



**LOCAL FEED-IN-TARIFF  
POWER PURCHASE AGREEMENT**

**PIONEER FIT  
POWER PURCHASE AGREEMENT  
COVER SHEET**

**Seller:** [Name of entity selling Energy & Regulatory Products to Pioneer]

**Buyer:** Pioneer Community Energy, a California joint powers authority

**Description of Facility:** [General location of Facility along with generator type]

**Milestones:**

Milestone	Date for Completion
<b>Proof of Site Control</b>	
<b>Conditional Use Permits</b>	
<b>Executed Interconnection Agreement</b>	
<b>Expected Construction Start Date</b>	
<b>Obtain Full Capacity Deliverability Status</b>	
<b>Initial Synchronization</b>	
<b>Network Updates (if necessary)</b>	
<b>Expected Commercial Operation Date</b>	

**Delivery Term:** 20 Years

**Expected Energy:**

Contract Year	Expected Energy (MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	

14	
15	
16	
17	
18	
19	
20	

**Guaranteed Capacity:** [Number in MW]

**Contract Price:**

Contract Year	Contract Price
1 – 20	[\$/MWh (flat) with no escalation]

**Product:**

- Facility Energy.
- Renewable Energy Credits (Portfolio Content Category 1) and any other Green Attributes associated with Facility Energy delivered at the Interconnection Point, net of storage losses if required by Law.
- Capacity Attributes, including any Resource Adequacy Benefits, associated with the Facility.
- Ancillary Services obtained from the Facility.

**Scheduling Coordinator:** Buyer or Buyer’s third-party Scheduling Coordinator.

**Development Security and Performance Security:**

Development Security: [Eighty dollars per kilowatt (\$80/kW) of Guaranteed Capacity.]

Performance Security: [Eighty dollars per kilowatt (\$80/kW) of Guaranteed Capacity.]

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## RECITALS

WHEREAS, Seller will develop, design, permit, construct, own, control, and operate the Facility; and

WHEREAS, Seller intends to sell, and Buyer intends to purchase, per the terms and conditions of 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

When used within this Agreement with capitalization of the first letter of each word, the following terms will have the meanings established below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning established in Section 3.10.

“**Adjusted Energy Production**” means the Facility Energy delivered to Buyer, plus Deemed Delivered Energy, plus Energy that would have been delivered by the Facility but was not due to either (i) a Force Majeure Event, (ii) a Curtailment Order, or (iii) an Event of Default with respect to Buyer.

“**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”, “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.

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility.

“**Automated Dispatch System**” or “**ADS**” has the meaning provided in the CAISO Tariff.

“**Available Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“**Bankrupt**” or “**Bankruptcy**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding



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

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

“**Buyer**” means Pioneer Community Energy, a California joint powers authority.

“**Buyer Bid Curtailment**” means any curtailment of the Facility arising out of or resulting from the manner in which Buyer bids, offers or schedules the Facility, the Energy or any Products, or in which Buyer fails to do so, including a situation where all of the following occurs:

(a) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted to be produced from the Facility for a period of time; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility, Facility Energy or Ancillary Services, including where the Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated or discharged by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“**Buyer Curtailment Order**” means (i) the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, (ii) a reduction of Facility Energy directed by CAISO during Settlement Intervals with a Negative LMP.

“**Buyer Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) Buyer’s Default; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“**Buyer Default**” means an Event of Default by Buyer.

“**Buyer’s WREGIS Account**” has the meaning provided in Section 4.6(a) of this Agreement.

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

“**CAISO Approved Meter**” means a CAISO approved revenue quality meter, 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 Facility Energy delivered to the Delivery Point.

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

“**CAISO Operating Order**” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

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

“**California Renewables Portfolio Standard**” or “**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, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

“**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, 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 Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“**CEQA**” means the California Environmental Quality Act.

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

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

“**Commercial Operation Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) sixty (60).

“**Compliance Actions**” has the meaning set forth in Section 3.10.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.10.

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

“**Construction Delay Damages**” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

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

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

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

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

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

“**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 attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating and replacing this Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

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

“**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. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Curtailement Cap**” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

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

- (a) CAISO orders, directs, alerts, or provides notice to a Party, including through the ADS or a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;
- (b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;
- (c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or
- (d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

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

**"Damage Payment"** means the dollar amount that equals the amount of the Development Security.

**"Day"** or **"day"** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 00:00 hours Pacific Prevailing Time on the next calendar day.

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

**"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 Energy"** means the amount of Energy that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such curtailments or unexcused failure to take delivery of the Product.

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

**"Deficient Month"** has the meaning set forth in Section 4.6(e).

**"Delay Damages"** means Construction Delay Damages and Commercial Operation Delay Damages.

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

“**Early Termination Date**” has the meaning set forth in Section 11.2.

“**Effective Date**” has the meaning set forth on the Preamble.

“**Effective FCDS Date**” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point.

“**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) generated by the Facility.

“**Energy Supply Bid**” 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 Exhibit C.

“**Expected Commercial Operation Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“**Expected Construction Start Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

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

“**Expected FCDS Date**” means the date set forth in the deliverability Section of the Cover Sheet, which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

“**Facility**” means the electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point

“**Facility Energy**” means the sum of Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

“**Facility Meter**” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

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

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

“**Forced Facility Outage**” means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Delivery Point due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or Planned Outage.

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

“**Full Capacity Deliverability Status Finding**” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“**Future Environmental Attributes**” shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“**Gains**” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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 include 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; provided, however, that “Governmental Authority” shall not in any event include any Party hereto.

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. 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 (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating or air quality permits.

“**Green Tag 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 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**” means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

“**Guaranteed Commercial Operation Date**” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“**Guaranteed Construction Start Date**” means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

“**Guarantor**” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“**Guaranty**” means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably acceptable to Buyer.

“**Imbalance Energy**” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“**Indemnified Party**” has the meaning set forth in Section 16.1.

“**Indemnifying Party**” has the meaning set forth in Section 16.1.

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

“**Installed Capacity**” means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto.

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

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

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

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

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

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“**Joint Powers Act**” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated September 9, 2015, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

“**Lender**” means, collectively, any Person (i) providing credit support, senior or subordinated construction, interim, back leverage or long-term debt, working capital, equity or tax equity



financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative 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 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 issued by a Qualified Issuer in a form substantially similar to the letter of credit set forth in Exhibit K.

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

“**Local Capacity Area Resources**” has the meaning set forth in the CAISO Tariff.

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

“**Losses**” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including 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.

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

“**Metered Energy**” means all Energy generated and delivered by the Facility, as measured at Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use to the Delivery Point.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

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

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

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

“**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 messaging (e-mail).

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“**Operating Procedures**” or “**Operating Restrictions**” means those rules, requirements, and procedures set forth on Exhibit P.

“**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 transmission 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.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

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

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

- (a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and
- (b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“**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.

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

“**Planned Outage**” has the meaning set forth in Section 4.4(a).

**“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.

**“Product”** has the meaning set forth on the Cover Sheet.

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

**“Prudent Industry Practice”** means the applicable practices, methods and standards of care, skill and diligence engaged in or approved by a significant portion of the electric generation industry during the relevant time period with respect to grid-interconnected, utility-scale electricity generating facilities in the Western United States, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, and standards of economy and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of others. Prudent Industry Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

**“PTC”** means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

**“Qualified Issuer”** means a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) 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 or (b) ) being reasonably acceptable to Buyer.

**“Qualifying Capacity”** has the meaning set forth in the CAISO Tariff.

**“RA Deficiency Amount”** has the meaning set forth in Section 3.7(d).

**“RA Guarantee Date”** means the Commercial Operation Date.

**“RA Showing”** means the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO), pursuant to the Resource Adequacy Rulings, to CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

**“Real-Time Price”** means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

**“Recurring Certificate Transfers”** has the meaning set forth in Section 4.6(a).

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

“**Renewable Energy Credit**” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by 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; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“**Resource Adequacy**” means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.10-04-012 and R.11-10-023 or by any successor proceeding, and the Resource Adequacy supply obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff.

“**Resource Adequacy Benefits**” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

“**Resource Adequacy Rulings**” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

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

“**Schedule**” has the meaning set forth in the CAISO Tariff, and “**Scheduled**” has a corollary meaning.

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

“**Security Interest**” has the meaning set forth in Section 8.9.

“**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 4.6(a).

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

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

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

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

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**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.

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or 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.

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

“**Tax Credits**” means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2.

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

“**Test Energy**” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Transmission System**” means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point and/or the CAISO Grid, as applicable.

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

“**Workforce Requirements**” refers to the Seller requirements set forth in Exhibit M.

“**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 4.6(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 the Agreement, unless context requires, or it is expressly stated otherwise:

- (a) headings and text displayed in bold and italics are for solely for convenience and reference, and do not impact the meaning or interpretation of this Agreement;
- (b) words referring to the singular include the plural and vice versa, while gender-specific terms encompass all genders including the neuter genders;
- (c) the words “herein”, “hereof”, and “hereunder” and words of similar meaning shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) when referring to a document or agreement, including this Agreement, it encompasses the document, agreement, or this Agreement itself, incorporating any amendments, supplements, replacements, novation, or modifications, while excluding any changes made in breach of said document, agreement, or this Agreement;

- (f) any reference to a Person includes that Person's successors and permitted assigns;
- (g) the terms "include" and "including" or similar expressions should be considered to be followed by the phrase "without limitation," and any list of examples following such terms should not restrict or limit the general applicability of the work or provision for which the examples are given;
- (h) mentions or references to any statute, code, or statutory provision are to be interpreted as references to the same, as it may have been, or may be amended, modified, or reenacted from time to time. This also encompasses references to all bylaws, instruments, orders, and regulations presently established under it or deriving validity from it, unless the context suggests otherwise;
- (i) if conflicting, a mathematical formula or other more exact description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) all references or mentions of any sum of money are to mean a reference to the sum in United States Dollars;
- (k) words, phrases, or expressions that are not defined herein that (i) have generally accepted meaning according to Prudent Industry Practice shall have said meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Industry Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;
- (l) the word "or" is not to be construed solely as exclusive; and
- (m) each Party acknowledges that it was represented by legal counsel in connection with this Agreement and that either it or its counsel has reviewed this Agreement. Furthermore, any rule of interpretations favoring the resolution of ambiguities against the drafting party will not be utilized in interpreting this Agreement.

## **ARTICLE 2 - TERM; CONDITION PRECEDENT**

### **2.1 Contract Term**

- (a) The term of this Agreement will commence on the Effective Date and will remain in full force and effect until the end of the Delivery Term, subject to any early termination or contract extension provisions herein (Contract Term); however, subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product (other than Test Energy) are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.
- (b) Certain provisions of this Agreement will continue to remain in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations, or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the

Parties under Article 18 and all indemnity and audit rights will remain in full force and effect for three (3) years following the termination of this Agreement.

## **2.2 Conditions Precedent.**

The Delivery Term will not commence until Seller satisfies the following conditions:

- (a) Seller has delivered to Buyer a signed completion certificate from a Licensed Professional Engineer substantially in the form found in Exhibit G;
- (b) Seller has executed a Participating Generator Agreement and a Meter Service Agreement with CAISO. Said agreements are to be in full force and effect with a copy of each delivered to Buyer;
- (c) Seller has executed an Interconnection Agreement with the Participating Transmission Owner. Said agreement is to be in full force and effect with a copy delivered to Buyer;
- (d) A copy of the CAISO's Full Capacity Deliverability Status Finding demonstrating that the Facility has Full Capacity Deliverability Status in an amount not less than the Guaranteed Capacity has been delivered to Buyer;
- (e) All requisite legal and regulatory authorizations, approvals, and permits for the operation of the Facility have been obtained (or are reasonably expected to be obtained within ninety (90) days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and are in full force and effect;
- (f) Seller has acquired CEC Precertification of the Facility and reasonably expects to receive final CEC Certification and Verification of the Facility within ninety (90) days from the Commercial Operation Date;
- (g) Seller, along with any reasonable assistance from Buyer, will have fulfilled all relevant WREGIS registration prerequisites, including the submission of all necessary registration forms and supporting documents. These may include pertinent interconnection agreements, information surveys concerning the Facility, QRE service agreements, and other suitable documentation required for the Facility's registration with WREGIS and for facilitating Renewable Energy Credit transfers associated with the Facility within the WREGIS system.
- (h) Seller has demonstrated compliance with the Workforce Requirements found in Exhibit M by certifying said compliance to Pioneer in writing and providing reasonably requested documentation demonstrating said compliance as described in Exhibit M.
- (i) Seller has delivered to Buyer the Performance Security in accordance with Section 8.8; and
- (j) Seller has paid to Buyer all amounts due to Buyer per this Agreement; including Construction Delay Damages and Commercial Operation Damages.



## **2.3 Development Progress Reports**

- (a) From the Effective Date until the Construction Start Date, Seller will deliver to Buyer a Progress Report (in substantially the form found in Exhibit E) within fifteen (15) days of the close of calendar quarter. Seller agrees to schedule a meeting between Seller and Buyer to review and discuss the Progress Report post-delivery.
- (b) From the Expected Construction Start Date until the Commercial Operation Date, Seller will deliver to Buyer a Progress Report (in substantially the form found in Exhibit E) within five (5) Business Days from the first date of the calendar month. Seller agrees to schedule a meeting between Seller and Buyer to review and discuss the Progress Report post-delivery.
- (c) Seller will provide to Buyer any reasonably requested documentation (subject to any confidentiality restrictions) directly related to completion of the Milestones listed above within ten (10) Business Days of receipt of request.

## **2.4 Remedial Action Plan**

If Seller fails to meet a minimum of three (3) Milestones or misses any single Milestone by more than ninety (90) calendar days, excluding instances caused by a Buyer Default or excused by a Force Majeure Event, Seller will deliver to Buyer a Remedial Action Plan within ten (10) Business Days. The Remedial Action Plan will provide a detailed account of any delays, whether realized or anticipated, extending beyond the scheduled Milestone dates and will include the delay's root cause (e.g., government approvals, financing, property acquisition, interconnection, or any other relevant factor), Seller's proposed corrective action to achieve the missed Milestone(s) and all subsequent Milestones by the Guaranteed Commercial Operation Date. Delivery of any Remedial Action Plan does not relieve Seller of its obligation to provide a Remedial Action Plan for any subsequent missed Milestone and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement.

# **ARTICLE 3 - PURCHASE AND SALE**

## **3.1 Sale of Product**

Subject to the terms of this Agreement, during the Delivery Term, Seller will sell and deliver to Buyer, and Buyer will purchase from Seller at the prices set forth in Exhibit C, all of the Product produced by or associated with the Facility. Buyer may, at its sole discretion, re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer's obligation to make payment for Facility Energy and all other Product from Seller will be excused during the occurrence of and to the extent necessitated by

- (a) A Force Majeure Event,
- (b) A Curtailment Period; provided that said Curtailment Period is not attributable to Buyer's breach of its obligations under this or any other Agreement, or
- (c) A period of Buyer suspension due to Seller Default pursuant to Section 11.1.

Buyer is under no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point due to any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

### **3.2 Sale of Green Attributes**

Seller will sell and deliver to Buyer, and Buyer will purchase from Seller, all Green Attributes attributable to Facility Energy generated by the Facility during the Delivery Term.

### **3.3 Imbalance Energy**

Buyer and Seller acknowledge that during any given Settlement Period, the amount of Facility Energy may deviate from the amount of Scheduled Energy. The Parties will work together to minimize charges and imbalances associated with Imbalance Energy to the extent possible. With the exception of Seller's responsibility for CAISO penalties, to the extent there are deviations between Facility Energy and Scheduled Energy, any CAISO costs, charges or revenues assessed as a result of said Imbalance Energy will be solely for the account of the Buyer.

### **3.4 Ownership of Renewable Energy Incentives**

Seller will have all right, title, and interest in and to all Renewable Energy Incentives. Buyer recognizes that any Renewable Energy Incentives belong to Seller. In the event that any Renewable Energy Incentives or values representing the same, are initially credit or paid to Buyer, Buyer will cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer will cooperate with Seller, within reason, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

### **3.5 Future Environmental Attributes**

- (a) The Parties recognize and accept that, as of the Effective Date, the sale of environmental attributes under this Agreement is limited to Green Attributes. However, Future Environmental Attributes may be created by a Governmental Authority via Laws enacted post Effective Date. In that situation, Buyer will be responsible for covering all expenses associated with the transfer, qualification, verification, registration, and ongoing compliance for said Future Environmental Attributes with no increase in Contract Price. In the event that Future Environmental Attributes require alternation or modification of the Facility, the Parties may separately agree to have the cost of said alterations and modifications reimbursed to Seller by Buyer. However, Seller is under no obligation to alter or modify the Facility for Future Environmental Attributes unless all requisite terms and conditions pertaining to such modifications or alterations have been mutually agreed upon by the Parties.
- (b) In the event that Buyer chooses to obtain Future Environmental Attributes per Section 3.5, both Parties agree to engage in good faith negotiations concerning the creation of additional agreements and documentation required to executed the transfer of said Future Environmental Attributes. The negotiations will include (but are not limited to) determining suitable mechanisms for transfer, delivery, and risk of loss as well as an appropriate distribution of any supplementary costs to the Buyer, as specified above. The Parties recognize and affirm that these terms are not meant to alter or modify the material terms of this Agreement.

### **3.6 Test Energy**

Buyer retains the exclusive option to purchase one-hundred percent (100%) but not less than one-hundred percent (100%) of all Test Energy that is available from the Facility before the Delivery Term at a rate that is fifty percent (50%) of the Contract Price. At least fourteen (14) calendar days prior to the first day in which Test Energy becomes available, Seller will provide notice to Buyer of Test Energy's availability. Buyer then has fourteen (14) calendar days in which to exercise their option to purchase Test Energy. If Buyer fails to exercise their option to purchase Test Energy or fails to respond to the notice from Seller within fourteen (14) calendar days, then the option to purchase Test Energy will terminate. Buyer and Seller both agree that upon termination of the option to purchase Test Energy due to the action or inaction taken by Buyer per the process laid out in Section 3.6, then Seller is not obligated to sell or deliver Test Energy to Buyer prior to the commencement of the Delivery Term and Seller may market, sell, and deliver all or a portion of the Test Energy from the Facility to one or more third parties.

For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

### **3.7 Capacity Attributes**

Seller shall have obtained Full Capacity Deliverability Status by the Commercial Operation Date. The Parties agree that Seller will be responsible for the cost and installation of any Network Upgrades associated with obtaining Full Deliverability Status.

- (a) During the entire Delivery Term, Buyer is entitled to and Seller grants, pledges, assigns, and otherwise commits to Buyer all the Capacity Attributes from the Facility. The consideration for Capacity Attributes is included in the Contract Price.
- (b) During the entire Delivery Term, Seller will transfer to Buyer, and Buyer will accept from Seller, any right, title, and interest that Seller will have in Capacity Attributes associated with the Facility.
- (c) During the entire Delivery Term, Seller will maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and will perform all actions reasonably necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller.
- (d) Starting from the RA Guarantee Date, if during any month the Facility does not achieve or fails to maintain Full Capacity Deliverability Status, Seller will pay to Buyer an amount equal to the sum of (A) the CPUC System RA Penalty and (B) the CPM Soft Offer Cap (the "RA Deficiency Amount"). RA Deficiency Amounts will be offset against amounts owed to Seller pursuant to section 8.6.
- (e) Seller will not sell or make an attempt to sell the Capacity Attributes to any other Person or entity during the Delivery Term. Seller will not disclose to any other Person or entity that the Capacity Attributes belong to anyone other than to the Buyer during the Delivery Term. Buyer retains the ability to, at its own risk, disclose to any Person or entity that Capacity Attributes belong exclusively to Buyer.
- (f) Upon Buyer's request, seller will:

- a. Execute the requisite documents and instruments in order to effect recognition and transfer of the Capacity Attributes to Buyer, and
  - b. Reasonably cooperate with Buyer for Buyer to satisfy Resource Adequacy requirements, including (but not limited to) the following:
    - i. Assisting Buyer in registering the Facility with CAISO so that the Capacity Rights are recognized and counted for Resource Adequacy purposes,
    - ii. Working with Buyer to make annual submissions to CAISO associated with establishing the correct Capacity Rights,
    - iii. Coordinating with Buyer to make submissions to CAISO that are required per the CAISO Tariff,
    - iv. Providing CAISO all necessary information for annual and other outage planning.
  - c. Deliver the documents, instruments, submissions, and information required for Seller to comply with Section 3.7(f). In responding to the request, Seller is under no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement that would negatively affect (or could reasonably be expected to have or result in and adverse effect on) any of Seller's rights, benefits, risks and/or obligations under this Agreement.
- (g) During the entire Delivery Term, Seller will install meters and power electronics that are necessary for Ancillary Services and Capacity Attributes from the Facility to be delivered to Buyer.

### **3.8 CEC Certification and Verification**

Seller will take all requisite steps, including (but not limited to) making or supporting timely submissions with the CEC to acquire and uphold CEC Certification and Verification for the Facility during the entirety of the Delivery Term, including compliance with all applicable requirements for certified facilities provided in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller will obtain CEC Precertification by the Commercial Operation Date. By thirty (30) days after the Commercial Operation Date, Seller must file an application with the CEC for the final CEC Certification and Verification. Additionally, within ninety (90) days from the Commercial Operation Date, Seller will secure uphold the final CEC Certification Verification for the remainder of the Delivery Term. Seller is required to promptly inform both Buyer and CEC of any modifications or changes to the information included in Seller's application for CEC Certification and Verification of the Facility.

### **3.9 Non-Modifiable Standard Terms and Conditions**

- (a) Eligibility. Seller, and if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy 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) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the Renewable Energy Credits

transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

- (c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].
- (d) 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. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

### **3.10 Change in Law**

- (a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and Capacity Attributes to meet Resource Adequacy Requirements and mid-term reliability requirements, and that Governmental Authorities, including (but not limited to) CEC, CPUC, CAISO, and WREGIS, may take actions to implement changes in Law. Seller will use commercially reasonable efforts to cooperate with respect to any future changes of this Agreement necessary to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including (but not limited to):
  - i. changes in the description of Green Attributes and Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities;
  - ii. submission of any reports, data, or information required by Governmental Authorities; or
  - iii. all other actions that may be required to assure that the Facility qualifies as an Eligible Renewable Energy Resource (ERR) by the CEC and retains any other benefits under the California Renewables Portfolio Standard.

Parties agree that Seller is under no obligation to modify this Agreement, or take actions not required per this Agreement, if such actions of modifications will reasonably be expected to result in a material adverse effect on any of Seller's rights, benefits, risks, and/or obligations under this Agreement.

- (b) Compliance Expenditure Cap

If Seller establishes that a change in Laws 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 requisite actions to comply with Seller's obligations per this Agreement with respect to maintaining, conveying, or effectuating Buyer's use of (as applicable), the items listed in 3.10(b)(i), (ii), and (iii) then Parties agree that the maximum amount of costs Seller will be required to bear during the Delivery Term will be capped at twenty thousand dollars (\$20,000) per MW of Guaranteed Capacity (Compliance Expenditure Cap):

- (i) CEC Certification and Verification;
- (ii) Green Attributes; and
- (iii) Capacity Attributes

Any cost associated with an action taken for Seller to comply with this clause will be included in the Compliance Expenditure Cap and shall be known, in sum, as the Compliance Actions.

- (c) Seller will provide Notice to Buyer in the event that Seller reasonably believes any Compliance Action will incur an expense in excess of the Compliance Expenditure Cap.
- (d) Buyer will have sixty (60) calendar days to assess the Notice referenced in 3.10(c) during which time Seller is under no obligation to take the Compliance Action. During the sixty (60) calendar day assessment period, Buyer will either:
  - (i) agree to reimburse Seller for a portion or all of the costs that exceed the Compliance Expenditure Cap (Accepted Compliance Costs), or
  - (ii) waive Seller's requirement to take said Compliance Action, or any part of said Compliance Action which Buyer has not agree to reimburse Seller.
- (e) In the event that Buyer agrees to reimburse Seller for the Accepted Compliance Costs, Seller will take the requisite Compliance Action covered by the Accepted Compliance Costs as agreed to by the Parties. Buyer will then reimburse Seller for Seller's actual cost to effect the Compliance Action, not to exceed the Accepted Compliance Costs, within sixty (60) calendar days from the time that Buyer received the invoice and documentation of said costs from Seller.

### **3.11 CPUC Mid-Term Reliability Requirements**

- (a) The Parties acknowledge that Buyer is entering into this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decision 21-06-035.
- (b) Seller represents and warrants to Buyer that:
  - i. The Product includes the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035;
  - ii. Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 to any other person or entity during the Delivery Term; and
  - iii. Seller will provide additional information and documentation to Buyer if necessary to enable Buyer to demonstrate that the Product meets the procurement mandates set forth in CPUC Decision 21-06-035.

## ARTICLE 4 - OBLIGATIONS AND DELIVERIES

### 4.1 Delivery

- (a) **Energy.** Based on the terms of this Agreement, from Commercial Operation Date until the conclusion of the Contract Term, Seller will supply and deliver Product to Buyer at the Delivery Point, and Buyer will take delivery of the Product at the Delivery Point. Seller is responsible for paying or satisfying when due, any costs or charges connected to the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation or maintenance charges levied by the Participating Transmission Owner related to the Facility's operations. Buyer is responsible for all costs, charges, and penalties levied in connected with the delivery of Facility Energy as and beyond the Delivery Point, including transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled into the CAISO by Buyer (or Buyer's Scheduling Coordinator) in accordance with Exhibit D.
- (b) **Green Attributes.** Throughout the Delivery Term, all Green Attributes associated with the Facility are solely dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to and hereby conveys to Buyer all such Green Attributes as included in the delivery of the Product from the Facility.

### 4.2 Titles and Risk of Loss

- (a) **Energy.** Title to and associated risk of loss of Facility Energy will pass and transfer to Buyer from Seller at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims, and encumbrances of any kind.
- (b) **Green Attributes.** Title to and associated risk of loss of Green Attributes will pass and transfer to Buyer from Seller upon the transfer of said Green Attributes in WREGIS (or other corresponding transfer mechanism). Seller will cooperate reasonably with Buyer, at Buyer's expense, for Buyer to register, hold, and manage said Green Attributes in Buyer's name and to Buyer's accounts.

### 4.3 Forecasting

Seller will provide the Available Capacity forecasts described in this section. Seller's Available Capacity forecasts will include availability for the Facility. Seller will use commercially reasonable efforts to accurately forecast the Available Capacity of the Facility and transmit said information at its sole expense in a format reasonably acceptable to Buyer or Buyer's designee).

- (a) **Annual Forecast of Expected Energy.** At least forty-five (45) calendar days prior to:
  - i. the first calendar day of the first Contract Year of the Delivery Term, and
  - ii. the first calendar day of each Contract Year of the Delivery Term thereafter, Seller will deliver to Buyer and the SC a non-binding forecast of each month's average-days Expected Energy, in hourly increments, for the following calendar year in the form (or a substantially similar form) found in Exhibit F-1 (Average Expected Energy).
- (b) **Monthly Forecast of Available Capacity.** At least thirty (30) calendar days prior to Commercial Operation, and subsequently ten (10) Business Days before the beginning of each month for the Delivery Term, Seller will provide to Buyer and the SC a non-binding

forecast of the Available Capacity for each calendar day of the following month in the form (or a substantially similar form) found in Exhibit F-2 (Monthly Delivery Forecast).

- (c) **Day-Ahead Forecast.** On the Business Day immediately preceding the date of delivery, by 5:30 AM Pacific Prevailing Time (or as specified otherwise by Buyer per Prudent Industry Practice), Seller will provide Buyer with a non-binding forecast of the following for the succeeding day (in sum the Day-Ahead Forecast):

- i. Available Capacity,
- ii. expected Facility Energy in hourly increments,

A Day-Ahead Forecast will clearly identify, in hourly increments, Seller's best estimate of the Available Capacity and the expected Energy from Facility. Said Day-Ahead Forecasts will be sent to Buyer's on-duty SC. In the event Seller fails to provide Buyer with a Day-Ahead Forecast, as required for any period, then for said unscheduled delivery period only Buyer will rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer.

- (d) **Hourly and Sub-Hourly Forecasts.** Despite any provisions to the contrary contained herein, if Seller makes changes to its Schedule on the date of delivery for any reason including Forced Facility outages (other than a scheduling change imposed by Buyer or CAISO) that results in a change to its deliveries (in partial or in whole), Seller will notify Buyer and CAISO of Forced Facility Outages and Seller will keep Buyer informed of any developments that will affect the duration of the outage or the availability of the Facility during or after the conclusion of the outage.
- (e) **Forecasting Penalties.** With the exception of a Force Majeure Event, if Seller does not provide a forecast comporting to the requirements of this section and specifically 4.3(d), and Buyer incurs a loss or penalty resulting from said failure, Seller will be responsible for a Forecasting Penalty. Settlement of Forecasting Penalties is given in Article 8 of this Agreement.
- (f) **CAISO Tariff Requirements.** Insofar as these obligations are pertinent to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO tariff and the Eligible Intermittent Resource Protocol. This includes furnishing suitable operational data and meteorological data, and fully cooperating with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

#### **4.4 Reduction in Delivery Obligation.**

To clarify, and for the avoidance of any doubt, without limiting Section 3.1:

- (a) **Facility Maintenance.** Seller will be permitted to reduce deliveries of Product during any period in which the Facility undergoes scheduled maintenance previously agreed to by the Parties provided that between June 1 and September 30, Seller will not schedule non-emergency maintenance that reduces Energy generation by the Facility by more than ten percent (10%) unless
- i. said outage is required to avoid damage to the Facility,
  - ii. said maintenance is required to maintain equipment warranties and cannot be scheduled outside the period of June 1 to September 30,



- iii. said outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or
  - iv. the Parties agree otherwise in writing (each a Planned Outage).
- (b) **Forced Facility Outage.** Seller will be permitted to reduce deliveries of Product during any Force Facility Outage. Seller will provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.
  - (c) **System Emergencies and other Interconnection Events.** Seller will be permitted to reduce deliveries of Product during the duration of any System Emergency or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement, or applicable tariff.
  - (d) **Force Majeure Event.** Seller will be permitted to reduce deliveries of Product during any Force Majeure Event.
  - (e) **Health and Safety.** Seller will be permitted to reduce deliveries of Product as required to maintain health and safety pursuant to Section 6.2.

#### **4.5 Scheduling Coordinator Responsibilities.**

Buyer will be the Scheduling Coordinator for the Facility and will perform the responsibilities in accordance with the requirements provided in Exhibit D.

#### **4.6 WREGIS**

Seller will, at its sole expense, take all requisite actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits related to all Facility Energy are issued and tracked for the purposes of satisfying California Renewables Portfolio Standard requirements and are transferred in a timely manner to Buyer for Buyer's exclusive benefit. Seller will transfer the Renewable Energy Credits to Buyer. Seller will comply with all Laws, regulations, and rules, including the WREGIS Operating Rules, regarding the certification and transfer of said WREGIS Certificates to Buyer and Buyer will be given exclusive title to all said WREGIS Certificates. Furthermore:

- (a) Preceding the Commercial Operation Date, Seller will register the Facility with WREGIS and establish an account with WREGIS (Seller's WREGIS Account), that Seller will maintain until the conclusion of the Delivery Term. Seller will transfer the WREGIS Certificates using Recurring Certificate Transfers (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of Buyer's designee identified by Notice to Seller (Buyer's WREGIS Account). Seller will be responsible for all expenses associated with registering the Facility with WREGIS, including establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer feed, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.
- (b) Seller will cause Recurring Certificate Transfer to occur monthly in accordance with the certification procedure established by the WREGIS Operating Rules. Per the WREGIS Operating Rules, WREGIS certificates are only created for whole MWh amounts of

generated Facility Energy. Any fraction of the amount of MWh will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

- (c) Seller, at its sole expense, will ensure that WREGIS Certificates for a given calendar month correspond with the Facility Energy for said calendar month as evidenced by the Facility's metered data.
- (d) Per WREGIS Operating Rules, there is a fourteen (14) day delay in the creation of a WREGIS Certificate relative to the timing of an invoice payment per section 8.2 of this Agreement. Buyer will make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for said month are to be formally transferred in accordance with WREGIS Operating Rules. Despite the delay, Buyer will have all right and title to said WREGIS Certificates upon payment to Seller in accordance with Section 8.2 of this Agreement.
- (e) A "WREGIS Certificate Deficit" refers to any deficit or shortfall in WREGIS Certificates delivered to the Buyer for a specified calendar month, in comparison to the Facility Energy for the same calendar month (Deficient Month), due to an error or omission on the part of the Seller. In the event that any WREGIS Certificate Deficit is caused by an action or inaction by the Seller, the quantity of Facility Energy for the Deficient Month will be reduced on a one-for-one basis by the amount of the WREGIS Certificate Deficit for the purpose of calculating Buyer's payment to the Seller under Article 8 of this Agreement for the relevant Contract Year. Without limiting Seller's obligation under this Section 4.6, if a WREGIS Certificate Deficit arises solely due to an error or omission by WREGIS, the Parties will collaborate in good faith to prompt WREGIS to rectify its mistake or omission.
- (f) If WREGIS changes or modifies the WREGIS Operating Rules after the Effective Date or implement the WREGIS Operating Rules in a manner inconsistent with this Section 4.6 after the Effective Date, the Parties will promptly amend this Section 4.6 as necessary to enable the Seller to transfer to the Buyer WREGIS Account a quantity of WREGIS Certificates for each specific calendar month corresponding to the Facility Energy in the same calendar month.

## **4.7 Financial Statements**

If a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller will provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including, but not limited to, a balance sheet, statements of income, and statements of cash flows), all prepared in accordance with Generally Accepted Accounting Principles (GAAP) in the United States.

## **4.8 Dispatch Down/Curtailment**

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility and delivered to the Delivery Point, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount pursuant to a Buyer Curtailment Order to the

extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Contract Price, in accordance with Exhibit C.

(c) Failure to Comply. Subject to Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed to Buyer by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

Seller Equipment Required for Curtailment Instruction Communications. Subject to the last sentence of this Section 4.4(d), Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices facilities pursuant to this Section 4.4(d) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.11

## **ARTICLE 5 - TAXES**

### **5.1 Allocation of Taxes and Charges**

Seller will settle or cause to settle all Taxes on or with respect to the Facility or concerning the sale and making available of Product to Buyer, that are imposed on Product before its delivery to Buyer at the Delivery Point. Buyer will settle, or cause to be settled, all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts, or

employees). For situations in which a Party is required to remit or pay Taxes that are the other Party's responsibility per this Agreement, the Party will promptly clear the due Taxes and then seek and obtain reimbursement from the other Party for said Taxes. If any sale of the Product under this Agreement is exempt from or not subject to any specific Tax, the Buyer will furnish Seller with all necessary documentation within thirty (30) calendar days from the Effective Date to validate such exemption or exclusion. Failure to provide said documentation will result in the Buyer indemnifying, defending, and exempting the Seller from any liability related to Taxes from which the Buyer claims to be exempt.

## **5.2 Cooperation**

The Parties will cooperate to minimize tax exposure with neither Party being required to incur any financial burden for which the other Party is responsible for per this Agreement. All Energy delivered by Seller to Buyer per this Agreement will be sale for resale, with Buyer reselling said Energy.

# **ARTICLE 6 - MAINTENANCE OF THE FACILITY**

## **6.1 Maintenance of the Facility**

Seller will comply with all relevant Laws and Prudent Industry Practice relating to operating and maintaining the Facility and relating to the generation and sale of Product.

## **6.2 Maintenance of Health and Safety**

Seller will take reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the Facility. In the event that Seller becomes aware of any circumstances pertaining to the Facility that pose an immediate risk of harm or damage to any individual or any individual's property, Seller is required to take immediate action to aver said harm or damage. Additionally, the Seller must provide Notice to Buyer's emergency contact, as identified in Exhibit M, concerning said condition. Actions taken to avoid harm or damage include, as reasonably necessary, disconnecting and removing all or a part of the Facility, or suspending the supply of Energy to the Buyer.

# **ARTICLE 7 - METERING**

## **7.1 Metering**

Seller will measure the amount of Facility Energy using the Facility Meter, subject to adjustments in accordance with applicable CAISO meter requirements and Prudent Industry Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's own cost. Subject to satisfying any applicable CAISO requirements, the meters will be configured to account for all losses from said meter to the Delivery Point, in a manner subject to Buyer's prior written consent. The metering process will adhere to the guidelines outlines in the Metering Diagram set forth in Exhibit T. Each meter is to be secured with a seal that can only be broken when the meters need testing, adjustment, modification, or relocation. If Seller breaks a seal, seller will notify Buyer as soon as practicable. Additionally, Seller agrees to furnish all meter data to the Buyer in a format reasonably acceptable to Buyer and grants consent to the Buyer to acquire from CAISO the CAISO meter data directly associated with the Facility, along with all inspection, testing, and calibration data and reports. . Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

## **7.2 Meter Verification**

In the event Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller will test the meter. The tests will be conducted by independent third parties qualified to conduct said tests. Seller will notify Buyer at least seven (7) calendar days in advance of such tests and Buyer will have the right to be present during such tests. If a meter is inaccurate, it will be promptly repaired or replaced. Seller may, at its own expense, elect to install and maintain backup metering devices.

# **ARTICLE 8 - INVOICING AND PAYMENT; CREDIT**

## **8.1 Invoicing**

Seller will deliver an invoice to Buyer within ten (10) calendar days after the conclusion of the prior monthly delivery period. Each of the invoices from Seller will include records of metered data, including CAISO metering and transaction data sufficient to validate all invoiced amounts for each Settlement Period during the preceding month, including the Facility Energy produced by the Facility as read by the Facility Meter, the amount of Product in MWh delivered during the prior billing period, Deemed Delivered Energy, if any, and the Contract Price applicable to such Product. The records referenced in the previous sentence will be in a format reasonably specified by Buyer. Buyer will, and will cause its SC to, provide Seller with all reasonable access (including but not limited to, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from CAISO, forecast data, and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

## **8.2 Payment**

Buyer will make payment to Seller for Product via wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Notice from Seller. Buyer will pay any undisputed invoice amounts within thirty (30) calendar days after receipt of the invoice, or the end of the succeeding monthly deliver period, whichever is later. If said due date falls on a weekend or Holiday, said due date will be the next Business Day. In the event that the amount due is not settled on or before the due date, or if any other payment owed from one Party to another remains unpaid on or after its stipulated due date, a late payment charge will be applied to the outstanding balance and included in the subsequent billing statement. This late payment charge will be calculated based on the 3-Month prime rate (or any corresponding successor rate recognized by a majority of major financial institutions) as published on the date of the invoice in the Wall Street Journal (or the following publication date if The Wall Street Journal is not issued on the specific day), plus two percent (2%) (Interest Rate). If the due date falls on a non-Business Day, the late payment charge will begin to accumulate from the subsequent succeeding Business Day.

## **8.3 Books and Records**

Parties will maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Within five (5) Business Days after Buyer provides Notice to Seller, Buyer will 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**

A payment adjustment will be made in the event that the Parties individually discover any good-faith inaccuracies in the invoicing, and they are not contested under Section 8.5 of this Agreement, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If said adjustment favors the Buyer, Buyer's monthly payment will be credited with an amount equivalent to the adjustment. Conversely, if the adjustment is in favor of Seller, Seller will include the adjustment amount in the Buyer's subsequent monthly invoice. Adjustments favoring either Buyer or Seller will accrue interest, beginning from the date non-erring Party received Notice until fully resolved, as outlined in Section 8.2 of this Agreement. Unless expressly agreed upon by the Parties, no modification of invoices will be permitted after twenty-four (24) months from the date of the original invoice.

## **8.5 Billing Disputes**

A Party may, in good faith, challenge the accuracy of any invoice, payment, or any adjustment to an invoice submitted under this Agreement, or rectify any invoice due to an arithmetic or computational error within twelve (12) months from the date the invoice or adjustment was issued. In the event that an invoice, payment, or any part thereof, or any other claim or adjustment arising from the Agreement, be contested, payment of the undisputed portion of the invoice will be promptly settled as it comes due. Any dispute or adjustment related to an invoice or payment must be presented in writing, providing the basis for the dispute or adjustment.

Payment of the disputed amount will not be required until the dispute is resolved. Upon resolution of the dispute, any necessary payment will be made within five (5) Business Days of such resolution, along with interest accrued at the Interest Rate from the original due date up to but not including the date of payment. In the event of inadvertent overpayments, upon request, the overpaid amount will be returned, or the Party receiving the overpayment may deduct it from subsequent payments, along with interest accrued at the Interest Rate from the date of overpayment up to but not including the date of repayment or deduction.

Any dispute concerning an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months from the invoice's issuance or subsequent adjustment, except when any misinformation originated from an unaffiliated third party and said third party rectifies the information after the twelve-month period. If an invoice is not issued within twelve (12) months after the end of the month in which performance occurred, the right to payment for said performance is relinquished.

## **8.6 Netting of Payments**

The Parties agree that they will discharge undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product and Deemed Delivered Energy during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Section 3.7(d) or Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount will be paid by the Party that owes it.

## **8.7 Seller's Development Security**

To secure its obligations under this Agreement, Seller will deliver the Development Security to Buyer within thirty (30) calendar days of the Effective Date. Seller will maintain the Development Security in full force and effect and in the event Buyer collects or draws upon any portion of the Development Security then Seller will replenish the Development Security to the initial full amount within five (5)

Business Days. Buyer may collect or draw upon a portion of the Development Security for unpaid Construction Delay Damages, Commercial Operation Delay Damages, or for any reason permitted under this Agreement with the exception of a Damage Payment or a Termination Payment. Buyer will return the Development Security upon delivery of the Performance security or sixty (60) days after termination of this Agreement, whichever is sooner. Buyer will return the Development Security minus any amounts drawn in accordance with this Agreement. In the event that the Development Security is a Letter of Credit and the issuer of said Letter of Credit fails to maintain Qualified Issuer status, indicates its intent to not renew said Letter of Credit and said Letter of Credit expires prior to Commercial Operation Date, or fails to honor Buyer's properly document request to draw on said Letter of Credit by the issuer, Seller will have ten (10) Business Days to either post cash collateral or deliver a substitute Letter of Credit which meets the requirements set forth defined in Development Security.

### **8.8 Seller's Performance Security**

To secure its obligations per this Agreement, Seller will deliver Performance Security to Buyer prior to or on the Commercial Operation Date. In the even that the Performance Security is not cash collateral or a Letter of Credit, it will be substantially in the form provided in Exhibit K. Seller will maintain the Performance Security in full force and effect, subject to any collections or draws made by Buyer in accordance with the terms of this Agreement. Buyer will return any unused portion of the Performance Security after the Delivery Term has expired or was prematurely terminated and all obligations of Seler then due and payable per this Agreement, including compensation for penalties, Termination Payment, indemnification payments, or other damages are paid in full (whether settled directly or through off-setting or netting). In the event that the Performance Security is a Letter of Credit and the issuer of said Letter of Credit fails to maintain Qualified Issuer status, indicates its intent to not renew said Letter of Credit and said Letter of Credit expires prior to Commercial Operation Date, or fails to honor Buyer's properly document request to draw on said Letter of Credit by the issuer, Seller will have ten (10) Business Days to either post cash collateral or deliver a substitute Letter of Credit which meets the requirements set forth defined in Performance Security.

### **8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral**

To secure its obligations per this Agreement, until released as provided herein, Seller hereby grants to Buyer a present and continuing first priority security interest (Security Interest) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, and other cash collateral and cash equivalent collateral posted 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 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 8.9):

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, 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; 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 the 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 Address 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 address set forth on Exhibit M 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 on Exhibit M.

## **ARTICLE 10 - FORCE MAJEURE**

### **10.1 Definition**

- (a) "Force Majeure Event" means any act or event occurring after the Effective Date that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, except as set forth below, so long as an event otherwise satisfies the definition of Force Majeure Event, 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; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party.

- (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 an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement);
  - ii. Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event;
  - iii. the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above;
  - iv. a Curtailment Order;
  - v. Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event;
  - vi. 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. Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

## **10.2 No Liability if a Force Majeure Event Occurs**

Neither Party will 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 promptly remove such inability with due speed and shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer’s remedies pursuant to Section 11.2.

### **10.3 Notice for Force Majeure**

The claiming Party shall make commercially reasonable efforts to provide the other Party with oral notice of the Force Majeure Event within five (5) Business Days of the date the claiming Party becomes aware of being impacted by such Force Majeure Event, and within two (2) weeks of the date the claiming Party becomes aware of being impacted by such Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide written notice within such two (2)-week period constitutes a waiver of the Force Majeure Event. Upon written request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to exercise due diligence or take reasonable actions. The claiming Party shall promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

### **10.4 Termination Following Force Majeure Event**

If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement

## **ARTICLE 11 - DEFAULTS; REMEDIES; TERMINATION**

### **11.1 Events of Default**

An Event of Default will mean:

- (a) with respect to a Party (the "Defaulting Party") that is subject to the Event of Default the occurrence of any of the following:
  - i. the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;
  - ii. any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
  - 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;
  - iv. such Party becomes Bankrupt;
  - v. such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

- vi. such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:
- i. if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility;
  - ii. the failure by Seller to achieve Commercial Operation within ninety (90) days following the Guaranteed Commercial Operation Date;
  - iii. Seller has failed to demonstrate compliance with the Workforce Requirements or failed to provide documentation of Workforce Requirements requested by Buyer pursuant to Section 2.5, and Seller has not cured such failure within thirty (30) days after receiving Notice thereof from Buyer;
  - iv. the failure by Seller to achieve the Construction Start Date within one hundred eighty (180) days of the Guaranteed Construction Start Date;
  - v. if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Industry Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days;
  - vi. failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;
  - vii. with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of 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:
    - 1. if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

2. the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
  3. the Guarantor becomes Bankrupt;
  4. the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
  5. the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
  6. the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or
- viii. 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 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:
1. the issuer of the outstanding Letter of Credit shall fail to meet the definition of Qualified Issuer;
  2. the issuer of such Letter of Credit becomes Bankrupt;
  3. the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
  4. 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;
  5. such Letter of Credit fails or ceases to be in full force and effect at any time; or
  6. 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 Delivery Term effective as of the Early Termination Date;
- (b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

- (c) to withhold any payments due to the Defaulting Party under this Agreement;
- (d) to suspend performance; or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, 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 any Terminated Transaction and the Event of Default related thereto.

### **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 or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include 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 be required 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 Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

### **11.5 Disputes with Respect to 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 an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

## **ARTICLE 12 - LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES**

### **12.1 No Consequential Damages**

EXCEPT TO THE EXTENT INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, 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.

### **12.2 Waiver and Exclusion of Other Damages**

THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.6, 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B 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.

## **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 the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and 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. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller (subject to any permits that have not yet been obtained by Seller), the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
- (e) The Facility will be located in the State of California.
- (f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.
- (g) Seller has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("Forced Labor"). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor.

### **13.2 Buyer's Representations and Warranties**

As of the Effective Date, Buyer represents and warrants as follows:

- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. 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 the Joint Powers Agreement and other Law.

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.

- (b) 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, the Joint Powers Act, 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.
- (c) 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.
- (d) Buyer warrants and covenants that, throughout the Contract Term, 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 (provided that such court is located within a venue permitted in law and under the Agreement), (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; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).
- (e) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

### **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 California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;



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

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

### **13.4 Seller Covenants**

Seller covenants that commencing on the Effective Date and continuing throughout the Delivery Term:

- (a) Signage. Seller agrees to install and maintain permanent signage during the Delivery Term at the Site displaying Buyer's logo, Seller's logo, and the name of the Facility. The sign shall be located on property frontage with visibility to the most populous roadway, subject to any local ordinance restrictions. The sign shall be large enough to be visible from such roadway. The materials should be environmentally friendly, such as aluminum composite or wood, and shall not be made of acrylic or similar materials. No lighting is required. Buyer shall provide a design file for the sign. Location and final specifications for signage, including design, are subject to Buyer's approval, not to be unreasonably withheld. Seller shall construct and maintain the sign at Seller's sole expense, and Seller shall be responsible for obtaining any required permits or approvals. The sign shall be installed within 30 days of the Commercial Operation Date.

## **ARTICLE 14 - ASSIGNMENT**

### **14.1 General Prohibition of Assignments**

Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. 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. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including 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.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, and must include, among others, the following provisions; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:

- (a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;

- (b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:
- i. The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
  - ii. Impediments to the cure plan or its development;
  - iii. If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
  - iv. Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

- (c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, not to exceed, except as agreed in the collateral assignment agreement, a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, any foreclosure of similar proceeding if required by Lender to cure any Event of Default);
- (d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;
- (e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;
- (f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:
- i. Cause such Event of Default to be cured, or
  - ii. Not assume this Agreement;
- (g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made

only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

- (h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

### **14.3 Permitted Assignment by Seller**

Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller. In addition, Buyer's written consent will not be unreasonably withheld for the transfer or assignment of this Agreement to any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law and whether by assignment or change of control), if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least forty-five (45) days before the date of such proposed assignment or change of control; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the first sentence of this Section 14.3, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

## **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 the courts of the State of California sitting in Placer County, California.

### **15.2 Dispute Resolution**

In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, 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, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then 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.

### **15.3 Attorney's Fees**

In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

## **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 and agents (collectively, the "Indemnified Party") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.
- (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 from its sole 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 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 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, commercial general liability insurance, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in a minimum amount of per occurrence and annual aggregate of not less than Two Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. The policy shall be endorsed to provide contractual liability in the required amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall contain standard cross-liability and severability of interest provisions.
- (b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.
- (c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.
- (d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.
- (e) **Construction All-Risk Insurance.** Seller shall maintain during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.
- (f) **Contractor's Pollution Liability.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability

Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

- (g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).
- (h) Umbrella/Excess Liability Insurance. Seller shall maintain at all times during the Contract Term umbrella/excess liability providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Auto Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 17.1 can be provided by any combination of Seller's primary and excess liability policies.
- (i) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance or self-insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.
- (j) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **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 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**

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 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 request or 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. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

### **18.3 Irreparable Injury; Remedies**

Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain 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 Disclosure to Lenders**

Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

### **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 seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or Indemnified Party.

#### **19.5 Severability**

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

#### **19.6 Mobile-Sierra**

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

#### **19.7 Counterparts**

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

#### **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, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

#### **19.9 Binding Effect**

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

#### **19.10 No Recourse**

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts,

obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

### **19.11 Change in Electric Market Design**

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

### **19.12 Forward Contract**

The Parties intend that this Agreement constitute a "forward contract" within the meaning of the U.S. Bankruptcy Code, and that Buyer and Seller are deemed "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

### **19.13 Further Assurances**

Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

**[SELLER]**

**PIONEER COMMUNITY ENERGY, a  
California joint powers authority**

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

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

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

## EXHIBIT A - FACILITY DESCRIPTION

**Site Name:**

**Site includes all or some of the following APNs:** This Agreement is specific to the Site and Seller may change the location of the Site only upon Buyer's prior written consent, which consent is in Buyer's sole discretion. Seller shall maintain Site Control throughout the Contract Term and shall provide Buyer with prompt Notice of any change in the status of Seller's Site Control.

**County:**

**Type of Generating Facility:** \_\_\_\_\_

**Energy Management Software:** The Facility shall include communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO, including through ADS.

**Guaranteed Capacity:** \_\_\_\_ MW (AC)

**Maximum Output:** \_\_\_\_ MW

**Delivery Point:**

**P-node:**

**Participating Transmission Owner:** Pacific Gas and Electric Company (PG&E) (or any successor entity)

## EXHIBIT B - FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

### 1. Construction of the Facility.

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility (such authorization to include, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall (i) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (ii) not limit Buyer’s right to receive a Damage Payment, upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit G (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The **“Commercial Operation Date”** shall be the date on which Commercial Operation is achieved.

- (a) Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify

Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

- (b) If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
- (c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and within ten (10) days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and 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 duration of any and all delays arising out of the following circumstances:

- (a) Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and Facility to make available and sell Product by the Expected Construction Start Date, despite the exercise of due diligence by Seller; or
- (b) a Force Majeure Event occurs; or
- (c) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of due diligence by Seller.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to exercise due diligence to meet its requirements and deadlines. 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 failure to exercise due diligence.

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred and eighty (180) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit H hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Two Hundred and Fifty Thousand Dollars (\$100,000) 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 - COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

- (a) Facility Energy. Buyer shall pay Seller the Contract Price for each MWh of Facility Energy, plus the amount of Deemed Delivered Energy above the Curtailment Cap, if any, up to one hundred fifteen percent (115%) of the Expected Energy for each Contract Year.
- (b) Annual Excess Energy. Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for such additional Facility Energy or Deemed Delivered Energy amounts shall be \$0.00/MWh.
- (c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours (“Excess MWh”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“Negative LMP Costs”).
- (d) Curtailment Payments. Seller shall receive no compensation from Buyer for (i) Facility Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap in accordance with paragraphs (a) and (b) of this Exhibit C.
- (e) Test Energy. Test Energy is compensated in accordance with Section 3.6.
- (f) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.



## **EXHIBIT D - SCHEDULING COORDINATOR RESPONSIBILITIES**

- (a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Facility Energy, and if applicable, the Test Energy, at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.
- (b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.
- (c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined under

the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

- (d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay any undisputed CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.
- (e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's third party costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.
- (f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
- (g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

## **EXHIBIT E - PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
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. Prevailing wage reports as required by Law.
12. 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.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Any other documentation reasonably requested by Buyer.

**EXHIBIT F1 - FORM OF AVERAGE EXPECTED ENERGY  
REPORT**

**EXHIBIT F2 - FORM OF MONTHLY AVAILABLE CAPACITY  
REPORT**

## EXHIBIT G - FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [licensed professional engineer] (“**Engineer**”) to Pioneer Community Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [Seller Entity] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Participating Transmission Owner and CAISO.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO, including through ADS.
5. A performance test for the Facility demonstrated peak electrical output of \_\_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).
6. The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.
7. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].
8. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].
9. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

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

[LICENSED PROFESSIONAL ENGINEER]

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

Printed Name: \_\_\_\_\_

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

## **EXHIBIT H - FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification (“Certification”) of Installed Capacity is delivered by [licensed professional engineer] (“Engineer”) to Pioneer Community Energy, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“Agreement”) by and between [Seller Entity] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the performance test for the Facility demonstrated peak electrical output of \_\_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“Installed Capacity”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

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

[LICENSED PROFESSIONAL ENGINEER]

By:

Printed Name:

Title:



## **EXHIBIT I - FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of Construction Start Date (“Certification”) is delivered by [Seller Entity] (“Seller”) to Pioneer Community Energy, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Construction Start Date occurred on \_\_\_\_\_ (the “Construction Start Date”); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: \_\_\_\_\_.

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

[SELLER ENTITY]

By:

Printed Name:

Title:

## EXHIBIT J - FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiration Date:

Beneficiary:

Pioneer Community Energy  
2510 Warren Dr.  
Rocklin, CA 95677

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Pioneer Community Energy, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of [insert date] and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [insert date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit 1, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an email to [bank email address] or (c) facsimile to [bank fax number]. Transmittal by email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration Date.

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.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date (or such later date, if applicable) will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

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 California.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Pioneer Community Energy, 2510 Warren Dr. Rocklin, CA 95677. 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.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

## Exhibit 1 - Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Pioneer Community Energy, a California joint powers authority, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of \_\_\_\_\_ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of 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

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 thirty (30) days prior to such Expiration Date.

3. The undersigned is a duly authorized representative of Pioneer Community Energy, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Pioneer Community Energy by wire transfer in immediately available funds to the following account: [Specify account information]

Pioneer Community Energy

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_



## EXHIBIT K - FORM OF GUARANTY

This Guaranty (this "Guaranty") is entered into as of [\_\_\_\_\_] (the "Effective Date") by and between [\_\_\_\_\_] a [\_\_\_\_\_] ("Guarantor"), and Pioneer Community Energy, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

### Recitals

- A. Buyer and [*SELLER ENTITY*], a \_\_\_\_\_ ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [\_\_\_\_\_] 20\_\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

### Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and shall reasonably specify in what

manner and what amount Seller has failed to pay and an explanation of why such payment is due and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earliest of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

provided that, subject to Guarantor's payment of a Guaranteed Amount in accordance with Paragraph 2, Guarantor reserves the right to assert for itself in a subsequent proceeding any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium



and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

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

Attn: [\_\_\_\_\_]

Fax: [\_\_\_\_\_]

If delivered to Guarantor, to it at

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

Attn: [\_\_\_\_\_]

Fax: [\_\_\_\_\_]

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.
9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in

accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

*[Signature on next page]*

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

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

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

Printed Name: \_\_\_\_\_

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

## **EXHIBIT L - WORKFORCE REQUIREMENTS**

- (a) Local Hire: Seller will ensure that fifty percent (50%) of the construction workhours from its workforce (including contractors and subcontractors) providing work and services at the project site during the Construction Phase (e.g., the period from Full Notice to Proceed (NTP) through receipt of a Permission To Operate (PTO) letter from the interconnecting utility) are obtained from permanent residents who live within the same county in which the Facility will be located (the “Local Hire Requirement”). Seller’s construction of the Facility is also subject to any local hire requirements specific to the city or town where the resource is located. As a condition precedent to commencement of the Delivery Term, Seller must certify that it met the Local Hire Requirement and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.
  
- (b) Prevailing Wage: Seller will ensure that all employees hired by Seller, and its contractors and subcontractors, that are performing work or providing services at the project site during the Construction Phase are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code (“Prevailing Wage Requirement”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code. As a condition precedent to commencement of the Delivery Term, Seller must certify that it met the Prevailing Wage Requirement, and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.

## EXHIBIT M - NOTICES

<p>_____</p> <p>("Seller")</p>	<p><b>PIONEER COMMUNITY ENERGY, a California joint powers authority ("Buyer")</b></p>
<p><b>All Notices:</b></p> <p>Street:</p> <p>City:</p> <p>Attn:</p> <p>Phone:</p> <p>Email:</p>	<p><b>All Notices:</b></p> <p>Pioneer Community Energy</p> <p>2510 Warren Dr.</p> <p>Rocklin, CA 95677</p> <p>Attn: Don Eckert, Executive Director</p> <p>Phone: (916) 251-8575</p> <p>Email: Don.Eckert@PioneerCommunityEnergy.org</p>
<p><b>Reference Numbers:</b></p> <p>Duns:</p> <p>Federal Tax ID Number:</p>	<p><b>Reference Numbers:</b></p> <p>Duns: 08-097-5104</p> <p>Federal Tax ID Number:</p>
<p><b>Invoices:</b></p> <p>Attn:</p> <p>Phone:</p> <p>E-mail:</p>	<p><b>Invoices:</b></p> <p>Attn: Finance and Administration</p> <p>Phone: (916) 758-8943</p> <p>E-mail: <a href="mailto:finance@pioneercommunityenergy.org">finance@pioneercommunityenergy.org</a></p>
<p><b>Scheduling:</b></p> <p>Attn:</p> <p>Phone:</p> <p>Email:</p>	<p><b>Scheduling:</b></p> <p>Attn: Day Ahead Scheduler</p> <p>Phone: (916) 235-9193; (916) 221-4064</p> <p>E-mail: <a href="mailto:dascheduler@zglobal.biz">dascheduler@zglobal.biz</a></p>
<p><b>Confirmations:</b></p> <p>Attn:</p> <p>Phone:</p> <p>Email:</p>	<p><b>Confirmations:</b></p> <p>Attn: Procurement</p> <p>Phone: (916) 758-8950</p> <p>Email: <a href="mailto:procurement@pioneercommunityenergy.org">procurement@pioneercommunityenergy.org</a></p>

_____ ("Seller")	<b>PIONEER COMMUNITY ENERGY, a California joint powers authority ("Buyer")</b>
<b>Payments:</b> Attn: Phone: E-mail:	<b>Payments:</b> Attn: Finance and Administration Phone: (916) 758-8943 E-mail: <a href="mailto:finance@pioneercommunityenergy.org">finance@pioneercommunityenergy.org</a>
<b>Wire Transfer:</b> BNK: ABA: ACCT:	<b>Wire Transfer:</b> BNK: UMPQUA BANK ABA: 123205054 ACCT: XXXXXX5407
<b>With additional Notices of an Event of Default to:</b>  Attn: Phone: E-mail:	<b>With additional Notices of an Event of Default to:</b>  Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>

# EXHIBIT N

## **EXHIBIT O**



## **EXHIBIT P – OPERATING RESTRICTIONS**

## **EXHIBIT Q - METERING DIAGRAM**