company shall make all payments to be made to the applicable Assignors by it under the applicable Assigned Agreements directly to such Collateral Agent to an account to be designated by such Collateral Agent in such written notice, and (ii) if any Person has assumed the Assigned Agreements pursuant to Section 1(c), then Company shall make all payments to be made by it to the applicable Assignors under the applicable Assigned Agreements directly to such Person. The Assignors instruct Company hereby, and Company accepts such instructions, to make all payments due and payable to the Assignors under the Assigned Agreements as set forth in the immediately preceding sentence.

5. Miscellaneous.

(a) This Consent and Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns and shall also inure to the benefit of the Secured Parties and their respective successors and permitted assigns[, and shall also benefit the Tax Equity Investors (solely with respect to Section 5(l))][19].

(b) No amendment or waiver of any provision of this Consent and Agreement or consent to any departure by Company from any provision of this Consent and Agreement shall in any event be effective unless the same shall be in writing and signed by the Construction Collateral Agent [(prior to the Construction Loan Discharge Date), the LCRA Collateral Agent][20], applicable Assignors and Company (if applicable); provided that, subject to Section 5(j)(i), all rights and obligations of the Construction Collateral Agent and the other Construction Secured Parties hereunder shall automatically terminate upon the Construction Loan Discharge Date without the requirement for any such writing; [provided, further, that, subject to Section 5(j)(i) and (iv), all rights and obligations of the LCRA Collateral Agent and each other LCRA Secured Party hereunder shall automatically terminate upon the occurrence of the Discharge Date (as defined in the LCRA) (the "LCRA Termination Date"), which upon occurrence thereof, the Assignors shall give written notice to Company thereof; provided, further, that, subject to Section 5(j)(i), all rights and obligations of (i) SunZia PowerCo hereunder shall terminate on the earlier of (A) the date the assignment of the SunZia PowerCo Assigned Agreement from SunZia PowerCo to SunZia South and/or SunZia North is completed and (B) the Construction Loan Discharge Date and (ii) SunZia North hereunder shall terminate on the Construction Loan Discharge Date, in each case without the requirement for any such writing[; provided, finally, that all rights of the Tax Equity

[19] Include where tax equity investors are to receive an estoppel certificate.
[20] Include as applicable.

Investors hereunder shall terminate upon the delivery of the estoppel certificate pursuant to Section 5(l)][21].][22]

(c) **THIS CONSENT AND AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. COMPANY, THE ASSIGNORS AND THE COLLATERAL AGENTS HEREBY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND OF ANY NEW YORK STATE COURT SITTING IN NEW YORK CITY FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH OF COMPANY, THE ASSIGNORS AND THE COLLATERAL AGENTS IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.**

(d) **EACH OF COMPANY, THE ASSIGNORS AND THE COLLATERAL AGENTS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

(e) **NO CLAIM MAY BE MADE BY ANY PARTY HERETO AGAINST ANY OTHER PARTY HERETO, OR THE AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, ATTORNEYS OR AGENTS OF ANY OF THEM, FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATING TO, OR ANY ACT, OMISSION OR EVENT OCCURRING IN CONNECTION WITH THIS CONSENT AND AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS CONSENT AND AGREEMENT, AND EACH PARTY HEREBY WAIVES, RELEASES AND AGREES NOT TO SUE UPON ANY CLAIM FOR ANY SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.**

[21] Include where tax equity investors are to receive an estoppel certificate.
[22] Include as applicable.

(f) This Consent and Agreement may be executed in one or more counterparts with the same effect as if such signatures were upon the same instrument.

(g) No failure on the part of any of the Collateral Agents, as applicable, to exercise, and no delay in exercising, any right under this Consent and Agreement shall operate as a waiver of such right nor shall any single or partial exercise of any right under this Consent and Agreement preclude any further exercise of such right or the exercise of any other right. Except to the extent inconsistent with the terms hereof, the rights, remedies, powers and privileges provided in this Consent and Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(h) All notices to be given under this Consent and Agreement shall be in writing and shall be (i) delivered personally, (ii) sent by certified or registered first-class mail, postage prepaid, return receipt requested, (iii) sent by a recognized courier service, with delivery receipt requested, or (iv) sent by facsimile transmission or other transmission by electronic means to the intended recipient at its address as set forth below, unless the recipient has given notice of another address for receipt of notices. All notices sent hereunder shall be deemed to have been given when transmitted by facsimile (with confirmation of receipt) or personally delivered or in the case of a notice mailed or sent by courier, upon receipt, at the address provided for herein. Any notice or other communication delivered by e-mail to a Collateral Agent must include and be contained in a scanned or imaged attachment (such as ".pdf" or similar widely used format).

If to Company:	[_____] [_____] [_____] Attn: [_____] Tel: [_____] Fax: [_____] Email: [_____]
If to Construction Collateral Agent:	[_____] as Construction Collateral Agent
If to LCRA Collateral Agent:	[_____] as LCRA Collateral Agent

If to Assignors: [SunZia Wind North LLC
SunZia Wind South LLC
SunZia Wind PowerCo LLC][23]
c/o Pattern Energy Group LP
1088 Sansome Street
San Francisco, CA 94111
Email:

(i) Delivery of a copy of this Consent and Agreement bearing an original signature by facsimile transmission, by electronic mail in "portable document format" (".pdf") form or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by a combination of such means, shall have the same effect as physical delivery of the paper document bearing the original signature. "Originally signed" or "original signature" means or refers to a signature that has not been mechanically or electronically reproduced.

(j) This Consent and Agreement shall terminate, with respect to each Assigned Agreement, on the earlier to occur of (i) the date on which the Assigned Agreement terminates in accordance with its terms (and is not replaced by a New Assigned Agreement), (ii) with respect to the Construction Collateral Agent and the Construction Secured Parties, the Construction Loan Discharge Date[, (iii) with respect to the LCRA Collateral Agent and the LCRA Secured Parties, the LCRA Termination Date, and (iv) with respect to any Assigned Agreement to which SunZia South is not a party on the Closing Date (as defined in the LCRA), on the Construction Loan Discharge Date][24].

(k) Any entity into which any Collateral Agent may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which any Collateral Agent shall be a party, or any entity to which all or substantially all of the corporate trust business of any Collateral Agent may be sold or otherwise transferred shall be the successor applicable Collateral Agent hereunder without any further act. In the performance of its obligations hereunder, (i) the Construction Collateral Agent shall be entitled to all of the rights, benefits, protections, indemnities and immunities afforded to it pursuant to the Construction Secured Agreements, and (ii) the LCRA Collateral Agent shall be entitled to all of the rights, benefits, protections, indemnities and immunities afforded to it pursuant to the applicable LCRA Secured Agreements, and shall exercise all rights and remedies hereunder and provide any consents, directions, approvals, acceptances, determinations, rejections or other similar actions pursuant to this Consent and Agreement in accordance with

[24] Include as applicable.

directions received from the applicable Secured Parties, and shall have no liability for taking any such actions or failing to take any such actions in accordance with such directions (and shall not be liable for any failure or delay in taking such actions resulting from any failure or delay by such Secured Parties in providing such directions).

(l) [Company agrees to deliver to the LC Administrative Agent and the Tax Equity Investors a customary estoppel certificate, substantially in the form of Annex 1, in connection with the initial funding by the Tax Equity Investors, and in connection with the achievement of commercial operation of the Projects following receipt of a written request therefor from Borrower or any Assignor.][25]

(m) As between the Assignors and the Collateral Agents, in the event of any conflict between the provisions set forth in this Consent and Agreement and those set forth in any Secured Agreement, the provisions of the applicable Secured Agreement shall govern.

(n) Each Party hereby acknowledges and agrees that the Secured Parties are intended third party beneficiaries of this Consent and Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGES FOLLOW.]

[25] Include where tax equity investors are to receive an estoppel certificate.

IN WITNESS WHEREOF, each of the Parties has caused this Consent and Agreement to be duly executed and delivered by its respective authorized officer as of the date first written above.

[_____],
a [_____]

By: _____
Name:
Title:

[SUNZIA WIND NORTH LLC,
a Delaware limited liability company

By:_____
Name:
Title:

SUNZIA WIND SOUTH LLC,
a Delaware limited liability company

By:_____
Name:
Title:

SUNZIA WIND POWERCO LLC,
a Delaware limited liability company

By:_____
Name:
Title: [26]

[26] Include as applicable.

[_____]
as Construction Collateral Agent for the
Construction Secured Parties

By:_____
Name:
Title:

[_____]
as LCRA Collateral Agent for the LCRA Secured Parties

By:_____
Name:
Title:]

Annex 1

FORM OF PPA ESTOPPEL CERTIFICATE

[*Insert Date*][27]

Reference is made to that certain Renewable Power Purchase and Sale Agreement, dated as of [_____ ___], 2024 (as amended, amended and restated, supplemented or otherwise modified from time to time, the "PPA"), by and between Sacramento Municipal Utility District (together with its successors and permitted assigns, "Buyer"), and SunZia Wind PowerCo LLC ("Seller"). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the PPA, as amended, attached hereto as Exhibit A, constitutes a true and complete copy of the PPA.

2. The PPA is in full force and effect and[, subject to the rights of the Collateral Agent pursuant to that certain [Consent and Agreement, dated as of [_____], 20[__] (the "Consent and Agreement")], has not been modified or amended in any way since [_____], 20[__], and constitutes the only agreement between Buyer and Seller[, other than the Consent and Agreement].

3. Buyer has not transferred or assigned its interest in the PPA.

4. Buyer is not in default under the PPA, nor has Buyer breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the PPA or would give Seller the right to terminate the PPA. To Buyer's actual knowledge, Seller is not in default under the PPA nor, to Buyer's actual knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the PPA or would allow Buyer to terminate the PPA.

5. All representations made by Buyer in the PPA were true and correct as of the effective date of the PPA and continue to be true and correct as of the date hereof.

6. To Buyer's knowledge, no event, act, circumstance, or condition constituting a Force Majeure Event with respect to Buyer as claiming party has occurred and is continuing, and Buyer has not received written notice from Seller of a Force Majeure Event with respect to Seller as claiming party.

[27] To be delivered to (i) the tax equity investors, (ii) the administrative agents for the tax-equity term loan, the wind backleverage loan and the operational letter-of-credit facility, (iii) the tax-equity partnership, and (iv) the class B members in the tax-equity partnership, in connection with the achievement of Commercial Operation of the Project(s) and funding by the tax equity investors, the tax-equity term lenders and wind backleverage lenders, following receipt of a written request therefor from Seller.

7. Seller has not claimed any amounts under the indemnification obligation of Buyer set forth in the PPA.

8. To Buyer's actual knowledge, Buyer has no existing counterclaims, offsets, or defenses against Seller under the PPA. Buyer has no present actual knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA.

9. All payments due, if any, under the PPA, by Buyer have been paid in full through the period ending on the date hereof.

10. The Commercial Operation Date of the Project(s) occurred on [_____], 20[__].

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

SACRAMENTO MUNICIPAL UTILITY DISTRICT,
as Buyer

By: _____
Name:
Title:

EXHIBIT I
FORM OF LETTER OF CREDIT [NTD: subject to review and comment by Seller's financing parties]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [●]

DATE: [●]

BENEFICIARY:

APPLICANT:

[NAME, ADDRESS, CONTACT]

EXPIRATION DATE: [●]

AMOUNT/CURRENCY: [●]

AT THE REQUEST OF AND FOR THE ACCOUNT OF APPLICANT, WE, [INSERT BANK NAME AND ADDRESS] ("ISSUER"), HEREBY ESTABLISH IN YOUR FAVOR IN RESPECT OF OBLIGATIONS OF APPLICANT OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ("LETTER OF CREDIT") IN FAVOR OF [____] ("BENEFICIARY"), [BENEFICIARY ADDRESS], WHEREBY, SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, BENEFICIARY IS HEREBY AUTHORIZED TO DRAW ON US, BY SIGHT, BY ITS DRAWING STATEMENT AS PROVIDED HEREIN, FOR AN AGGREGATE AMOUNT UP TO BUT NOT EXCEEDING [●] (THE "FACE AMOUNT").

WE ARE ADVISED THIS LETTER OF CREDIT IS IRREVOCABLE AND IS ESTABLISHED AS DEVELOPMENT SECURITY PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2024 BETWEEN APPLICANT AND BENEFICIARY (THE "AGREEMENT").

THIS LETTER OF CREDIT SHALL BE EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [●], WHICH IS ONE YEAR AFTER THE ISSUE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE "EXPIRATION DATE").

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ADDITIONAL TWELVE (12) MONTH PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, BUT IN NO EVENT TO AN EXPIRATION DATE LATER THAN [●], UNLESS AT LEAST NINETY (90) DAYS PRIOR TO THE EXPIRATION DATE WE SEND NOTICE IN WRITING TO YOU VIA HAND DELIVERY OR OVERNIGHT COURIER AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD.

ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT YOU MAY DRAW ON US HEREUNDER FOR UP TO THE FULL UNUTILIZED AMOUNT AVAILABLE AS OF THE DATE OF DRAWING ON THIS LETTER OF CREDIT.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS LETTER OF CREDIT (PROVIDED THAT THE CUMULATIVE AGGREGATE AMOUNT THAT MAY BE DEMANDED UNDER THIS LETTER OF CREDIT SHALL NOT EXCEED THE FACE AMOUNT), AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ANY CONTINUING BALANCE.

FUNDS UNDER THIS LETTER OF CREDIT SHALL BE AVAILABLE TO THE BENEFICIARY UPON PRESENTATION TO US OF A DATED DRAWING CERTIFICATE IN THE FORM OF EXHIBIT A HERETO (WHICH IS AN INTEGRAL PART OF THIS LETTER OF CREDIT) PURPORTEDLY SIGNED BY THE BENEFICIARY'S DULY AUTHORIZED REPRESENTATIVE.

THE DRAWING CERTIFICATE MAY BE PRESENTED BY (A) PHYSICAL DELIVERY TO [ADDRESS] OR (B) BY FACSIMILE TO [FAX NUMBER].

ALL PAYMENTS MADE UNDER THIS LETTER OF CREDIT SHALL BE MADE WITH ISSUER'S OWN IMMEDIATELY AVAILABLE FUNDS BY MEANS OF WIRE TRANSFER IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS TO BENEFICIARY'S ACCOUNT AS INDICATED BY BENEFICIARY IN ITS DRAWING CERTIFICATE OR IN A COMMUNICATION ACCOMPANYING ITS DRAWING CERTIFICATE.

WE HEREBY AGREE THAT THE DRAWING DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED BY US UPON DELIVERY OF THE ABOVE SPECIFIED DRAWING CERTIFICATE, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED HEREIN.

AS STIPULATED HEREIN, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF _____ ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. IF ANY DRAWING OR THE DOCUMENTATION PRESENTED IN CONNECTION THEREWITH, DOES NOT CONFORM TO THE TERMS AND CONDITIONS HEREOF, WE WILL ADVISE YOU OF THE SAME BY TELEPHONE OR FACSIMILE AND GIVE THE REASONS FOR SUCH NON-CONFORMANCE.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE RULES OF THE 'INTERNATIONAL STANDBY PRACTICES 1998', INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ('ISP98') AND AS TO MATTERS NOT ADDRESSED BY ISP98 SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF STATE OF _____.

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS (OTHER THAN AS SET FORTH IN THE

IMMEDIATELY PRIOR PARAGRAPH), THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

OTHER THAN AS PROVIDED HEREIN, COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING, SHALL SPECIFICALLY REFER TO BENEFICIARY AND TO OUR LETTER OF CREDIT NO. [●], AND SHALL BE ADDRESSED TO: [●]

ALL NOTICES TO BENEFICIARY SHALL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED LETTER, OVERNIGHT COURIER OR DELIVERED IN PERSON TO: [BENEFICIARY], ATTN: [BENEFICIARY ADDRESS]. ONLY NOTICES TO BENEFICIARY MEETING THE REQUIREMENTS OF THIS PARAGRAPH SHALL BE CONSIDERED VALID. ANY NOTICE TO BENEFICIARY WHICH IS NOT IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE VOID AND OF NO FORCE OR EFFECT.

ALL COSTS RELATED TO THIS LETTER OF CREDIT SHALL BE PAID BY THE APPLICANT.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. ISSUER ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

EXHIBIT "A"

DRAWING CERTIFICATE

TO: [ISSUING BANK]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ISSUED BY [ISSUING BANK] TO [BENEFICIARY] ("LETTER OF CREDIT"); CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DRAWING CERTIFICATE HAVE THE MEANINGS ASCRIBED TO THEM IN THE LETTER OF CREDIT)

THIS IS A DRAWING CERTIFICATE UNDER THE ABOVE-MENTIONED LETTER OF CREDIT.

I,_____, AN AUTHORIZED REPRESENTATIVE OF [BENEFICIARY], DO HEREBY CERTIFY THAT:

APPLICANT AND BENEFICIARY ARE PARTY TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF _____, 2024 (THE "AGREEMENT").

[CHOOSE ONLY ONE OF THE FOLLOWING]

(1) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. $_____ BECAUSE [A SELLER EVENT OF DEFAULT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) HAS OCCURRED OR OTHER OCCASION PROVIDED FOR IN THE AGREEMENT WHERE BENEFICIARY IS AUTHORIZED TO DRAW ON THE LETTER OF CREDIT HAS OCCURRED][OR][A DELAY DAMAGES PAYMENT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) IS DUE UNDER THE AGREEMENT].

(2) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. $_____, WHICH EQUALS THE FULL AVAILABLE AMOUNT UNDER THE LETTER OF CREDIT, BECAUSE APPLICANT IS REQUIRED TO MAINTAIN THE LETTER OF CREDIT IN FORCE AND EFFECT BEYOND THE EXPIRATION DATE OF THE LETTER OF CREDIT BUT HAS FAILED TO PROVIDE BENEFICIARY WITH A REPLACEMENT LETTER OF CREDIT OR OTHER ACCEPTABLE INSTRUMENT WITHIN SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE.

IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT , [BENEFICIARY] IS ENTITLED TO AND HEREBY DEMANDS PAYMENT OF USD _____, SUCH AMOUNT TO BE PAID TO [BENEFICIARY] BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE

FUNDS TO: (INSERT WIRE INSTRUCTIONS),WHICH, [____] CERTIFIES IT IS ENTITLED TO UNDER THE AGREEMENT.

COMMUNICATIONS TO ME CONCERNING THIS DRAWING CERTIFICATE MAY BE MADE AT FOLLOWING TELEPHONE AND FACSIMILE NUMBERS: _____; _____.

IN WITNESS WHEREOF, [BENEFICIARY] THROUGH ITS AUTHORIZED REPRESENTATIVE HAS EXECUTED AND DELIVERED THIS DRAWING CERTIFICATE THIS DAY OF , 20 _.

[____]

BY:_____

NAME:_____

TITLE:_____.

EXHIBIT J
FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this "**Assignment Agreement**" or "**Agreement**") is entered into as of [____], by and among [____], a [____] ("**PPA Seller**"), Sacramento Municipal Utility District, a municipal utility district organized under the provisions of the Municipal Utility District Act (Division 6, Chapter 2, Articles 2 and 3, Sections 11581 through 11614 of the California Public Utilities Code, as amended) ("**PPA Buyer**"), and J. Aron & Company LLC, a New York limited liability company ("**J. Aron**"), and relates to that certain power purchase agreement between PPA Buyer and PPA Seller as further described in Appendix 1 (the "**PPA**"). Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and J. Aron (the "**Parties**" hereto; each is a "**Party**") agree as follows:

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers and conveys to J. Aron all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the "**Assigned Products**") during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the "Further Information" section on Appendix 1 (the "**Assigned Product Rights**"). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer. The Parties agree that the assignment, transfer and/or conveyance of all or any portion of the Assigned Products in accordance with this Agreement and the Parties' performance of any obligation in accordance with this Agreement shall not constitute a failure to meet the requirements of the PPA, or a breach of any covenant, representation or warranty under the PPA (and in no event shall PPA Seller be responsible for any failure of any portion of the Assigned Products to satisfy the requirements of the PPA, to the extent such failure results from the assignment, transfer and/or conveyance of such Assigned Products in accordance with this Agreement).

(b) PPA Buyer hereby delegates to J. Aron the obligation to pay the APC Contract Price set forth in Appendix 1 for all Assigned Products that are actually delivered to J. Aron pursuant to the Assigned Product Rights during the Assignment Period (the "**Delivered Product Payment Obligation**" and together with the Assigned Product Rights, collectively the "**Assigned Rights and Obligations**"); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer and PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products; and (ii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to J. Aron consistent with Section 1(d) hereof). To the extent J. Aron fails to pay for any Assigned Products by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it will remain jointly and severally responsible as a primary obligor (and not as a surety) for such payment and that it will be an Event of Default pursuant to Section 11.1(a) if PPA Buyer does not make such payment within

five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller, and that PPA Buyer shall remain liable for, and indemnify and hold PPA Seller harmless from, any and all losses, damages, costs and expenses of PPA Seller of any kind as a result of or arising from (x) the assignment, transfer, conveyance, and delegation described in Section 1(a) and this Section 1(b), or (y) J. Aron's failure to take or pay for any such Assigned Product or make any payment in respect of the Delivered Product Payment Obligation as and when due under the PPA and disregarding the effects of any stay or other suspension rights, including without limitation under sections 362 or 365 of the Bankruptcy Code or similar laws), whether due to bankruptcy, insolvency or any other cause.

(c) J. Aron hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass from PPA Seller to J. Aron upon delivery by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer will provide copies to J. Aron of any Notice of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iii) PPA Buyer will provide copies to J. Aron of any forecasts of Energy generation provided by PPA Seller under the PPA; (iv) PPA Seller will provide copies to J. Aron of all invoices and supporting data provided to PPA Buyer pursuant to Section 8.1 of the PPA, provided that any payment adjustments or subsequent reconciliations occurring after the date that is 10 days prior to the payment due date for a monthly invoice, including pursuant to Section 8.4 of the PPA, will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (v) PPA Buyer and PPA Seller, as applicable, will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products.

(e) PPA Seller acknowledges that (i) J. Aron intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer; and (ii) in the event that PPA Buyer fails to pay the relevant intermediary entity for any such Assigned Products, the receivables owed by PPA Buyer for such Assigned Products ("PPA Buyer Receivables") may be transferred to J. Aron. To the extent any such PPA Buyer Receivables are transferred to J. Aron, J. Aron may transfer such PPA Buyer Receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation, and PPA Buyer waives all rights to dispute or claim any defence in respect of such PPA Buyer Receivables other than a defence that would have arisen under the PPA if this Agreement were not in effect. To effect such transfer, J. Aron shall deliver to PPA Seller a notice of intent to transfer PPA Buyer Receivables not later than the payment due date for the Delivered Product Payment Obligation and shall deliver to PPA Seller a bill of sale signed by J. Aron not later than five Business Days thereafter, provided that no such transfer or application shall reduce or limit PPA Buyer's obligations under Section1(b) above. Such transfer of PPA Buyer Receivables shall immediately be deemed an Event of Default under Section 11.1(a) of the PPA, without regard to any cure periods set forth therein, and PPA Seller shall be entitled to pursue collection on such PPA Buyer Receivables

directly against PPA Buyer pursuant to the remedies set forth in the PPA for such Event of Default.

(f) On or before the commencement of the Assignment Period, The Goldman Sachs Group, Inc. ("Guarantor") will issue, in favor of PPA Seller, a guaranty of J. Aron's payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto ("Guaranty").

(g) The Assigned Prepay Quantity set forth in Appendix 2 relates to obligations by and between J. Aron and PPA Buyer and has no impact on PPA Seller's rights and obligations under the PPA.

(h) In the event that the PPA or the Assigned Rights and obligations are either or both rejected or terminated in or as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting J. Aron, PPA Buyer shall, at the option of PPA Seller exercised within thirty (30) days after such rejection or termination, enter into a new agreement with PPA Seller having identical terms as the PPA (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), *provided*, that the term under such new agreement shall be no longer than the remaining balance of the term specified in the PPA.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination specifying a termination date by either J. Aron or PPA Buyer to each of the other Parties;

(2) delivery of a written notice of termination specifying a termination date by PPA Seller to each of J. Aron and PPA Buyer following J. Aron's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such payment is not made by J. Aron within one (1) business day following receipt by J. Aron and PPA Buyer of written notice;

(3) delivery of a written notice by PPA Seller if any of the events described in the definition of "Bankrupt" in the PPA occurs with respect to J. Aron; or

(4) delivery of a written notice by J. Aron if any of the events described in in the definition of "Bankrupt" in the PPA occurs with respect to PPA Seller.

(b) The Assignment Period will end at the end of last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause 2(a)(1) or 2(a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

(c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the expiration of or early termination of the PPA, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

(d) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty or if the Guarantor otherwise repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The PPA Seller and the PPA Buyer represent and warrant to J. Aron that (a) the PPA is in full force and effect; (b) to the best of its knowledge, no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

4. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with [Article]/[Section] [__] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Buyer agrees to notify J. Aron of any updates to such notice information, including any updates provided by PPA Seller to PPA Buyer. Notices to J. Aron shall be provided to the following address, as such address may be updated by J. Aron from time to time by notice to the other Parties:

J. Aron & Company LLC
200 West Street
New York, New York 10282-2198
Email:

5. Miscellaneous. Section [__] (Buyer's Representations and Warranties), Article [__] (Confidential Information), Section [__] (No Consequential Damages), Section [__] (Severability), Section [__] (Counterparts), Section [__] (Amendments), Section [__] (No Agency, Partnership, Joint Venture or Lease), Section [__] (Mobile-Sierra), Section [__] (Electronic Delivery), Section [__] (Limitations on Damages), Section [__] (Binding Effect) and Section [__] (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

1.1 **6. U.S. Resolution Stay Provisions.**

(a) As between J. Aron and PPA Buyer, J. Aron and PPA Buyer hereby confirm that they are adherents to the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay Protocol"), the terms of the ISDA U.S. Stay Protocol are incorporated into and form a

part of this Assignment Agreement, and for the purposes of such incorporation, (i) J. Aron shall be deemed to be a Regulated Entity, (ii) PPA Buyer shall be deemed to be an Adhering Party, and (iii) this Assignment Agreement shall be deemed a Protocol Covered Agreement. In the event of any inconsistencies between this Assignment Agreement and the ISDA U.S. Stay Protocol, as between J. Aron and PPA Buyer, the ISDA U.S. Stay Protocol will prevail.

(b) As between J. Aron and PPA Seller:

(i) In the event that J. Aron becomes subject to a proceeding under (A) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (B) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a "U.S. Special Resolution Regime") the transfer from J. Aron of this Agreement, and any interest and obligation in or under, and any property securing, this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any interest and obligation in or under, and any property securing, this Agreement were governed by the laws of the United States or a state of the United States.

(ii) In the event that J. Aron or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable and as amended ("Default Right")) under this Agreement that may be exercised against J. Aron are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(iii) Notwithstanding anything to the contrary in this Agreement, J. Aron and PPA Seller expressly acknowledge and agree that:

(1) PPA Seller shall not be permitted to exercise any Default Right with respect to this Agreement or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of J. Aron becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an "Insolvency Proceeding"), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable and as amended; and

(2) Nothing in this Agreement shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of J. Aron becoming subject to an Insolvency Proceeding, unless the transfer would result in PPA Seller being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to PPA Seller.

(iv) If PPA Seller adheres to the ISDA U.S. Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018, after the date of this Agreement, the terms of the ISDA U.S. Protocol will supersede and replace the terms of this Section 6(b).

(v) For purposes of this Section 6(b):

(1) "**Affiliate**" is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k); and

(2) "**Credit Enhancement**" means any credit enhancement or credit support arrangement in support of the obligations of J. Aron under or with respect to this Agreement, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

7. Governing Law, Jurisdiction, Waiver of Jury Trial.

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (i) the courts of the State of New York located in the Borough of Manhattan and (ii) the federal courts of the United States of America for the Southern District of New York.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[PPA SELLER]

By: _____

Name: _____

Title: _____

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By:_____

Name: _____

Title: _____

J. ARON & COMPANY LLC

By:_____

Name:
Title:

Appendix 1

Assigned Rights and Obligations

PPA: "**PPA**" means that certain [Power Purchase and Sale Agreement] dated [____], 20[_] by and between [____] and [____], as amended from time to time.

"**Assignment Period**" means the period beginning on [_____] and extending until [_____], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

APC Contract Price: $[redacted]/MWh (flat) with no escalation

Assigned Product: "**Assigned Products**" include [____].

Further Information: [____]

Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]

Appendix 3

Form of GSG Guaranty

, 2024

NAME
ADDRESS

Attention:

Ladies and Gentlemen:

For value received, The Goldman Sachs Group, Inc. (the "Guarantor"), a corporation duly organized under the laws of the State of Delaware, hereby unconditionally guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of J. Aron & Company LLC, a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of New York (the "Company"), to **COUNTERPARTY NAME** (the "Counterparty") arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and [PPA Seller] dated as of [ ], 202[_]. This Guaranty is one of payment and not of collection.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Counterparty against, and any other notice to, the Company, the Guarantor or others.

Counterparty may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Counterparty, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Counterparty, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any obligation or liability of the Company to Counterparty including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the opening of business on the fifth business day after Counterparty receives written notice of termination from the Guarantor. It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the obligations and liabilities set forth above which shall have been incurred prior to such termination.

The Guarantor further agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the guaranteed obligations, or interest thereon is rescinded or must otherwise be restored or returned by the Counterparty upon the bankruptcy, insolvency, dissolution or reorganization of the Company. No failure on the part of the Counterparty to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Counterparty of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time, either before or after the termination hereof, payment of the obligations or liabilities guaranteed pursuant to this Guaranty, or any part thereof, is rescinded or must otherwise be returned by Counterparty for any reason, including without limitation upon the insolvency, bankruptcy or reorganization of the Company or the Guarantor, all as though such payment had not been made.

Except as to applicable statutes of limitation, Guarantor hereby agrees that no delay of Counterparty in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

The Guarantor hereby represents as follows:

(a) The Guarantor is duly organized, validly existing, and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Guaranty.

(b) The execution and delivery of this Guaranty have been and remain duly authorized by all necessary action and do not contravene any provision of the Guarantor's certificate of incorporation or by-laws, as amended to date, or any law, regulation, decree, order, judgment, resolution or any contractual restriction binding on the Guarantor or its assets that could affect, in a materially adverse manner, the ability of the Guarantor to perform any of its obligations hereunder.

(c) All consents, licenses, clearances, authorizations, and approvals of, and registration and declarations with, any governmental or regulatory authority necessary for the due execution and delivery of this Guaranty have been obtained and remain in full force and effect and all conditions thereof have been duly complied with, and no other action by, and no notice to or filing with, any governmental or regulatory authority is required in connection with the execution or delivery of this Guaranty.

(d) This Guaranty constitutes the legal, valid, and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with all of its terms and conditions (subject to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar law

affecting creditors' rights generally). The enforceability of the Guarantor's obligations is also subject to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part, without prior written consent of the Counterparty, and any purported assignment or delegation absent such consent is void, except for (i) an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, and (ii) the Guarantor may transfer this Guaranty or any interest or obligation of the Guarantor in or under this Guaranty, or any property securing this Guaranty, to another entity as transferee as part of the resolution, restructuring or reorganization of the Guarantor upon or following the Guarantor becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. Upon any such delegation and assumption or transfer of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption or transfer.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

In the event the Guarantor becomes subject to a proceeding under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together, the "U.S. Special Resolution Regimes"), the transfer of this Guaranty, and any interest and obligation in or under, and any property securing, this Guaranty, from the Guarantor will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if this Guaranty, and any interest and obligation in or under this Guaranty, were governed by the laws of the United States or a state of the United States. In the event the Company or the Guarantor, or any of their affiliates, becomes subject to a U.S. Special Resolution Regime, default rights against the Company or the Guarantor with respect to this Guaranty are permitted to be exercised to no greater extent than such default rights could be exercised under such U.S. Special Resolution Regime if this Guaranty was governed by the laws of the United States or a state of the United States.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: _____
Authorized Officer

Exhibit J-5

EXHIBIT K
NOTICES

SUNZIA WIND POWERCO LLC ("Seller")	**SACRAMENTO MUNICIPAL UTILITY DISTRICT** ("Buyer")
All Notices: Street: 1088 Sansome St. City: San Francisco, CA Attn: General Counsel Phone: Email:	**All Notices:** Street: 6301 S Street City: Sacramento, CA 95817 Mail Stop: A404 Attn: Power Contracts Administration Phone: Email:
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: Federal Tax ID Number:
Invoices: Attn: Pattern Energy Settlements Phone: Email:	**Invoices:** Phone: Email:
Scheduling: Attn: Manager 24/7 Operations Control Center Email: Phone: Facsimile:	**Scheduling:** Attn: Day Ahead Trading Phone: Email: Attn: Phone: Email:
Confirmations: Attn: Pattern Energy Settlements Phone: Email:	**Confirmations:** Attn: Energy Settlements Phone: Email:
Payments: Attn: Pattern Energy Settlements Phone: Email:	**Payments:** Attn: Energy Settlements Phone: Email:

SUNZIA WIND POWERCO LLC ("Seller")	**SACRAMENTO MUNICIPAL UTILITY DISTRICT** ("Buyer")
Wire Transfer: BNK: ABA: ACCT:	**Wire Transfer:** BNK: ABA: ACCT:
Emergency Contact: Attn: 24/7 Operations Control Center Phone: Email:	**With additional Notices of an Event of Default to:** Attn: Energy Commodity Contracts Phone: Email:
	Emergency Contact: Attn: Real Time Trading Phone: Email:

EXHIBIT L
OPERATING RESTRICTIONS

Operating restrictions of the Facility for Market Curtailment Periods are as follows:

- Interconnection Capacity (Maximum Injection Amount): [redacted] MW
- Minimum operating capacity: 0.0 MW
- Maximum number of start-ups per calendar day (if any such operational limitations exist): N/A
- Ramp Rate: To be provided by Seller upon Notice to Buyer prior to Commercial Operation
- Minimum Down Time: N/A

EXHIBIT M

PRINCIPLES OF RENEWABLE ENERGY DEVELOPMENT

SMUD is committed to developing carbon free renewable energy in a manner that supports the community, protects the environment, and respects human rights. This document provides guidance on the key objectives that SMUD expects to achieve associated with this commitment. Renewable energy projects engaged in a commercial relationship with SMUD such as a power purchase agreement will use commercially reasonable efforts to provide, implement, and maintain throughout the associated term, a "Community Benefits Plan" that addresses how the project will achieve the key objectives identified herein.

Key objectives:

1. Land Use: Prioritize previously developed lands. Avoid or minimize impacts on sensitive environmental resources, including but not limited to cultural resources, tribal cultural resources, and biological resources such as endangered species habitat, vernal pools and other sensitive habitats, "Waters of the US", "Waters of the State" and waters identified by California Department of Fish and Wildlife as "Streambed". Provide additional mitigation measures if avoidance and minimization measures cannot fully eliminate impacts. Applicants are expected to discuss these topics with both SMUD and the lead agency as early as possible to identify potential associated issues in advance of the purchase power agreement being finalized.

2. Land Use: All projects should employ techniques for maintaining and/or restoring ecosystem function to the site in conjunction with renewable energy outcomes, including establishment of native vegetation, restricting use of herbicides and pesticides, use of grazing for vegetation management and seasonally appropriate maintenance practices. Where development is on or surrounded by agricultural lands the project should also employ agricultural practices on the property during operations including sheep grazing, dry crop farming and irrigated food production where feasible.

3. Land Use: Employ design and construction practices that minimize ground disturbance to the maximum extent possible. This is especially critical in areas where cultural, tribal cultural and biological resources are of significant concern.

4. Sustainable Life Cycle Management: Include plans for sustainable life cycle management of construction materials and project components during construction and operation that provides for recycling and reuse of construction waste and waste during operation including but not limited to the solar panels.

5. Community Benefits:

   (a) Inclusive Economic Development: Leverage SMUD's Supplier Education & Economic Development (SEED) team to connect with certified small business vendors/contractors in SMUD's service territory to support the project. Submit requests to seed.mgr@smud.org.

6. Zero Carbon Workforce Development: SMUD seeks to galvanize and prepare the region for an inclusive, diverse, creative, and empowered future workforce. Leverage SMUD's existing workforce development agreements, programs, and partnerships throughout the Project to support the development of a clean energy labor force. The Project Team will work with SMUD to engage various elements of the labor supply chain via pre-apprentice and apprenticeship programs, internships, informational sessions, and mentorship opportunities.

7. Sustainable Materials & Equipment: Sourcing materials and equipment from companies that have a human rights policy and statement of supply chain ethics commitment that expresses the corporation's commitment to meet the responsibility to respect human rights and uphold ethical business practices in their operations and value chains.

EXHIBIT N
NON-BINDING ESTIMATES OF PRODUCTION TAX CREDIT

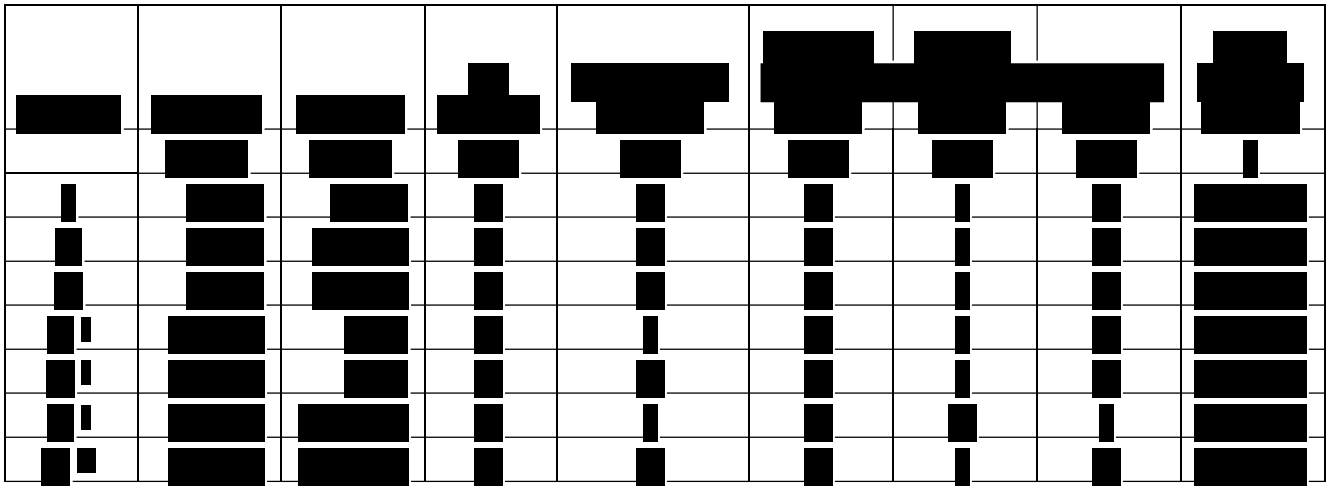
EXHIBIT O

SETTLEMENT EXAMPLES

In accordance with Sections 3.3(a) and 4.6(e), Product delivered to Buyer will be calculated consistent with the illustrative examples below:

[redacted]

[redacted]



[redacted]

2

SSS No.	Committee Meeting & Date
CIO 24-004	ERCS – 11/20/24
	Board Meeting Date: November 21, 2024

BOARD AGENDA ITEM
STAFFING SUMMARY SHEET

TO		TO	
1.	Claire Rogers	6.	Lora Anguay
2.	AJ Jacobs	7.	
3.	Frankie McDermott	8.	
4.	Suresh Kotha	9.	**Legal**
5.	Brandy Bolden	10.	**CEO & General Manager**

Consent Calendar	X	**Yes**		**No** *If no, schedule a dry run presentation.*	**Budgeted**		**Yes**	X	**No** *(If no, explain in Cost/Budgeted section.)*

FROM (IPR)	DEPARTMENT	MAIL STOP	EXT.	DATE SENT
David Bitter	Cybersecurity	K112	6901	10/24/2024

NARRATIVE:

Requested Action: Accept the monitoring report for Strategic Direction SD-16, Information Management and Security.

Summary: Present the 2023-2024 Board Monitoring Report for SD-16, Information Management and Security.

Board Policy: *(Number & Title)* Strategic Direction SD-16, Information Management and Security

Benefits: Provides an update to the Board of Directors on the progress and status of the Information Security, Privacy, Physical Security and Records Management programs.

Cost/Budgeted: Costs contained in internal labor budget.

Alternatives: Receive information via memo or written report.

Affected Parties: All SMUD Departments

Coordination: Cybersecurity

Presenter: AJ Jacobs, Director, Cybersecurity
Kirsten DePersis, Director, Facilities, Security & Emergency Operations
Kelsey McFadyen, Program Manager, Information Management & Compliance

Additional Links:

SUBJECT	ITEM NO. *(FOR LEGAL USE ONLY)*
Monitoring Report **Strategic Direction SD-16, Information Management and Security**	

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

OFFICE MEMORANDUM

TO: Board of Directors **DATE:** October 29, 2024

FROM: Claire Rogers *CR 10/29/24*

SUBJECT: **Audit Report No. 28007755**
Board Monitoring Report; SD-16, Information Management and Security

Internal Audit Services (IAS) received the SD-16 *Information Management and Security* 2024 Annual Board Monitoring Report and performed the following:

- Selected a sample of statements and assertions in the report for review.
- Interviewed report contributors and verified the methodology used to prepare the statements in our sample.
- Validated the reasonableness of the statements in our sample based on the data or other support provided to us.

During the review, nothing came to IAS' attention that would suggest the items sampled within the SD Board Monitoring report did not fairly represent the source data available at the time of the review.

CC:

Paul Lau

DRAFT

Board Monitoring Report 2024
SD-16 Information Management and Security

1) Background

Strategic Direction Information Management and Security policy states that:

Proper management of cyber and physical information, as well as physical security, is a core value. Robust information management and physical security practices are critical to effective risk management and to ensure regulatory compliance, business resiliency and customer satisfaction. SMUD shall take prudent and reasonable measures to accomplish the following:

a) **Information Security**: SMUD will protect customer, employee and third-party information, and SMUD information systems are protected from unauthorized access, use, disclosure, disruption, modification, or destruction.

b) **Physical Security**: SMUD will safeguard its employees while at work as well as customers and visitors at SMUD facilities. SMUD will also protect its facilities and functions that support the reliability of the electric system and overall operation of the organization from unauthorized access or disruption of business operations.

c) **Customer Privacy**: SMUD will annually notify customers about the collection, use and dissemination of sensitive and confidential customer information. Except as provided by law or for a business purpose, SMUD will not disseminate sensitive and confidential customer information to a third party for non-SMUD business purposes unless the customer first consents to the release of the information. Where sensitive and confidential information is disseminated for a business purpose, SMUD will ensure: (i) the third party has robust information practices to protect the sensitive and confidential customer information, and (ii) use of the information by the third party is limited to SMUD's business purpose. SMUD will maintain a process that identifies the business purposes for which SMUD will collect, use and disseminate sensitive and confidential customer information.

d) **Records Management**: SMUD will maintain the efficient and systematic control of the creation, capture, identification, receipt, maintenance, use, disposition, and destruction of SMUD records, in accordance with legal requirements and Board policies.

2) Executive summary

a) SMUD's Information Security, Physical Security, Customer Privacy, and Records Management programs and initiatives align directly with the "Safety and Reliability" Core Values of SMUD's 2030 Clean Energy Plan. These programs work towards ensuring

that SMUD continues to be a good steward over customer information, physical security, privacy, and records in accordance with our customers' high expectations.

b) SMUD is substantially in compliance with SD-16 Information Management and Security Policy.

c) Summary:

SD Requirement	Program/initiative/policy	Purpose	Outcome	Notes
Information Security: protect systems and information from unauthorized access	Information security program; AP 07.03.01 Information Security Concepts and Roles	Protect systems and information; provide policy supporting the Cybersecurity program	Security controls and processes are in place to protect people, processes, and technology	
Customer Privacy: Annually notify customers about use of information	Annual notice of privacy practices	Notify customers of our privacy practices	Notice sent in the May bill package	Minor changes (around consent for non-SMUD use of data)
Customer Privacy: Ensure security where data is shared	System Security Plans and SOC 2 audit report requirements	Evaluate the information practices and security controls of third parties	Confidence that vendors have robust cybersecurity programs to protect SMUD information	
Customer Privacy: Maintain process that identifies purposes for information collection and dissemination	Data Sharing Policy, Data Sharing Request/Approval Process	Track NDAs, the data being shared, and the business justification for sharing	Formal data sharing process is being observed and maintained	
Records Management: Identify and manage records and information	Records Evaluations and Information Migration	Evaluate, classify and migrate records, and ensure retrieval, disposal and protection.	Plan to complete migration of 29 out of 41 total business areas, for an estimated total of 4.5 million documents classified and migrated.	
Records Management: Ensure all information systems are compliant with	Information System Evaluations	Review of software tools housing SMUD data and information.	Evaluate software tools for information management compliance and avoidance of redundancy.	

IMC requirements and best practices.				
Physical Security: safeguard employees, customers, and visitors	AP 06.03.01, MP_06.03.01.103 – Visitor Control	Protect SMUD employees and those who visit SMUD facilities	Improved stakeholder coordination and risk mitigation related to campus visits.	
Physical Security: protect SMUD facilities	AP 06.03.01 Thermal intrusion detection technology pilot	Protect SMUD campuses and grid facilities by assessing and implementing security-industry best practices	Completed pilot effort to help mitigate the resource-draining false activations by our current system	

3) **Additional supporting information**

Information Security

SMUD, customer, employee and third-party information and SMUD information systems are protected from unauthorized access, use, disclosure, disruption, modification, or destruction.

SMUD's Cybersecurity program, under the direction of the Chief Information Security Officer, continues to evolve and mature to keep pace with the evolving cyber threats we face and to manage our cyber, privacy, legal, regulatory and compliance risk. This includes the adoption of a Zero Trust Architecture strategy, aligned to the CIOs larger IT Strategic Plan. We align to the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF) to establish prudent and reasonable measures intended to protect SMUD's operations from a cyber-attack, disruption and other threats to enterprise technologies, processes, and information. The CSF has been updated to now have six core functions (Identify, Protect, Detect, Respond, Recover, and Govern) which comprise both administrative and technical controls to effectively manage information and cybersecurity risk. Cybersecurity is actively working to implement the CSF controls through SMUD policies to enhance and govern information management and security risk management practices and processes in support of SD-16. Cybersecurity will highlight the cybersecurity capabilities provided in an update to the board for SD-16 during an upcoming closed session.

Physical Security

SMUD will safeguard its employees while at work as well as customers and visitors at SMUD facilities.

SMUD facilities welcome thousands of community members through community events, meetings, and face to face interactions in addition to being the home of nearly 2300 employees.

SMUD's Security Operations continues to meet its goal of maintaining customer and employee safety by leveraging physical security staff, video surveillance technology, lighting and signage, passive and active physical security barriers, education and partnerships with law enforcement and community stakeholders.

This year, SMUD authored and implemented a comprehensive new Visitor Control and Management policy. This policy outlines the requirements for planning, coordinating, escorting and approving visits throughout SMUD. The new policy ensures uniform, consistent, safe and efficient processes for visitors and SMUD employees. SMUD additionally added an enhanced Workplace Violence Prevention policy and training for all employees. These safeguards and policies ensure that safety remains priority one at SMUD. As with most new policies and procedures, these will be updated appropriately when needed to reflect the ever-changing threat landscape.

SMUD will also protect its facilities and functions that support the reliability of the electric system and overall operation of the organization from unauthorized access or disruption of business operations.

Security Operations has identified a new thermal imaging technology that will be used to supplement existing intrusion detection methods at substations and other sites where false alarms have been rampant. This system "sees" things thermally and then directs a camera to the detected object for the Security Dispatcher to assess. This will help with an aging fiber optic sensor system that has been giving widespread false alarms for years. The resulting drain on resources and unnecessary patrol response has been a costly issue, and introducing this new system should reduce those problems significantly. This is part of a larger effort to use metrics-gathering tools to increase operational efficiency, identify trends and hotspots, and increase visibility of emergent issues, particularly at our Critical Infrastructure Protection (CIP) sites.

Customer Privacy

SMUD will annually notify customers about the collection, use and dissemination of sensitive and confidential customer information.

SMUD sent out our annual privacy notice via email and as a bill insert to customers during the May bill cycle. The language in the notice was updated this year to emphasize that any non-SMUD business uses of personal information require individual consent. The notice is otherwise very similar to previous years and continues to include plain language regarding SMUD's collection, use, and release of customer sensitive and confidential information, the business purposes for which customer information is used, as well as a reaffirmation of SMUD's commitment to customer privacy.

Except as provided by law or for a business purpose, SMUD will not disseminate sensitive and confidential customer information to a third party for non-SMUD business purposes unless the customer first consents to the release of the

information.

No sensitive and confidential customer information has been sent to a third party for non-SMUD business purposes this year.

Where sensitive and confidential information is disseminated for a business purpose, SMUD will ensure: (i) the third party has robust information practices to protect the sensitive and confidential customer information, and (ii) use of the information by the third party is limited to SMUD's business purpose.

Cybersecurity and Procurement continue to follow a formalized supply chain risk management process, in compliance with NERC CIP requirements. The process is aligned to the NIST Cybersecurity Framework (CSF) and is reviewed on at least an annual basis to ensure it is functioning as designed and incorporates lessons learned as new procurements follow the process. The process includes a mandatory procurement requirement for vendors to allow the Cybersecurity team to evaluate the security posture of a proposed vendor solution. The American Institute of CPAs (AICPA) Service Organization Control 2 (SOC 2) Type 2 continues to be our procurement standard as it is an independent assessment focused on a solution's security controls which includes tests of the security controls' efficacy. SOC 2 Type 2 reports provide staff confidence that vendor security controls are robust and sufficient to protect SMUD information. Contract and non-disclosure agreement language is used to provide assurance that SMUD provided sensitive and confidential information will not be used for any unapproved purposes. Additionally, our data sharing policy and process also align to this requirement.

SMUD will maintain a process that identifies the business purposes for which SMUD will collect, use and disseminate sensitive and confidential customer information.

MP 07.03.01.122 - Data Sharing requires an approved data sharing request prior to sharing information with a third party for SMUD business purposes. No significant policy or process changes related to data sharing occurred this year.

Records Management

The efficient and systematic control of the creation, capture, identification, receipt, maintenance, use, disposition, and destruction of SMUD records, in accordance with legal requirements and Board policies.

The IMC Program in collaboration with the Enterprise Content Management (ECM) team launched a mass content migration (Enterprise Shared Drive Migration) project at the beginning of 2023. Using completed IMC records evaluations, this effort has migrated or is in the process of migrating content from 29 business areas out of the 41 business areas in scope, for an estimated total of 4.5 million documents classified and migrated. The project identifies, organizes, and migrates content for each business area from non-approved records repositories

into approved record repositories. This allows content to be managed in accordance with SD-16.

The IMC program is continuing to partner with IT to review and support new software integrations to ensure they meet records policies and information management requirements. This is imperative as new software often produces and stores records outside of official repositories. IMC has been added to the purchase approval process to support this effort.

The IMC Program continues to collaborate with the Enterprise Content Management team, Cybersecurity, the CIP Program, Data Governance, and other business partners to ensure compliance with records policies and information management requirements.

4) **Challenges**

Information Security

Our federal partners (FBI) continue to warn us of the heightened geopolitical tension and the nation state cyber actors targeting critical infrastructure that led to the “Shields Up” declaration from the Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA) from 2022, stressing the continued need to focus on maturing our cybersecurity posture. The Cybersecurity team continued to work this past year with numerous IT teams to follow CISA guidance to help manage the cyber risk. Internally facing awareness campaigns continue to remind staff of the risks we’re facing and the role they play in keeping our systems and data protected. In addition to the technical controls put in place, cybersecurity once again partnered with other departments to ensure our cyber insurance coverage is maintained.

SMUD’s Payment Card Industry (PCI) card payment transaction volume makes SMUD a PCI Level 2 Merchant. This year the new updated version 4 of the PCI Data Security Standard (PCI DSS) went live. As determined by an independent third-party PCI Qualified Security Assessor, we are compliant with the new version. Our required assessment documents attesting to our compliance with the updated standards were submitted to Chase Paymentech in June.

The Cybersecurity team continues to work hard to ensure compliance with the NERC Critical Infrastructure Protection (CIP) standards. Additional standards become enforceable in 2025 and subsequent years which will require additional resources from the Cybersecurity team and other teams as well.

Ransomware continues to be a threat, and in response SMUD Cybersecurity has continued to mature our Cybersecurity Emergency Operations Program (CEOP), performing annual exercises to ensure our teams understand the plan and are prepared to execute it in the event of a security incident. The exercises highlight ways we can improve our processes.

Cybersecurity’s Zero-Trust Strategy is a core part of the larger IT strategy, and better positions SMUD to secure sensitive data, systems, and services. IT continues to make progress in this area, working with Cybersecurity to ensure upcoming projects and efforts align to this strategy.

Physical Security

Physical Security is a first line of defense against any unauthorized intrusions at our facilities. With the ever-changing international and domestic threat landscape, as well as the significant increase in unsafe activity located near SMUD campuses, sub-stations and other assets, the risk of outside impacts to SMUD assets and field staff continues to increase. SMUD Security Operations continues to invest in technology, increased training and adoption of best practices as well as partnerships with local and federal law enforcement and local community and government agencies to ensure we are prepared to meet and withstand current threat conditions in support of our employees, physical assets and the community we serve.

SMUD continues to grow as an organization in size and reputation, gaining national and international attention as one of the best public utilities in the world and as an economic development driver in the Sacramento region. As such, our infrastructure and facilities footprint continue to grow as we move toward our 2030 Zero Carbon Plan. As SMUD continues to grow our influence, impact and footprint, our threat exposure grows as well.

SMUD Security Operations continues to work to ensure compliance with the NERC CIP standards while meeting the SMUD Strategic Directives. Balancing SMUD's management of critical CIP areas while maintaining our role as a community convener and customer facing campus will continue to offer challenges. As CIP standards are adopted in 2025 and into the future, SMUD Security Operations will continue to evaluate our program to ensure that SMUD continues to have sufficient resources from a personnel, technology and security infrastructure standpoint to meet future needs, responsibilities and conditions.

Customer Privacy

SMUD continues to see requests for SMUD customer data to be used and shared for additional purposes and programs, including customer personally identifiable information (PII). SMUD's Data Sharing Policy and process are in place to provide request tracking and approval to ensure that all sharing of PII is authorized and that transmission is performed using an approved and secure transfer mechanism.

Records Management

The IMC program continues to integrate information management best practices into SMUD's daily operations. Business areas are actively collaborating with IMC in the creation of information management and recordkeeping polices/procedures specific to their day-to-day operational needs. SMUD's continued development of the IMC program further reduces the risk of potential multi-million-dollar fines and reputational damage associated with lack of records management controls.

The Enterprise Shared Drive Migration project which launched at the beginning of 2023 (expected to end in 2025) is a large undertaking that involves the mass organization and migration of content from Enterprise shared drives to approved SMUD information repositories. IMC in collaboration with the ECM team is working diligently to ensure completion of the project tasks by business areas and ease the learning curve that comes with these implemented

changes. We have created documentation that helps with the classification of the records as well as training to ease the transition into using a new repository. This project will ensure SMUD stays in line with information management industry best practices, create an environment of purposeful organization and generate information management symmetry across SMUD.

5) **Recommendation**

It is recommended that the Board accept the Monitoring Report for SD-16 Information Management Policy Monitoring Report.

6) Appendices

Definitions and acronyms:

NIST – National Institute of Standards and Technology
CSF – Cybersecurity Framework
CISA – Cybersecurity and Infrastructure Security Agency
PCI – Payment Card Industry
PCI DSS – Payment Card Industry Data Security Standard
CIP – Critical Infrastructure Protection
BCSI – Bulk Electric System (BES) Cyber System Information
CEOP – Cybersecurity Emergency Operations Program

3

SSS No.	BOARD AGENDA ITEM	Committee Meeting & Date
GM 24-167	**STAFFING SUMMARY SHEET**	ERCS – 11/20/24
		Board Meeting Date: November 21, 2024

TO		TO	
1.	Antiwon Jacobs	6.	Brandy Bolden
2.	Joe Schofield	7.	Lora Anguay
3.	Kirsten DePersis	8.	Suresh Kotha
4.	Jose Bodipo-Memba	9.	**Legal**
5.	Frankie McDermott	10.	**CEO & General Manager**

Consent Calendar	X	**Yes**		**No** *If no, schedule a dry run presentation.*	**Budgeted**		**Yes**	X	**No** *(If no, explain in Cost/Budgeted section.)*

FROM (IPR)	DEPARTMENT	MAIL STOP	EXT.	DATE SENT
AJ Jacobs	Cybersecurity	K112	5169	10/29/24

NARRATIVE:

Requested Action: Approve proposed revisions to Strategic Direction SD-16, Information Management and Security.

Summary: Language updates to policy in order to: 1) Be more inclusive of Cybersecurity and Information Management & Compliance functions; 2) Include not only customer privacy but also employee privacy; 3) Clarify that both information and operational technology are to be protected; and 4) Make changes to nomenclature that are more consistent with current practices.

Copies of the proposed revisions are attached in redline and clean (redlines accepted) format.

Board Policy: *(Number & Title)* Strategic Direction SD-16, Information Management and Security; Governance Process GP-1, Purpose of the Board; and Governance Process GP-3, Board Job Description.

Benefits: Enables the Board to review the policy with the opportunity to make corrections, additions, or changes if necessary; updates the policy to address present-day factors and current nomenclature.

Cost/Budgeted: There is no budgetary impact associated with the proposed revisions to the policy.

Alternatives: Make no changes at this time; make other changes as directed by the Board; table discussion for another date.

Affected Parties: All SMUD Departments and Customers

Coordination: Cybersecurity, Facilities, Security & Emergency Operations, Information Management and Compliance, and Legal

Presenter: Antiwon Jacobs, Director, Cybersecurity

Additional Links:

SUBJECT	ITEM NO. ***(FOR LEGAL USE ONLY)***
Proposed Revisions to SD-16, Information Management and Security	

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

SMUD BOARD POLICY

Category: Strategic Direction
Policy No.: SD-16
Title: Information Management and Security

Proper management of cyber and physical information, as well as physical security, is a core value. Robust information management and physical security practices are critical to effective risk management and to ensure regulatory compliance, business resiliency and customer satisfaction. SMUD shall take prudent and reasonable measures to accomplish the following:

a) ~~**Information** **Cyber**~~**Ss**~~**ecurity:**~~ SMUD will protect customer, employee and ~~third party~~third-party information, and SMUD ~~information~~ technology systems are protected from unauthorized access, use, disclosure, disruption, modification, or destruction.

b) **Physical Security:** SMUD will safeguard its employees while at work as well as customers and visitors at SMUD facilities. SMUD will also protect its facilities and functions that support the reliability of the electric system and overall operation of the organization from unauthorized access or disruption of business operations.

c) ~~**Customer**~~ **Privacy:** SMUD will annually notify customers about the collection, use and dissemination of sensitive and confidential customer information. Except as provided by law or for a business purpose, SMUD will not disseminate sensitive and confidential customer information to a third party for non-SMUD business purposes unless the customer first consents to the release of the information. Where sensitive and confidential information is disseminated for a business purpose, SMUD will ensure: (i) the third party has robust information practices to protect the sensitive and confidential customer or employee information, and (ii) use of the information by the third party is limited to SMUD's business purpose. SMUD will maintain a process that identifies the business purposes for which SMUD will collect, use and disseminate sensitive and confidential customer and employee information.

d) ~~**Records**~~**Information Management:** SMUD will maintain the efficient and systematic control of the creation, capture, identification, receipt, maintenance, use, disposition, and destruction of SMUD ~~records~~information, in accordance with legal requirements and Board policies.

Monitoring Method: CEO Report
Frequency: Annual
Versioning:

August 7, 2008	Resolution No. 08-08-03	Date of Adoption.
October 16, 2008	Resolution No. 08-10-09	Date of Revision.
March 20, 2014	Resolution No. 14-03-08	Date of Revision.
December 21, 2017	Resolution No. 17-12-03	Date of Revision.
September 21, 2023	Resolution No. 23-09-02	Date of Revision. ~~[Current Policy]~~
November 21, 2024	Resolution No. 24-11-##	Date of Revision. [Current Policy]

SMUD BOARD POLICY

Category: Strategic Direction
Policy No.: SD-16
Title: Information Management and Security

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December 21, 2017	Resolution No. 17-12-03	Date of Revision.
September 21, 2023	Resolution No. 23-09-02	Date of Revision.
November 21, 2024	Resolution No. 24-11-##	Date of Revision. [Current Policy]

SSS No.
BOD 2024-006

BOARD AGENDA ITEM
STAFFING SUMMARY SHEET

Committee Meeting & Date
ERCS – 2024
Board Meeting Date
N/A

TO		TO	
1.	Frankie McDermott	6.	
2.	Suresh Kotha	7.	
3.	Brandy Bolden	8.	
4.	Lora Anguay	9.	**Legal**
5.		10.	**CEO & General Manager**

Consent Calendar		**Yes**	x	**No** *If no, schedule a dry run presentation.*	**Budgeted**	x	**Yes**		**No** *(If no, explain in Cost/Budgeted section.)*

FROM (IPR)	DEPARTMENT	MAIL STOP	EXT.	DATE SENT
Brandon Rose / Crystal Henderson	Board Office	B304	5424	01/21/24

NARRATIVE:

Requested Action: A summary of directives is provided to staff during the committee meeting.

Summary: The Board requested an ongoing opportunity to do a wrap up period at the end of each committee meeting to summarize various Board member suggestions and requests that were made at the meeting to make clear the will of the Board. The Energy Resources & Customer Services (ERCS) Committee Chair will summarize Board member requests that come out of the committee presentations for this meeting.

Board Policy: *(Number & Title)* Governance Process GP-4, Board/Committee Work Plan and Agenda Planning states the Board will "[focus] on the results the Board wants the organization to achieve."

Benefits: Having an agendized opportunity to summarize the Board's requests and suggestions that arise during the committee meeting will help clarify the will of the Board.

Cost/Budgeted: There is no budgetary impact for this item.

Alternatives: Not to summarize the Board's requests at this meeting.

Affected Parties: Board of Directors and Executive Staff

Coordination: Crystal Henderson, Special Assistant to the Board of Directors

Presenter: Brandon Rose, ERCS Chair

Additional Links:

SUBJECT	ITEM NO. *(FOR LEGAL USE ONLY)*
Energy Resources & Customer Services Summary of Committee Direction	

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.