

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**64KT 8ME LLC ("SPRINGBOK 3")**

**DATED AS OF DECEMBER 17, 2015**

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# POWER PURCHASE AGREEMENT

## PARTIES

THIS POWER PURCHASE AGREEMENT ("**Agreement**") which is dated for convenience as of the 17th day of December, 2015, is being entered into by and between the Southern California Public Power Authority, a public entity and joint powers authority formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) ("**Buyer**"), and 64KT 8ME LLC, a limited liability company organized and existing under the laws of the State of Delaware ("**Seller**"). Each of Buyer and Seller is referred to individually under this Agreement as a "**Party**" and together they are referred to as the "**Parties**."

## RECITALS

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

WHEREAS, in January 2012, Buyer issued a request for proposals to acquire renewable energy resources; and

WHEREAS, on January 24, 2012, Seller's indirect parent, 8minutenergy Renewables, LLC, responded on behalf of Seller to Buyer's request for proposals and, following negotiation, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, certain renewable energy, capacity and associated environmental attributes; and

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

## AGREEMENT

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

### ARTICLE I DEFINITIONS AND INTERPRETATION

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

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

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, "control"

shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership or voting securities, by contract or otherwise.

**"Agreement"** has the meaning set forth in the preamble to this Agreement, and includes Appendices A through S and Schedule 12.2(h).

**"Agreement Term"** has the meaning set forth in Section 2.2.

**"Ancillary Documents"** means any agreement, instrument, certificate or other document required to be executed and delivered between Buyer or LADWP, on the one hand, and any Seller Party, on the other hand, in connection with this Agreement, including the Option Agreement, the License Agreement, the Co-Tenancy Agreement (and any other Shared Facilities Agreement), the Generator Interconnection Agreement and, to the extent in the form of a guarantee, the Development Security or Performance Security provided by an Affiliate of Seller.

**"Appraiser"** has the meaning set forth in Section 2.2(b).

**"ASME"** means American Society of Mechanical Engineers.

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

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

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

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

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

**"Bankruptcy"** means any case, action or proceeding under any bankruptcy, reorganization, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief, or shall remain undismissed for sixty (60) days.

**"Beacon Substation"** means the LADWP-owned substation which is located approximately three (3) miles from the Facility Site.

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

**"Budget"** has the meaning set forth in Section 4.5.

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

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

**“Buyer’s Agent”** means such Person as Buyer may designate from time to time to perform certain tasks acting as an agent on Buyer’s behalf.

**“Buyer’s Check Meters”** has the meaning set forth in Section 11.5(f).

**“Buyer’s Members”** means any member of Buyer that has entered into the Joint Powers Agreement.

**“Buyer’s Non-Compensable Curtailment Hours”** has the meaning set forth in Section 7.3(d).

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

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

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

**“CEC Certified”** means that the CEC has certified that the Facility is an eligible renewable energy resource in accordance with Public Utilities Code Section 399.12(e) and the guidelines adopted by the CEC.

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

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

**“CEQA EIR”** has the meaning set forth in Section 3.1.

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

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

**“Certification Deadline”** has the meaning set forth in Section 2.4(f).

**"Change in Control"** means the occurrence, whether in a single transaction or in a series of related transactions at any time during the Agreement Term of any one or more of the following: (i) a merger or consolidation of Seller, or any upstream equity owner of Seller at any level at or below the entity set forth in Section 1 of Schedule 12.2(h) (any such upstream entity, an **"Upstream Equity Owner"**) with or into any other Person or any other reorganization in which the members of Seller or such Upstream Equity Owner immediately prior to such consolidation, merger, or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger, or reorganization, (ii) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or any Upstream Equity Owner or the power to control the management and policies of Seller or any Upstream Equity Owner is transferred to another Person, (iii) a sale, lease, or other disposition of all or substantially all of the assets of any Upstream Equity Owner, (iv) the dissolution or liquidation of any Upstream Equity Owner, or (v) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing; provided, however, that a Change in Control shall not include any transaction or series of transactions in which the membership interests in Seller or any Upstream Equity Owner are issued or transferred to another Person solely for the purpose of a Tax Equity Financing. Seller shall provide written notice to Buyer prior to the occurrence of any Change in Control in accordance with Sections 12.5(a) and 14.6.

**"Change in Law"** means a change in any federal, state, local or other law (including any environmental laws, RPS Law or EPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permitting conditions, certification conditions, authorization, approval of a Governmental Authority or WREGIS, including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval, which is binding on a Party, the Parties, or the Facility or any of the products sold therefrom.

**"Closing"** has the meaning set forth in Section 2.7 of the Option Agreement.

**"Co-Tenancy Agreement"** means that certain Amended and Restated Large Generator Interconnection Agreement Co-Tenancy Agreement dated as of April 23, 2015 by and among 62SK 8me LLC, 63SU 8me LLC, Seller and 60TM 8me, LLC.

**"Code"** means the Internal Revenue Code of 1986.

**"Commercial Operation"** means that (a) Seller has demonstrated, and the Independent Engineer has confirmed in writing, that the conditions set forth in the Independent Engineer certificate attached to Appendix N have been met with respect to the Facility, and (b) Seller has demonstrated, to the reasonable satisfaction of Buyer, that any conditions not certified to by the Independent Engineer on Appendix N have been met with respect to the Facility, and in the case of both (a) and (b), the certificates associated therewith have been accepted by Buyer.

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

**“Compensable Curtailments”** has the meaning set forth in Section 7.3(c).

**“Compliance Costs”** has the meaning set forth in Section 8.6.

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

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

**“Contract Capacity”** means a minimum of 80 MW (ac) (unless otherwise agreed upon in writing by Buyer in its sole discretion), and a maximum of 90 MW (ac), net of all auxiliary loads, station electrical uses and electrical losses prior to the Point of Delivery, which is the maximum amount of Delivered Energy in any one hour that Buyer is obligated to accept under this Agreement.

**“Contract Year”** means (i) the period beginning on the Commercial Operation Date and ending at 24:00 hours on December 31 in the year during which the Commercial Operation Date occurs (the **“Initial Stub Year”**); (ii) the following twenty six (26) calendar years (or, if the Agreement Term is extended in accordance with Section 2.2(b), the following twenty (29) calendar years), beginning on the first day of January following the end of the Initial Stub Year and each succeeding twelve-month period up to and including the period ending with the December 31 of such twenty-sixth (26<sup>th</sup>), or twenty-ninth (29<sup>th</sup>), as applicable, calendar year; and (iii) the period beginning on the first day of January next preceding such twenty-sixth (26<sup>th</sup>) or twenty-ninth (29<sup>th</sup>), as applicable, calendar year, and ending at 24:00 hours on the date that, together with the number of days in the Initial Stub Year, would be equal to three hundred sixty five (365) days (the **“Final Stub Year”**).

**“Costs”** has the meaning set forth in Section 13.3(f).

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

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

**“CRO”** has the meaning set forth in Section 14.23(g).

**“Daily Delay Damages”** means a daily amount of damages equal to \$17,104.

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

**“DBE”** has the meaning set forth in Section 14.23(c)(i).

**“DVBE”** has the meaning set forth in Section 14.23(c)(i).

**“Deemed Delivered Energy”** has the meaning set forth in Section 7.3(e).

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

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

**"Delivered Energy"** means the MWh of Facility Energy delivered by Seller and received by Buyer at the Point of Delivery, as measured using the Electric Metering Device(s) installed at the Project Substation, as may be adjusted to include Deemed Delivered Energy in accordance with Section 7.3.

**"Delivery Term"** has the meaning set forth in Section 2.2.

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

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

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

**"DNP"** has the meaning set forth in Section 7.2(f).

**"Downgrade Event"** means, with respect to a financial institution, or a provider of a letter of credit, guarantee, or Escrow Account hereunder, (a) the failure of such financial institution to maintain the credit rating or organizational status of a Qualified Issuer or Qualified Guarantor, as applicable, or (b) the commencement by such a financial institution of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding (whether under any present or future statute, law or regulation), or (c) Buyer or LADWP, as applicable, has elected to terminate any relationship with any Person(s) pursuant to directives from any Governmental Authorities applicable to Buyer, the City Council of Los Angeles, California, or the Board of Water and Power Commissioners.

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

**"EBO"** has the meaning set forth in Section 14.23(f).

**"EEI"** means Edison Electric Institute.

**"Effective Date"** means the date that both Parties have executed this Agreement, the conditions precedent set forth in Section 2.1 have been met and Buyer has delivered a notice to Seller declaring that the "Effective Date" has occurred.

**"Electric Metering Device(s)"** means all meters, metering equipment, and data processing equipment conforming to the requirements set forth in Section 11.5 and used to measure, record, or transmit data relating to the Energy output from the Facility. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

**"Energy"** means electrical energy.

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

**“Environmental Attributes”** means Renewable Energy Certificates, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (A) that are at any time recognized or deemed of value (or both) by either Party, applicable laws, or any voluntary or mandatory program of any Governmental Authority or other Person, and (B) that are attributable to (i) generation of Facility Energy or Replacement Energy delivered by Seller to Buyer, and (ii) the emissions or other environmental characteristics of such Facility Energy or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “*UNFCCC*”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to the Global Warming Solutions Act of 2006, including any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board), or any similar international, federal, state or local program or crediting “early action” with a view thereto, or laws or regulations involving or administered by the CAMD, and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as Renewable Energy Certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Facility Energy. Environmental Attributes exclude (a) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on ownership or a security interest in the Facility or Facility Energy, including any investment or production tax credit expected to be available to Seller with respect to the Facility, (b) any other depreciation deductions and benefits, and other tax benefits arising from ownership or operation of the Facility, and (c) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

**“Environmental Compliance Milestone”** means the date upon which final and non-appealable conditional use permits for the Facility issued by Kern County, California, have been obtained by Seller.

**“Environmental Documents”** has the meaning set forth in Section 3.1.

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

**“EPA”** means the United States Environmental Protection Agency

**“EPS Compliant”** when used with respect to the Facility or any other facility at any time, means that the Facility or facility, as applicable, satisfies both the PUC Performance Standard and the CEC Performance Standard in effect at the time; provided, if it is impossible for the Facility or facility, as applicable, to satisfy both the PUC Performance Standard and the CEC Performance Standard in effect at any time, such Facility or facility, as applicable, shall be



deemed EPS Compliant if it satisfies the CEC Performance Standard in effect at the time and those portions of the PUC Performance Standard in effect at the time that it is possible for such Facility or facility, as applicable, to satisfy while at the same time satisfying the CEC Performance Standard in effect at the time.

**"EPS Law"** means Sections 8340 and 8341 of the California Public Utilities Code.

**"Escrow Account"** has the meaning set forth in Section 5.6(a).

**"Excess Energy"** means, for any Contract Year, the portion of Delivered Energy that is in excess of one hundred twenty percent (120%) of the Expected Annual Generation for the first Contract Year.

**"Excess Energy Price"** means the price per MWh (\$/MWh) paid by Buyer to Seller for Excess Energy according to the provisions of Appendix A.

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

**"Extended Term"** has the meaning set forth in Section 2.2(b).

**"Extension Term Exercise Period"** has the meaning set forth in Section 2.2(c).

**"Facility"** means the solar powered electric generating facility to be located on the Facility Site, including the real property that constitutes the Facility Site, the structures, facilities, equipment, fixtures, appurtenances, improvements and associated real and personal property as further described in the Real Property Agreements, and physical and intangible property, and other rights and interests as further described in Appendix B.

**"Facility Assets"** has the meaning set forth in Section 2.4(h), as may be further described in the Option Agreement.

**"Facility Energy"** means Energy generated by the Facility.

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

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

**"Federal Investment Tax Credit"** means the federal Business Energy Investment Tax Credit available under 26 U.S.C. Section 48.

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

**"Final Stub Year"** has the meaning set forth in the definition of "Contract Year."

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

**"First MW Milestone"** means the date upon which the first MW of capacity of the Facility has been installed and is capable of delivering, but is not required to deliver, Energy to the Point of Delivery.

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

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

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

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

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

**"Generator Interconnection Agreement"** means that certain large generator interconnection agreement and associated documents (or any successor agreement and associated documentation) by and between Seller, or Affiliate of Seller, and LADWP governing the terms and conditions of Seller's interconnection with the Transmission System.

**"Governmental Authority"** means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority. The term "Governmental Authority" shall not include Buyer.

**"Green Value"** consists of the market value of (a) avoided greenhouse gas emissions and/or credits associated with RPS Compliant Energy, and (b) all other Environmental Attributes and avoided emissions-related attributes and benefits that would otherwise have been realized had Seller generated the Facility Energy, and shall be calculated as an amount equal to the time-weighted average of the prices of greenhouse gases and other Environmental Attributes (as

published in commercial indices related to California energy markets) that would have been realized for each MWh of the Shortfall Energy, provided that if for any Contract Year there does not exist a liquid trading market that is mutually agreeable to the Parties to determine such Green Value, the Green Value will be equal to the lesser of the replacement cost for the attributes described in clauses (a) and (b) above, expressed in \$/MWh, or \$15/MWh.

**"Guaranteed Commercial Operation Date"** or **"GCOD"** means the later of (i) December 31, 2016, as may be extended in accordance with Section 3.3(e), or (ii) the date designated by Seller as the Guaranteed Commercial Operation Date in the GCOD Extension Notice in Section 3.3(b), as may be further revised in accordance with Section 3.3(b), and as may be extended in accordance with Section 3.3(e).

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

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

**"Guaranteed Generation"** means the amount of Energy guaranteed by Seller during each Contract Year (including the Initial Stub Year and the Final Stub Year), as set forth in Appendix I, to be delivered to Buyer at the Point of Delivery and measured using the Electric Metering Devices installed at the Project Substation, which amount is adjusted for annual degradation.

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

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

**"Independent Engineer"** means AWS Truepower, or such other engineer as may be jointly selected by the Parties.

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

**"Initial Stub Year"** has the meaning set forth in the definition of "Contract Year."

**"Initial Term"** has the meaning set forth in Section 2.2(b).

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

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

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

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

**"Key Milestones"** means the Environmental Compliance Milestone, NTP Milestone, the First MW Milestone, and the GCOD, each as further described in Appendix B, and as may be extended in accordance with Section 3.3(e).

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

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

**"LAAC"** has the meaning set forth in Section 14.23(b).

**"Legal Opinion"** means an executed original of a written legal opinion of Chadbourne & Parke LLP, counsel for Seller, or other counsel reasonably acceptable to Buyer, addressed to Buyer and in form and substance reasonably acceptable to Buyer, concerning, among others, the enforceability and due authorization of this Agreement, any Development Security or Performance Security provided by a Seller Party, and the other Ancillary Documents that are agreements between the Parties, dated as of the Effective Date.

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

**"License Agreement"** means that certain Irrevocable License Agreement, by and between Seller and LADWP, pursuant to which Seller is granted a license to access land required for Seller or its Affiliate to construct, and for Seller to access, the generator tie line that will connect the Facility to LADWP at the Beacon Substation.

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

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

**"Major Maintenance Blockout"** has the meaning set forth in Section 7.3(a).

**“Major Subcontractors”** has the meaning set forth in Section 11.4.

**“Market Price Index”** means the monthly firm forward market price at SP-15 for on-peak hours and off-peak hours, as reasonably calculated by Buyer, and verified by Seller, taking into account, among other valuations, a minimum of three (3) quotations from leading brokers in Energy contracts that are not Affiliates of either Party, settlement prices on established, actively traded power exchanges for SP-15, and other bona fide third-party offers, and other relevant market information, provided that in the event there is no longer market prices for SP-15, the Parties will mutually agree to a replacement market price index that most closely reflects the geographic location of SP-15 market at the Effective Date.

**“Material Adverse Effect”** means any effect that is material and adverse to the operations or physical condition of the Facility, or that limits the ability of Seller to deliver Facility Energy.

**“MBE”** has the meaning set forth in Section 14.23(c).

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

**“Milestone Date”** means the deadline associated with each Milestone as set forth in Appendix B.

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

**“MVAR”** means megavolt-ampere-reactive or megavolt-amperes-reactive, as applicable.

**“MW”** means megawatt or megawatts, as applicable.

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

**“NERC”** means the North American Electric Reliability Council.

**“Non-Compensable Curtailments”** has the meaning set forth in Section 7.3(c).

**“Non-Consolidation Opinion”** means a reasoned opinion of Chadbourne & Parke LLP, in form and substance reasonably acceptable to Buyer, as to the non-consolidation of Seller in a bankruptcy proceeding of any member of Seller, addressed and delivered to Buyer on or before the Effective Date.

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

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

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

**“NTP Milestone”** means the date upon which a full notice to proceed has been issued by Seller to its general contractor for the commencement of installation and construction of the

Facility and the permits listed in Appendix K have been obtained, are final and are in full force and effect.

**"OBE"** has the meaning set forth in Section 14.23(c).

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

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

**"Operating Insurance"** means the Insurance associated with the Facility after the achievement of Commercial Operation, including Builder's Risk coverages, as set forth in Appendix F, which are associated with construction or personnel.

**"Operation & Maintenance Plan"** has the meaning set forth in Section 4.3(a).

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

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

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

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

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

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

**"Permit"** means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production and delivery to the Point of Delivery of Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including those described in Appendix K.

**"Permitted Encumbrances"** means (a) any Lien approved by Buyer in a writing separate from this Agreement which expressly identifies the Lien as a Permitted Encumbrance, (b) Liens in favor of Facility Lenders, (c) Liens for Taxes not yet due or for taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve (i) a material risk of the sale, forfeiture, loss of the Facility or any part thereof, or (ii) a restriction on the use of the Facility or any part thereof, provided that such proceedings end by the expiration of the Agreement Term, (d) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or

service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent, bonded or is being contested in good faith by appropriate proceedings, so long as such proceedings will have ended by the expiration of the Agreement Term and do not involve a material risk of the sale, forfeiture, loss of the Facility or any part thereof, (e) the Real Property Agreements, or memoranda of such Real Property Agreements; or (f) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations, so long as they have been identified by Seller to Buyer in writing prior to the achievement of the Commercial Operation Date and do not materially interfere with or impair the operation of the Facility as contemplated by this Agreement.

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

**"Point of Delivery"** means the Beacon Substation.

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

**"Principals"** means any board chair, president, chief executive officer, chief operating officer and any other individual who serves in the functional equivalent of one or more of those positions, as well as any individual who holds an ownership interest in Seller or any Upstream Equity Owner of at least twenty percent (20%), and any employee of Seller who is authorized by Seller to represent Seller before the City of Los Angeles.

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

**"Project Substation"** has the meaning set forth in Section 11.5(a).

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

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

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

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

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

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

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

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

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

**"Qualified Guarantor"** means a guarantor with a rating of at least (a) BBB- by Fitch's; (b) BBB- by Standard & Poor's; and (c) Baa3 by Moody's Investors Services, Inc., and which is reasonably acceptable to Buyer, unless agreed otherwise by the Parties.

**"Qualified Issuer"** means a Person that maintains a domestic branch office in the continental United States, and (a) maintains a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) "A3" or higher by Moody's Investors Service, Inc. and (ii) "A-" or higher by Standard & Poor's, and (b) has not suffered a Downgrade Event.

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

**"Qualified Transferee"** means: a Person that (a) (i) has a net worth at the time of the transfer that is equal to or greater than \$150,000,000, or who has a parent or an Affiliate with a net worth at the time of the transfer equal to or greater than \$150,000,000, (ii) (A) retains or causes the Subsequent Owner to retain, a Qualified Operator to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility) and (B) has, if the time of determination is three (3) years or less following the Effective Date, two (2) years of experience owning, leasing, or managing electrical generation through renewable resources with at least two (2) projects of 25MW or higher, or if the time of determination is more than three (3) years following the Effective Date, has four (4) years of experience owning, leasing or managing electrical generation through renewable resources with at least two (2) projects of 50MW or higher, (iii) executes a written assumption agreement in favor of Buyer pursuant to which such Person shall assume all of the obligations of Seller under the PPA and the Ancillary Documents, (iv) is a Special Purpose Entity and (v) is not at the time of transfer in active litigation against Buyer or LADWP or (b) is reasonably acceptable to Buyer.

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

**"Real Property"** means the real property for the Facility Site, including the transmission line for the Facility, that is covered by any of the Real Property Agreements.



**“Real Property Agreements”** means the real property agreements listed in Appendix H.

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

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

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

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

**“Replacement Energy”** has the meaning set forth in Section 9.2.

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

**“Requirement of Law”** means federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, Environmental Laws and occupational safety and health requirements).

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

**“Residual Test”** has the meaning set forth in Section 2.2(b).

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

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

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

**“RPS Law”** means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standards Program (Article 16 of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code) and California Public Resources Code Sections 25740 through 25751, Division 25.5 of California Health and Safety Code (commencing with Section 38580), and any related regulations or guidebooks promulgated by the CEC or, as

applicable, the CARB, and as all of the foregoing may be promulgated and implemented from time to time, and any replacement laws or regulations.

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

**“SBE”** has the meaning set forth in Section 14.23(c).

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

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

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

**“Scheduled Outage Projection”** has the meaning set forth in Section 7.3(a).

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

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

**“Seller Parties”** means Seller and any Affiliates of Seller executing any Ancillary Documents now or hereafter in effect, including any such Affiliate providing Development Security or Performance Security.

**“SFPO”** has the meaning set forth in Section 14.23(h).

**“Shared Facilities Agreement”** means any agreement by and between 62SK 8me LLC, 63SU 8me LLC, Seller, or any other Affiliates, governing the use of certain shared facilities, the right to occupy or use shared real property, or the ownership or governance of the rights associated with either, in any case, in form and substance acceptable to Buyer. Such Shared Facilities Agreements shall provide Buyer with the right to approve any material amendments to such form for the purpose of protecting Buyer’s rights under this Agreement, the Option Agreement and the power purchase agreements and option agreements entered into between Buyer and 62SK 8me LLC, and between Buyer and 63SU 8me LLC, respectively, and shall provide that Buyer is a third party beneficiary for the purpose of enforcing the agreements, rights, obligations or remedies of Seller or any other party with whom Buyer has entered into a power purchase agreement.

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

**“Shortfall Make Up Period”** has the meaning set forth in Section 9.1.

**“Shortfall Liquidated Damages”** has the meaning set forth in Section 9.3(a).

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

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

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

(b) was, is and will be organized solely for the purpose of (i) acquiring, developing, owning, holding, selling, financing, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer and the Ancillary Documents with the applicable counterparties thereto, and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

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

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

(e) has held itself out as and will hold itself out to the public as a legal entity separate and distinct from any other entity and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

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

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

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

(i) has not made and will not make loans or advances to any Person other than as required under the Generator Interconnection Agreement or the Co-Tenancy Agreement, or as may be permitted under a Shared Facilities Agreement, or hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by an entity that is not an Affiliate of or subject to common ownership with such entity) or made any gifts or fraudulent conveyances to any Person;

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

(k) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates, except (i) in the ordinary course of its business and on terms which are intrinsically fair, commercially reasonable and are no less favorable to it than would be obtained in a comparable arm's-length transaction with an unrelated third party, (ii) in connection with the development or construction of the Facility, provided that (except with respect to the clause (iii) agreements below), any indebtedness or other obligations of Seller pursuant to any such transaction with its members or Affiliates shall be fully performed and discharged in their entirety on or prior to the occurrence of the Commercial Operation Date, (iii) the Co-Tenancy Agreement and any Shared Facilities Agreement, or (iv) as otherwise set forth and permitted in this Agreement;

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

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

(n) does not and will not have any of its obligations guaranteed by any Affiliate (other than the Development Security or the Performance Security that is in the form of a guarantee) and does not and will not hold itself out as being responsible for the debt obligations of any other Person except (i) in connection with the development or construction of the Facility; provided that any such debt obligations shall be fully performed and discharged on or prior to the occurrence of the Commercial Operation Date, or (ii) in accordance with the Generator Interconnection Agreement, the Co-Tenancy Agreement and any Shared Facilities Agreement;

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

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

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

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

(s) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

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

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

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

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

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

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

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

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

(bb) now has and will have no indebtedness other than (i) loans (or lease payments) made by a Facility Lender pursuant to a Financing Agreement, (ii) liabilities incurred in the ordinary course of business relating to its ownership, leasing and operation of the Facility and its routine administration, the amounts of which are normal and reasonable under the circumstances, (iii) any other liabilities incurred in the ordinary course of business relating to its development and construction of the Facility, provided that any such liabilities shall be fully discharged on or prior to the achievement of the Commercial Operation Date or as set forth in the Co-Tenancy Agreement or any Shared Facilities Agreement, and (iv) such other liabilities that are permitted pursuant to this Agreement.

**"Startup and Test Energy"** means the MWh of Delivered Energy delivered prior to the Commercial Operation Date, but not to exceed, at any time, the Contract Capacity.

**"Subcontractors"** has the meaning set forth in Section 11.4(a).

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

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

**"Tax Equity Financing"** means, with respect to Seller or any Upstream Equity Owner, any transaction or series of transactions in which (a) (i) one or more tax equity investors (each, a **"Tax Equity Investor"**) buys an interest in Seller, or any Upstream Equity Owner acting as a holding company for Seller, (ii) such Tax Equity Investors are thereafter allocated as much as 99% of income, loss and tax credits associated with Seller until a "flip date," after which such allocations are reduced to as little as 4.95% of such income, loss and tax credits associated with Seller, (iii) after such "flip date" any non-Tax Equity Investor shall have an option to repurchase any Tax Equity Investors' interest in Seller or such Upstream Equity Owner acting as a holding company for Seller, and (iv) the non-Tax Equity Investor's interest in Seller or such Upstream Equity Owner retains management control over the Facility, but must obtain the agreement of the Tax Equity Investors prior to taking major decisions (in accordance with the applicable financing documents) with respect to Seller or such Upstream Equity Owner acting as a holding company, or (b) there is a Sale Leaseback Financing.

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

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

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

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

**"Transmission Line Loss Factor"** means 0.06%, which is the assumption used to calculate line losses on the gen-tie transmission line between the Project Substation and the Point of Delivery and will be applied to the readings taken by the Electric Metering Device(s) installed at the Project Substation as set forth in Section 11.5(b).

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

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

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

**"Unexcused Cause"** has the meaning set forth in Section 14.5.

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

**"Upstream Equity Owner"** has the meaning set forth in the definition of "Change in Control."

**"WBE"** has the meaning set forth in Section 14.23(c)(i).

**"WECC"** means the Western Electricity Coordinating Council.

“WREGIS” means Western Renewable Energy Generation Information System.

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

“WREGIS Operating Rules” means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS.

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

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

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



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

## ARTICLE II EFFECTIVE DATE, TERM AND EARLY TERMINATION

**Section 2.1 Effective Date.** This Agreement shall be effective as of the Effective Date, which shall occur as of the date upon which each of the following has occurred: (a) Seller has executed this Agreement, the Option Agreement and the License Agreement; (b) each Seller Party has delivered (or caused to be delivered) to Buyer the documents described in Section 12.2(b); (c) Seller has delivered the Legal Opinion and the Non-Consolidation Opinion; (d) Seller has delivered true, correct and complete copies of the Phase I Environmental Site Assessment and any other reports or studies prepared and submitted to Kern County in order to obtain CEQA clearance and to obtain the Conditional Use Permit for the Facility; and lastly, (e) Buyer has executed this Agreement and the Option Agreement, and LADWP has executed the License Agreement. No more than twenty (20) Business Days after the Effective Date, Buyer shall receive from Seller the Development Security. No more than thirty (30) days after the Effective Date, Seller shall have delivered to Buyer, and Buyer shall have received (i) a copy of the CEC pre-certification application for the Facility in the name of Seller that has been filed with the CEC; and (ii) evidence reasonably satisfactory to Buyer that Seller continues to maintain Site Control.

### **Section 2.2 Agreement Term and Delivery Term; Extension Term.**

(a) This Agreement shall have a delivery term commencing on the Commercial Operation Date and ending on the last day of the Final Stub Year, unless sooner terminated or later extended in accordance with the terms of this Agreement (the "***Delivery Term***").

(b) The term of this Agreement (as may be extended hereunder, the "***Agreement Term***") shall commence on the Effective Date and shall end upon the last day of the Initial Term or, if the option to extend is exercised in accordance with this Section 2.2(b), the last day of the Extended Term. The initial term of this Agreement shall be twenty seven (27) years from the Commercial Operation Date (the "***Initial Term***"), with the option for a three (3) year extension (the "***Extended Term***"). The option to extend the Agreement Term shall be exercisable by either Party, provided that an independent, licensed appraisal and valuation consultant that is mutually agreed upon by Buyer and Seller (the "***Appraiser***") has determined that (i) the Extended Term shall not extend for more than eighty percent (80%) of the estimated useful life of the Facility, and (ii) the estimated remaining residual value of the Facility at the conclusion of the Extended Term shall be equal to at least twenty percent (20%) of the original cost of the Facility ((i) and (ii) together, the "***Residual Test***"), and provided further that Buyer has not elected to exercise its Project Purchase Option upon the twenty seventh (27<sup>th</sup>) anniversary of the Commercial Operation Date in accordance with the Option Agreement. For the avoidance of doubt, so long as either Party has exercised its option to extend and the Residual Test has been met, the other Party shall have no right to decline to extend the Agreement Term, except that Buyer's right to elect, in its sole discretion, to exercise its Project Purchase Option at such time shall take precedence over Seller's election to extend the Agreement Term. If the

Parties cannot agree upon the selection of an Appraiser within fourteen (14) days, then each of Seller and Buyer shall select an independent appraiser, which independent appraisers shall, within fourteen (14) days of being selected by each of Buyer and Seller, agree upon and appoint a third Appraiser to perform the Residual Test. If the two selected appraisers cannot agree on a third Appraiser within such fourteen (14) day period, then either Party may apply to the American Arbitration Association to make such an appointment. The Parties shall equally bear the costs of the Appraiser ultimately selected. The Appraiser's determination shall be complete within thirty (30) days following the appointment of the Appraiser.

(c) Either Party shall have the right to elect to conduct the Residual Test in order to extend the Agreement Term no later than eighteen (18) months prior to the last day of the Initial Term. The Appraiser shall conduct its review and determine whether the Residual Test has been met during the period of time that is no more than eighteen (18) months from, and no less than twelve (12) months from, the last day of the Initial Term (the "***Extension Term Exercise Period***").

(d) Neither Party shall be liable to the other Party in the event that the actual useful life or residual value of the Facility proves to be different from the Appraiser's determination thereof.

(e) During the Extension Term Exercise Period, the requirement to conduct the Residual Test may be waived by the mutual agreement of the Parties.

**Section 2.3 Survivability.** The provisions of this Section 2.3, Section 5.6, Section 11.4, Article XIII, and Article XIV shall survive the termination of this Agreement. In addition, applicable provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to the period prior to termination of this Agreement, including payment of any money due and owing to Seller or Buyer pursuant to this Agreement, including Section 3.3, Section 5.6, Section 6.1, Section 6.3, Section 6.4, Section 9.2 and Section 9.3.

#### **Section 2.4 Early Termination.**

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

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

(c) **Early Termination Based on CEQA.** Buyer may, in its sole discretion, terminate this Agreement in accordance with Section 3.1.

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

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

(f) **Early Termination for Failure to Obtain CEC Certification.** Buyer may, in its sole discretion, terminate this Agreement effective upon notice to Seller pursuant to Section 3.6 if the Facility is not CEC Certified by the date that is six (6) months following the Commercial Operation Date, which date may be extended (i) due to a Change in Law (in which case, the provisions of Section 8.7 shall apply), or (ii) if Seller can demonstrate to Buyer's reasonable satisfaction that the failure to obtain CEC Certification is not due to any act or omission by Seller, then such additional period of time as the Parties may agree is required to obtain such CEC Certification (the "**Certification Deadline**").

(g) **Early Termination for Business Policies.** Buyer, in its sole discretion, may terminate this Agreement pursuant to Section 14.23.

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

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

Any termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

### ARTICLE III DEVELOPMENT OF THE FACILITY

**Section 3.1 Permitting and CEQA Determinations.** Buyer has all rights and powers available to it as a responsible agency under CEQA to participate in the CEQA review of the Facility, including commenting on the lead agency's notice of preparation, consulting with the lead agency during preparation of the CEQA environmental impact report ("**CEQA EIR**"), and commenting on the draft CEQA EIR. Buyer shall have full discretion to consider the CEQA EIR in order to reach its own CEQA decision about the Facility and therefore retains its full authority under CEQA to: (a) adopt feasible mitigation measures or alternatives to avoid or lessen significant environmental impacts resulting from the Facility; (b) determine that any significant impacts that cannot be mitigated are acceptable due to overriding concerns; or (c) terminate this Agreement due to the Facility's significant adverse environmental impacts. On or before the thirtieth (30th) day after the lead agency's filing of a notice of determination under CEQA, Buyer may issue one of the following: (i) a notice confirming it has complied with CEQA Guidelines sections 15096(a), (f), (g), and (h) by considering the CEQA EIR, adopting applicable alternatives or mitigation measures, making findings, and filing a Notice of Determination for its approval of the purchase of Facility Energy (the "**CEQA EIR Acceptability Notice**"), or (ii) a notice that Buyer, based upon its independent review of the CEQA EIR, has determined not to approve the purchase of the Facility Energy hereunder, and to terminate this

Agreement and the Option Agreement due to the significant adverse environmental effects from the Facility specified in the CEQA EIR (the "*CEQA EIR Unacceptability Notice*"). If Buyer fails to provide Seller with a notice by the end of such thirty (30) day period, so long as no challenge has been successfully made or is pending against the determination of the lead agency as of such date, Buyer will be deemed to have confirmed that Seller has complied with CEQA Guidelines. The Parties shall work together in good faith to make any necessary amendments to this Agreement required in connection with the CEQA review process. Upon delivery by Buyer of a CEQA EIR Unacceptability Notice, this Agreement and the Option Agreement shall automatically terminate. Seller shall represent the Facility as necessary at all meetings and proceedings before all Governmental Authorities and timely prepare all environmental documents required for the review of the Facility under CEQA (the "*Environmental Documents*"), and any relevant Milestones.

**Section 3.2 Design, Development and Construction of the Facility.** The location, design, configuration and capacities of the Facility shall be consistent with the Requirements, including the characteristics and other requirements for the Facility set forth in Appendix B, and also subject to any conditions that are imposed by the lead agency or any responsible agency as part of the CEQA review of the Facility. Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. The Facility and the Facility Site shall be owned (or leased pursuant to a Sale Leaseback Financing or other lease arrangement acceptable to Buyer) by Seller during the Agreement Term. Seller shall develop, finance and construct the Facility at its sole risk and expense and in compliance with the Requirements, provided that meeting these requirements shall not relieve Seller of its other obligations under this Agreement. Any failure by Seller to inspect the physical condition of the Facility Site, including any local or other conditions that may be material to Seller's performance of its obligation under this Agreement, shall not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any expense to Buyer. Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Buyer, provided, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder.

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

(a) Attached as Appendix B is a schedule of the milestones for the development of the Facility through the Commercial Operation Date (each milestone, a "*Milestone*") and the Milestone Dates associated therewith, including the Guaranteed Commercial Operation Date. Seller shall achieve each Milestone by the Milestone Date specified therefor. Until the date upon which Commercial Operation has been achieved, Seller shall provide Buyer with a report, which shall be provided every January 1, April 1, July 1 and October 1 until the date that is six (6) months prior to the Guaranteed Commercial Operation Date, as set forth in Appendix B, and thereafter, on a monthly basis, which shall set forth the status of each Milestone, any issues that have arisen with respect to the timely achievement of such Milestone, and any slippage in any Milestone Date.

(b) As of the Effective Date, the Guaranteed Commercial Operation Date is December 31, 2016. Notwithstanding the foregoing, if Seller will not achieve the Commercial

Operation Date by December 31, 2016, then Seller shall have the right, no later than the later to occur of: (i) March 31, 2016, and (ii) thirty (30) days after execution and delivery of this Agreement by Buyer, provide written notice to Buyer (the "**GCOD Notice**") stating that the Commercial Operation Date will not occur in 2016. If Seller provides a GCOD Notice to Buyer, then no later than December 31, 2016, Seller shall provide Buyer with another notice (the "**GCOD Extension Notice**") stating (A) the date upon which Seller shall interconnect the Facility and (B) the date upon which Seller guarantees that it shall achieve the Guaranteed Commercial Operation Date after 2016, which Guaranteed Commercial Operation Date may be revised in writing by Seller to occur on a date that is no more than four (4) months earlier than, and no more than three (3) months later than, the date specified in the GCOD Extension Notice; provided that the provisions of Section 3.3(c) and Section 3.3(d) shall apply should Seller fail to achieve the Commercial Operation Date by such Guaranteed Commercial Operation Date; and, provided further, in no event shall the GCOD be later than December 31, 2019, except as may be extended in accordance with Section 3.3(e). Following receipt of the GCOD Extension Notice, the Parties shall update Part II of Appendix B to reflect the revised Guaranteed Commercial Operation Date, the NTP Milestone, and the First MW Milestone. The revised NTP Milestone shall not be later than six (6) months prior to the Guaranteed Commercial Operation Date, and the revised First MW Milestone shall not be later than two (2) months prior to the Guaranteed Commercial Operation Date. The Guaranteed Commercial Operation Date set forth in Appendix B, as it may be revised in the GCOD Extension Notice and this Section 3.3(b), and except as may be extended in accordance with Section 3.3(e), shall be final and binding upon Seller and shall serve as the Guaranteed Commercial Operation Date under this Agreement. In addition to updating Appendix B, Seller shall provide such updated environmental reports, surveys, studies and Permits as may be reasonably required by Buyer to demonstrate that Seller is in compliance with its obligations hereunder. If Seller achieves the Milestones as set forth herein, prior to the Commercial Operation Date and up to nine (9) months prior to the Guaranteed Commercial Operation Date as set forth in the GCOD Extension Notice, Seller shall sell and deliver, and Buyer shall purchase and accept the Startup and Test Energy at the rate for such Energy set forth in Appendix A. For the avoidance of doubt, (1) Buyer shall have the right, but shall have no obligation hereunder, to purchase Energy from the Facility at any time that is more than nine (9) months before the Guaranteed Commercial Operation Date as set forth in the GCOD Extension Notice, and (2) during the period of time between nine (9) months before the Guaranteed Commercial Operation Date as set forth in the GCOD Extension Notice and four (4) months before the Guaranteed Commercial Operation Date as set forth in the GCOD Extension Notice, regardless of whether the Commercial Operation Date has occurred during such period, Buyer shall only be obligated to pay Seller the Startup and Test Energy rate for any Energy delivered during such period.

(c) If Seller fails to achieve any Milestone by the Milestone Date therefor, Seller shall immediately notify Buyer of such failure and, no more than ten (10) days following the failure to achieve such Milestone, provide Buyer with a written action plan detailing how Seller will cure such failure (such plan, a "**Remedial Action Plan**"). The proposed Remedial Action Plan must in all cases be acceptable to Buyer, such acceptance not to be unreasonably withheld, delayed or conditioned. The Remedial Action Plan shall specify in reasonable detail Seller's analysis of the causes of the missed Milestone Date, the actions that Seller plans to take to correct such underperformance, and the time needed to complete such corrective actions. Seller shall complete any and all corrective action pursuant to the provisions of the Remedial

Action Plan. Seller may (i) supplement the Remedial Action Plan, as may be reasonably required, or (ii) provide Buyer with written notice of any deviations from the approved Remedial Action Plan; provided that in the case of (i) or (ii), any supplements to, or deviations from, the Remedial Action Plan must be acceptable to Buyer, such acceptance not to be unreasonably withheld, delayed or conditioned.

(d) In addition to the preparation of a Remedial Action Plan in accordance with Section 3.3(c), if Seller fails to achieve any Key Milestone by the Milestone Date therefor, Seller shall, unless excused pursuant to Section 3.3(e), pay Buyer the Daily Delay Damages for each day between the Milestone Date for the applicable Key Milestone and the date upon which such Key Milestone is achieved (or the Agreement is terminated by Buyer under Section 13.1(i)). If Seller, notwithstanding having failed to timely achieve any other Milestone by the Milestone Date therefor as set forth in Appendix B, is thereafter able to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, as may be extended pursuant to the terms of this Agreement, then any amounts previously paid as Daily Delay Damages will be refunded to Seller. Buyer may draw from the Development Security the amount of any such Daily Delay Damages. At any time prior to the Commercial Operation Date, if the amount of the Development Security has been fully drawn by Buyer hereunder, Seller shall, within five (5) Business Days following receipt of notice thereof from Buyer, replenish the Development Security in an amount equal to One Million Dollars (\$1,000,000). Seller shall continue to replenish the Development Security as set forth herein at each instance that such Development Security has been drawn in full by Buyer. If Seller fails to replenish the Development Security within five (5) Business Days of notice from Buyer, such failure shall be a default by Seller under Section 13.1(b), provided that Seller shall have ten (10) additional days to cure such failure, rather than thirty (30) days.

(e) Without prejudice to Buyer's rights to terminate this Agreement under Section 13.1(i), each Key Milestone (and each subsequent Key Milestone, as applicable) shall be extended on a day-for-day basis due to a delay by LADWP to achieve the In-Service Date, as defined in the Generator Interconnection Agreement, by April 1, 2016. In addition, notwithstanding anything to the contrary set forth in this Agreement, if the Environmental Compliance Milestone is not achieved on or before the date set forth in Exhibit B, Buyer shall be under no obligation to seek approval to execute this Agreement or to consummate the transactions contemplated hereunder, and the Parties shall have no obligations to one another arising in connection with this Agreement. Each Key Milestone (and each subsequent Key Milestone, as applicable) shall be extended to the extent reasonably required following an event of Force Majeure, not to exceed twenty four (24) months from the date of the occurrence of such event of Force Majeure in accordance with Section 14.5(c). In addition, each Key Milestone shall be automatically extended in a manner consistent with any amendment of the deadline to receive the Federal Investment Tax Credit that occurs on or before such Key Milestone, but in no event by more than three hundred sixty five (365) days. Notwithstanding anything to the contrary set forth in this Agreement, in no event shall the Commercial Operation Date occur later than December 31, 2020 (the "**Outside COD**"), and the failure to achieve the Commercial Operation Date by the Outside COD shall be an immediate Default by Seller, not subject to extension or cure of any kind.

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

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

#### **Section 3.4 Certification of Commercial Operation Date.**

(a) Seller shall provide Buyer with no fewer than ninety (90) days prior written notice of the date on which Seller anticipates achieving all of the conditions precedent to Commercial Operation of the Facility as specified in the Appendix N. Once the certificate set forth in Appendix N has been delivered, Buyer may either accept or reject the notice, provided that Buyer may not unreasonably withhold, delay or condition acceptance of such notice, and any rejection by Buyer must be reasonable and contain a written description with reasonable detail of Buyer's reasons therefor. Buyer shall in all cases respond to any such notice within twenty (20) Business Days and shall be deemed to have accepted such notice if it fails to respond within such timeframe. If Buyer rejects the notice, Seller shall promptly correct those defects or deficiencies as directed by Buyer and resubmit the notice. The Commercial Operation Date shall be deemed to relate back to the date of any Seller notice of Commercial Operation of the Facility that is accepted (or deemed accepted) by Buyer. The Milestone Date for the Commercial Operation Date shall be extended automatically during the period starting five (5) Business Days following the date of Seller's delivery of any notice of the Commercial Operation Date under this Section 3.4 until the date on which Buyer responds to such notice under this Section 3.4. Any Daily Delay Damages otherwise payable under Section 3.4 shall be excused for each day following the date of Seller's delivery of notice of the Commercial Operation Date under this Section 3.4 until the date on which Buyer responds to such notice under this Section 3.4. In no event shall any extension of the achievement of the Commercial Operation Date affect the amount of the applicable price payable by Buyer hereunder.

**Section 3.5 Additional Contract Capacity.** If Seller achieves Commercial Operation with a Facility that has a Contract Capacity that is less than 85 MW (ac), then Seller shall have the right to install additional solar facilities, up to the amount of the Contract Capacity, within one hundred eighty (180) days following the Commercial Operation Date, as such date may be extended by Buyer, in its sole discretion. Seller shall have the right to modify the Facility configuration shown in Appendix B to incorporate additional facilities installed and completed after achievement of Commercial Operation of the Facility by providing written notice to Buyer at the Commercial Operation Date. Any such installation of additional solar

facilities shall satisfy all of the conditions set forth in the definition of Commercial Operation (with the additional facilities to be thereafter considered the "Facility" for this purpose).

**Section 3.6 CEC Certification.** Promptly, but in no event more than ten (10) days following the Commercial Operation Date, Seller shall file with the CEC all materials and documents required to demonstrate that the Facility is a solar photovoltaic facility entitled to be CEC Certified. Seller shall promptly provide Buyer with copies of all submittals to the CEC and other correspondence between Seller and the CEC. Failure by Seller to comply with the requirements set forth in this Section 3.6 shall constitute an event of default by Seller, subject to the cure periods set forth in Section 13.1(b).

**Section 3.7 Other Information.** Seller shall provide to Buyer such other information that is in the possession of Seller or its Affiliates or is reasonably available to Seller regarding the permitting, engineering, construction or operations of Seller, its subcontractors or the Facility, and other data concerning Seller, its subcontractors or the Facility that Buyer may, from time to time, reasonably request in writing, subject to Seller's obligations of confidentiality to third parties with respect to such information.

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

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

**Section 4.2 General Operational Requirements.** In addition to the requirements set forth in Section 4.1 and elsewhere in this Agreement, Seller shall, at all times employ or cause to be employed qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Authorized Representative. Seller shall ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term. The Facility shall be operated during the Delivery Term by a Qualified Operator. For the avoidance of doubt, in no event will the operation of the Facility by a third party, nor shall Buyer's approval of any third party operator, relieve Seller of any of its obligations hereunder.

**Section 4.3 Operation and Maintenance Plan after Commercial Operation.** Following the Commercial Operation Date, Seller shall:

(a) Provide to Buyer on a quarterly basis, any regularly prepared operations and maintenance status reports of the Facility provided to WECC or lenders pursuant to the Financing Agreement.



(b) In addition to the other required and preventive maintenance actions contained in this Agreement, provide notification to Buyer of its actions to: (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify all preventive maintenance requirements for the following calendar year, including the performance of maintenance in accordance with Section 7.3(a); (iii) schedule and assign routine maintenance during operations, planned outages, as well as maintenance that can be conducted in parallel (but in the event of a forced or unscheduled outage, and as a result of outage and curtailment notifications (scheduled and unscheduled) ); (iv) conduct periodic maintenance to various equipment, and provide a report about any findings to Buyer; (v) conduct periodic Q/A and Q/C activities and inspections in accordance with Appendix J and, to the extent prepared in the ordinary course of business, provide reports thereof to Buyer; and (vi) hire Subcontractors, as applicable, to meet the Facility's maintenance, betterment, and improvement needs.

**Section 4.4 Operation and Maintenance Plan after Purchase Option Notice.** Following the provision by Buyer of a Purchase Option Tentative Exercise Notice (as defined in the Option Agreement) and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement Seller shall, to the extent prepared in the ordinary course of business:

(a) devise and implement, or cause the Qualified Operator to devise and implement, an operations and maintenance plan, or implement an existing plan that includes the status of the Facility and each of the major components thereof in order to maintain such equipment in accordance with Prudent Utility Practices (the "*Operation and Maintenance Plan*"). Such Operation and Maintenance Plan shall be consistent with the requirements of any Financing Agreement in place as of such date. Seller shall keep, or cause the Qualified Operator to keep, records with respect to inspections, maintenance, and repairs. The Operations and Maintenance Plan and all records associated therewith shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice; provided that Buyer shall at all times comply with Seller's or the Qualified Operator's written safety and security requirements when present at the Facility;

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

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

(d) perform routine and preventive maintenance actions in accordance with all applicable manufacturers' instructions, the Quality Assurance Program, Prudent Utility Practice, and the Operation and Maintenance Plan, including to: (i) conduct regular visual equipment inspections and log significant parameters ; (ii) identify all preventive maintenance requirements for a period of the following two (2) calendar years, including the performance of maintenance

in accordance with Section 7.3(a); (iii) schedule and assign routine maintenance during operations, planned outages, and maintenance that can be conducted in parallel (but not extend required actions) in the event of a forced or unscheduled outage, and outage and curtailment notifications (scheduled and unscheduled); (iv) conduct periodic maintenance to various equipment, and provide a report about any findings to Buyer; (v) conduct periodic Q/A and Q/C activities and inspections in accordance with Appendix J and provide reports thereof to Buyer; and (vi) hire Subcontractors, as applicable, to meet the Facility's plant's maintenance, betterment, and improvement needs.

**Section 4.5 Budgets.** Following the provision by Buyer of a Purchase Option Tentative Exercise Notice (as defined in the Option Agreement) and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement Seller shall, to the extent prepared in the ordinary course of business, provide Buyer with a draft budget for the Facility (the "**Budget**") for the twelve (12) month period beginning on July 1 of the applicable calendar year. Following the provision by Buyer of a Purchase Option Tentative Exercise Notice (as defined in the Option Agreement) and until a Closing or the termination of a Purchase Option Opportunity (as defined in the Option Agreement) occurs, Buyer shall also have the right to review and provide comments to such Budget.

**Section 4.6 Reporting and Information.** Following the provision by Buyer of a Purchase Option Tentative Exercise Notice (as defined in the Option Agreement) and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement Seller shall, to the extent prepared in the ordinary course of business, perform the following and report information regarding the following to Buyer:

(a) Administrative and periodic reporting, including (i) on a quarterly basis, safety records, which shall be provided, including Occupational Safety and Health Administration recordable and non-recordable incidents, Facility Site safety meeting information etc.; (ii) on a quarterly and annual basis, operational reports on various aspects of the Facility, including performance, capacity factor, availability, weather, and generation data to confirm that the requirements of this Agreement have been met, which reports shall be in forms reasonably acceptable to Buyer; (iii) on an annual basis, Q/A and Q/C activities; (iv) outage and curtailment (scheduled and unscheduled) notifications in accordance with Section 7.3; and (v) work performed on the Facility following the completion of any such work.

(b) Following the provision by Buyer of a Purchase Option Tentative Exercise Notice (as defined in the Option Agreement) and until such time as the Closing occurs or Buyer declines to purchase the Facility in accordance with the Option Agreement: (i) in addition to the operational reports provided in Section 4.6(a), monthly operational reports; (ii) overall operation and maintenance of the Facility; (iii) preventive and maintenance actions taken; (iv) administrative and on-Facility Site personnel support; (v) safety and health; (vi) on a monthly basis, Q/A and Q/C activities; (vii) work to be conducted during any planned outage; (viii) Facility Site safety and security measures in place; (ix) usage of parts at the Facility; (x) maintenance; (xi) on-going and planned maintenance activities; (xii) planning documents; (xiii) general recordkeeping for the Facility; (xiv) work completion logs, checklists, explanations, and conformance documents; (xv) productivity records; (xvi) environmental compliance; (xvii) training and qualification of personnel; (xviii) remote control and monitoring;

(xix) information technology services; (xx) spare parts and consumables for the Facility; (xxi) permits and regulatory compliance documents; (xxii) NERC and FERC compliance records; and (xxiii) activities for betterment and improvement of the Facility to reduce long-term main component replacement expenses.

**Section 4.7 Facility Visits.** Except in the event of a System Emergency, from and after the Commercial Operation Date, Seller shall accommodate Buyer's requests to visit the Facility during Seller's regular business hours upon reasonable notice.

**Section 4.8 Taxes.** Seller shall pay or cause to be paid all Taxes on or with respect to the Energy and any Environmental Attributes or any other transactions arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Energy and any Environmental Attributes or any other transactions from (but excluding) the Point of Delivery. If Seller is required by a Requirement of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder. If Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution is reduced.

**Section 4.9 Environmental Credits.** Seller shall, if applicable, obtain in its own name and at its own expense any and all pollution or environmental credits or offsets necessary to operate the Facility in compliance with the Requirements of Law; provided, however, that Seller shall not use any Environmental Attributes to satisfy the foregoing obligation.

## ARTICLE V

### COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD

#### Section 5.1 In General.

(a) **The Facility.** Seller warrants that it will perform, or cause to be performed, all engineering, design and construction in a good and workmanlike manner and in material compliance with the Requirements. Seller warrants that, as of the Commercial Operation Date: (i) the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering, and construction, and (ii) the Facility will comply in all material respects with the Requirements, and any reports or studies. Seller also warrants that throughout the Agreement Term it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in material compliance with all applicable standards, reports, studies, Permits, Prudent Utility Practices, and Requirements of Law applicable to the Facility, Seller's Quality Assurance Program, and any other provisions of this Agreement. Without limiting the foregoing, Seller shall promptly repair and/or replace, consistent with Prudent Utility Practice, any component of the Facility that may be damaged or destroyed or otherwise not operating properly. Seller shall, subject to Seller's reasonable judgment consistent with Prudent

Utility Practices, exercise commercially reasonable efforts to undertake all published, recommended, or required updates or modifications from manufacturers or suppliers to the Facility, its equipment and materials, including procedures, programming and software in a timely manner. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with applicable manufacturers' recommendations and Prudent Utility Practice.

(b) **Buyer's Right To Monitor In General.** Buyer shall have the right and Seller shall permit Buyer and its Authorized Representatives, advisors, engineers and consultants to observe, inspect and monitor, upon reasonable notice to Seller during normal working hours and subject to Seller's or its subcontractors' reasonable requirements and procedures in respect of confidentiality (subject to the provisions set forth in Section 14.19) and safety, all operations and activities, including the performance of the contractor(s) under the construction contract(s) pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing, and Commercial Operation.

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

(i) review and monitor the subcontractors' performance and achievement of all initial performance tests and all other tests required under the Facility construction contracts that must be performed in order to achieve completion, with respect to which Seller shall provide to Buyer a schedule for the performance of such tests at least ten (10) Business Days before such tests are scheduled to begin; and

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

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

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

(i) grant to Buyer such rights of access to the Facility during normal working hours and subject to Seller's subcontractors' reasonable requirements and procedures in respect of confidentiality (subject to the provisions set forth in

Section 14.19) and safety, and to inspect, make notes about and copy (and make such copies and notes available to Buyer) all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request;

(ii) make the personnel of, and consultants to, the subcontractors and Seller available to Buyer, Buyer's Agent, and Buyer's agents, Authorized Representatives and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof; and

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

(e) **Equipment Supplier Provisions.** Seller shall only engage with Tier One solar panel manufacturers for the solar panels to be incorporated into the Facility. A "**Tier One**" solar panel manufacturer means a manufacturer whose photovoltaic-powered solar panels are (i) financeable by a Qualified Issuer, or (ii) if not a Qualified Issuer, financeable by a Person with a net worth of at least Five Hundred Million Dollars (\$500,000,000). Seller shall use reasonable efforts to ensure that any equipment and supply contracts for such solar panels, as well as inverters and any other major equipment for the Facility shall be fully assignable to, and be enforceable by, Buyer (including any warranties associated therewith) following Buyer's exercise of the Project Purchase Option pursuant. Buyer shall have the right to review such equipment supply contracts for the Facility to ensure that Seller has complied with the provisions of this Section 5.1(e).

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

**Section 5.3 Compliance With Standards.** Seller shall cause the Facility and all parts thereof to be designed, constructed, tested, operated and maintained to meet all of the requirements of this Agreement, all applicable requirements of the latest revision of the ASTM, ASME, AWS, EPA, EEL, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, as applicable, Uniform Building Code, Uniform Plumbing Code, and the applicable local County Fire Department Standards of the applicable county, and other codes and standards and

operations and maintenance requirements applicable to the services, equipment, and work as generally shown in this Agreement, as well as all applicable Requirements of Law not specifically mentioned in this Section.

**Section 5.4 Quality Assurance Program.** Seller agrees to maintain and comply with a written quality assurance policy ("*Quality Assurance Program*") attached hereto as Appendix J, and Seller shall cause all work performed on or in connection with the Facility to materially comply with said Quality Assurance Program.

**Section 5.5 Preservation of the Facility.** Except as expressly permitted by this Agreement, Seller shall not sell or otherwise dispose of, or create, incur, assume, or permit to exist any Lien (other than the Permitted Encumbrances) on, any portion of the Facility or any other property or assets which are necessary for the operation, maintenance, and use of the Facility, without the prior written approval of Buyer.

**Section 5.6 Security Provided by Seller.**

(a) Seller shall, by no later than twenty (20) Business Days following the Effective Date, deliver to Buyer (i) one or more letters of credit issued by Qualified Issuers, (ii) surety bonds, (iii) cash to be held in an escrow account in form and substance satisfactory to Buyer in its sole discretion (an "*Escrow Account*"), or (iv) a guarantee from a Qualified Guarantor, or a combination thereof, in the forms attached hereto as Appendix M-1, or Appendix M-2, as applicable, in the amount of Three Million Eight Hundred Seventy Thousand Dollars (\$3,870,000), and subject to replenishment as set forth in Section 3.3(d), which security shall guarantee Seller's obligations under this Agreement or the Option Agreement prior to the achievement of the Commercial Operation Date (the "*Development Security*"). Seller shall maintain the Development Security until Seller posts the Performance Security pursuant to Section 5.6(b), or until Buyer is required to return the Development Security under Section 5.6(c) below.

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall furnish to Buyer (i) one or more letters of credit issued by Qualified Issuers, (ii) surety bonds, (iii) a guarantee from a Qualified Guarantor, in the forms attached hereto as Appendix M-1, or Appendix M-2, as applicable, or (iv) cash to be held in an Escrow Account, or a combination thereof, in the amount of Twelve Million Five Hundred Seventy Five Thousand Dollars (\$12,575,000), which shall guarantee Seller's obligations under this Agreement or the Option Agreement from and after the Commercial Operation Date (the "*Performance Security*"). Notwithstanding the foregoing, if the Facility as of the Commercial Operation Date is less than 90 MW(ac), the amount of the Performance Security will be reduced to reflect the reduced size of the Facility, rounded up to the nearest increment of 1 MW. For example, if the Facility as of the Commercial Operation Date is 80.5 MW(ac), the amount of the Performance Security will be based on an 81 MW Facility (80.5 MW rounded up to the nearest 1 MW) reduced to an amount equal to .90 multiplied by \$12,575,000, which equals \$11,317,500. Seller may elect to apply the Development Security toward the Performance Security. Seller shall maintain such Performance Security until Buyer is required to return the Performance Security to Seller as set forth in Section 5.6(e) below.

(c) If (i) upon the Commercial Operation Date, no damages or other amounts are due and owing to Buyer under this Agreement and Seller does not elect to apply the Development Security toward the Performance Security, or (ii) this Agreement terminates prior to the occurrence of the Commercial Operation Date while the Development Security is outstanding, then Buyer shall return to Seller the remaining amount of the Development Security (or any portions thereof if damages or other amounts are due and owing to Buyer under this Agreement or the Option Agreement), less any amounts previously drawn by Buyer in accordance with this Agreement, within ten (10) Business Days after Seller's provision of the Performance Security or the effective date of such early termination.

(d) Buyer may draw on the Development Security or the Performance Security, as applicable (i) at any time following the accrual of Daily Delay Damages, Shortfall Liquidated Damages or any other liquidated damages provided for hereunder in the amount of such Daily Delay Damages, Shortfall Liquidated Damages or other liquidated damages, as applicable, or (ii) upon Seller's failure to make a Termination Payment to Buyer in accordance with Section 13.3, in the amount of the unpaid Termination Payment, or (iii) upon Seller's failure to make any other payment due to Buyer hereunder or under the Option Agreement in the amount of the unpaid payment; provided, that, in the case of a draw made under clause (iii), any such amount shall have been invoiced to Seller, shall be past due, and shall not be the subject of a good faith dispute between the Parties in accordance with Section 11.2. Promptly, and in no event more than five (5) Business Days following a draw by Buyer on the Performance Security, Seller shall replenish the amount drawn on the Performance Security such that the amount of the Performance Security is restored to the amount set forth in Section 5.6(b).

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

(f) If any portion of the Development Security or the Performance Security is in the form of a letter of credit or cash, Seller shall provide, or cause to be provided, a replacement letter of credit from a Qualified Issuer or cash in an Escrow Account in the required amount set forth in this Section 5.6 within ten (10) Business Days after the earlier of (i) a Downgrade Event (provided that Seller shall have thirty (30) days if the Downgrade Event is pursuant to clause (c) of that definition), (ii) the date that Seller becomes aware of, or Buyer notifies Seller of, the occurrence of any one of the following events: (A) the failure of the issuer of the letter of credit to renew such letter of credit twenty (20) Business Days prior to the expiration of such letter of credit; or (B) the failure of the issuer of the letter of credit to honor Buyer's properly documented request to draw on such letter of credit in accordance with its terms; or (iii) the issuer of the letter of credit or the bank that holds cash in an Escrow Account becomes Bankrupt.

(g) If any portion of the Development Security or the Performance Security is in the form of a guarantee, then Seller shall provide, or cause to be provided, replacement security in the form of a letter of credit (from a Qualified Issuer) or cash to be held in an Escrow

Account in the required amount set forth in this Section 5.6 within ten (10) Business Days after the earlier of (i) a Downgrade Event (provided that Seller shall have thirty (30) days if the Downgrade Event is pursuant to clause (c) of the definition of Downgrade Event), and (ii) the date that Seller becomes aware, or Buyer notifies Seller of, the occurrence of any one of the following events: (A) the failure of the guarantor to make a payment under the guarantee immediately following Buyer's properly documented claim made pursuant thereto in accordance with its terms; (B) any representation or warranty made by the guarantor in connection with this Agreement or the guarantee is false or misleading in any material respect when made or when deemed made or repeated; (C) the guarantor becomes Bankrupt; (D) the guarantee fails to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement; or (E) the guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its guarantee.

(h) In the event that replacement security in the form of a letter of credit or cash to be held in an Escrow Account, as applicable, in the required amount is not delivered in accordance with Section 5.6(f) or Section 5.6(g), Buyer shall have the right to demand payment of the full amount of the existing Development Security or Performance Security, as applicable, and to retain such amount in order to secure Seller's obligations under this Agreement; provided that, if and to the extent such retained amount exceeds the value of payment and performance in full of all of Seller's obligations under this Agreement, Buyer shall refund any excess amount to Seller promptly after all such obligations of Seller under this Agreement have been paid or performed in full.

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

(j) Notwithstanding the other provisions of this Agreement, each of the Development Security and the Performance Security: (i) constitute security for, but are not a limitation of, Seller's obligations under this Agreement, and (ii) with respect to the Performance Security, shall not, from the Commercial Operation Date, be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

**Section 5.7 Decommissioning and Other Costs.** If Buyer elects to exercise the Project Purchase Option, the Right of First Offer, or the Right of First Refusal, Buyer shall be responsible for all costs of decommissioning or demolition of the Facility, or (subject to the allocation of liabilities as set forth in the Option Agreement, or the purchase agreement for the Right of First Offer or Right of First Refusal) any environmental or other liability associated with the decommissioning or demolition without regard to the timing or cause of the decommissioning or demolition. If Buyer elects not to purchase the Facility pursuant to this Agreement, Buyer shall not be responsible for any costs of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition.



**Section 5.8 Quarterly Certification.** On a quarterly basis from and after the Commercial Operation Date, Seller shall, within fourteen (14) days following the end of each calendar quarter, provide Buyer with a quarterly certification signed by an authorized representative of Seller stating that the representations and warranties set forth in this Agreement remain true and correct as of the date of such certification, and that there exists no Default, or, to the Knowledge of Seller, any event which, with the giving of notice or passage of time, or both, would become a Default by Seller, as of such date, provided that if a Default or such an event exists as of such date, Seller shall list, in detail, the nature of the event, the period during which it has existed and the actions that Seller is taking taken, is taking, or proposes to take with respect to such event.

## **ARTICLE VI PURCHASE AND SALE OF POWER**

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

(a) Prior to the Commercial Operation Date, but no earlier than the date that is up to nine (9) months before the Guaranteed Commercial Operation Date as set forth in Section 3.3(b), Seller shall sell and deliver, and Buyer shall purchase and accept the Startup and Test Energy at the rate for such Energy set forth in Appendix A.

(b) At least one hundred eighty (180) days prior to the Commercial Operation Date as then-anticipated by Seller, (i) Seller shall provide Buyer with a written declaration of the final Contract Capacity of the Facility.

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

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

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

**Section 6.3 Seller's Failure.** Except as provided in Article IX, in no event shall Seller have the right to procure energy from sources other than the Facility for sale and delivery pursuant to this Agreement. During the Delivery Term and subject to the terms and conditions of this Agreement, all of the Energy from the Facility shall be dedicated to Buyer; provided that Seller may sell to any third-party purchaser outside of LADWP's service territory (a) Energy from the Facility sold as provided under Section 7.3(g), (b) Facility Energy, the delivery of

which is curtailed due to a Force Majeure event that prevents Buyer from receiving Energy at the Point of Delivery, or (c) if a Default by Buyer has occurred and is continuing, the Facility Energy that is not accepted by Buyer at the Point of Delivery. Unless excused as set forth herein, if Seller sells to a third party all or any part of the Products required to be delivered by Seller under this Article VI, Article VIII or Article X, then Seller shall pay Buyer, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting (A) the price per MWh that would have been payable by Buyer for the Facility Energy not delivered from (B) the Replacement Price. Buyer shall provide Seller prompt written notice of the Replacement Price, together with back-up documentation.

**Section 6.4 Buyer's Failure.** Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to receive at the Point of Delivery all or any part of the Facility Energy or Replacement Product required to be received by Buyer under this Article VI, Article VIII, or Article X, Buyer shall, on the date payment would otherwise be due to Seller, pay Seller Cover Damages; provided that Seller shall use commercially reasonable efforts to resell any Facility Energy not able to be received by Buyer. "**Cover Damages**" means the positive difference, if any, obtained by subtracting (A) the amount for which Seller, acting in a commercially reasonable manner, resells any such Facility Energy (or, absent any such sales despite using commercially reasonable efforts to procure such sales, zero dollars (\$0)) from (B) the price that would have been payable by Buyer for the Energy not received by Buyer. Seller shall provide Buyer with prompt written notice of the Cover Damages together with back-up documentation.

**Section 6.5 Notice of Expected Annual Generation, Guaranteed Generation, Initial Stub Year and Final Stub Year.** Seller shall notify Buyer of the expected size (in MW) of the Facility, which shall be between 80 MW (ac) and 90 MW (ac) at the Point of Delivery as of the Commercial Operation Date and the corresponding amount of the Expected Annual Generation and the Guaranteed Generation for each Contract Year by no later than the date that is six (6) months prior to the Guaranteed Commercial Operation Date. Upon confirmation thereof by Buyer, the Parties shall update Appendix I to adjust the Expected Annual Generation and the Guaranteed Generation amounts as set forth in Appendix I. Within thirty (30) days after the Commercial Operation Date, Seller shall provide to Buyer a statement of the amount of the Expected Annual Generation and the Guaranteed Generation for each of the Initial Stub Year and the Final Stub Year (with respect to each of the Initial Term and the Extended Term), calculated in accordance with the requirements of Appendix I, and, upon confirmation of such amounts by Buyer, the Parties shall update Appendix I to include such Initial Stub Year and Final Stub Year amounts. Notwithstanding the foregoing, the Contract Capacity installed by Seller may be up to 5 MW (ac) above or below the expected size of the Facility specified in Seller's notice to Buyer, as long as the Contract Capacity is no less than 80 MW (ac) or more than 90 MW (ac), *provided, however*, that the Expected Annual Generation and the Guaranteed Generation set forth in Appendix I shall not be updated to reflect any difference between the expected size set forth in the notice and the actual Contract Capacity.

## ARTICLE VII

### TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

#### Section 7.1 In General.

(a) Seller shall use all reasonable efforts consistent with Prudent Utility Practices to maximize the output of Facility Energy from the Facility. Seller shall arrange for, and shall bear all risks associated with, delivery of all Facility Energy to the Point of Delivery, including that Seller shall arrange and pay for the interconnection of the Facility to the grid and any Transmission Services required to deliver Facility Energy to and at the Point of Delivery, including interconnection costs, charges related to control area services, inadvertent energy flows, transmission losses, and the transmission of Facility Energy, scheduling and transformer crossover fees associated with the transmission of Energy from the on-site substation to the Point of Delivery. In the event Seller procures transmission to sell Energy to a third party, Seller shall be responsible for any costs or charges associated therewith.

(b) Buyer shall be obligated to pay for all Facility Energy delivered to the Point of Delivery, and Buyer shall arrange for, and shall bear all risks associated with, acceptance and transmission of Facility Energy from the Point of Delivery, including that Buyer shall arrange and be responsible for Transmission Services from the Point of Delivery, and shall Schedule or arrange for Scheduling and transmission services with its Transmission Providers to deliver Facility Energy to Buyer, including charges related to control area services, inadvertent energy flows, transmission losses, the transmission of Facility Energy, and otherwise associated with the management of Buyer's load.

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

(a) The Parties agree to the following scheduling procedures: (i) Seller shall notify Buyer and Buyer's Agent on a forward (monthly, weekly and day-ahead) basis, as provided in this Section 7.2 and, as needed, in real time, of any reduction in availability of the Facility that exceeds one (1) MW; (ii) Seller shall make available to Buyer and Buyer's Agent, as a graphical display, the output for the Facility in increments not to exceed one (1) minute averages via a web portal and secure client login; (iii) Seller shall make available to Buyer and Buyer's Agent real-time data of actual output that shall be automatically telemetered to Buyer's or Buyer's Agent's supervisory control and data acquisition ("*SCADA*") system; and (iv) either Buyer or Buyer's Agent shall have the right, in accordance with Section 7.3, to contact Seller and require that the Facility be curtailed or to directly curtail the Facility (collectively, the "*Scheduling Procedures*"), which may be modified, from time to time, by written agreement of the Authorized Representatives of both Parties, including with respect to Buyer, Buyer's Agent, in order to comply with all applicable requirements, including those of the Transmission Provider, WECC or any balancing authority involved in the Scheduling of Energy under this Agreement. The Authorized Representatives shall promptly cooperate with respect to any reasonably necessary and appropriate modifications to Scheduling Procedures.

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

(c) No later than forty-five (45) days before the beginning of each Contract Year, Seller or Seller's Authorized Representative shall provide, or cause to be provided, a non-binding forecast of each month's average-day deliveries of Energy, by hour, for the following twelve (12) months.

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

(e) By 5:30 AM Pacific Prevailing Time ("*PPT*") on the WECC pre-scheduling day immediately preceding the date of delivery of Energy during the Delivery Term, Seller or Seller's Authorized Representative shall provide, or cause the Facility's scheduling coordinator to provide, Buyer or Buyer's Agent with a copy of a non-binding hourly (or as then-appropriate) forecast of deliveries of Energy for each date of delivery of such Facility Energy (the "*Day-Ahead Schedule*"). If the WECC pre-scheduling day pertains to multiple dates of delivery, then this requirement shall apply to each of those dates. After 5:30 AM PPT, Seller, Seller's Authorized Representative, or the Facility's scheduling coordinator may contact Buyer or Buyer's Agent by telephone to provide any Scheduling updates or changes and the reason for such updates or changes. Acceptable reasons for such updates shall be with respect to current conditions (other than commercial considerations), including weather and applicable balancing authority rules.

(f) Commencing on the first date on which Startup and Test Energy is received from the Facility, and continuing throughout the Delivery Term, Seller shall provide to Buyer the following data on a real-time basis:

(i) Read-only access to meteorological and pyranometer measurements, the parameters of which are provided in Appendix G, MW capacity based upon inverter and panel availability, and any other Facility availability information;

(ii) Read-only access to energy output information collected by the SCADA system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide energy output information and pyranometer and meteorological measurements to Buyer in four (4)-second intervals in the form of a one (1)-hour flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back-up for each flat file submittal. Seller shall store such information for up to three (3) months after delivery thereof to Buyer; and

(iii) Read-only access to all Electric Metering Devices (other than meteorological data) installed, owned and operated by Seller at the Facility (the "*Seller's Check Meters*").

All data points shall be provided through the LADWP Distributed Control System that is capable of interfacing with both a primary Remote Terminal Unit for the LADWP Automatic Generation Control and a secondary Remote Terminal Unit for LADWP's Back-up Automatic Generation Control. Communication protocols shall be Distributed Network Protocol ("*DNP*")

3.0. The Automatic Generation Control Remote Terminal Unit shall have interface capability for a PI historian.

(g) During the Delivery Term, if Seller, Seller's Authorized Representative, or the Facility's scheduling coordinator becomes aware of changes to its Day-Ahead Schedule on the actual date of delivery of Facility Energy due to current conditions, including weather or environmental conditions, an unscheduled outage or a scheduling change imposed by Buyer or a Transmission Provider that results in a change to the Facility's deliveries (whether in part or in whole), Seller or Seller's Authorized Representative shall cause the Facility's scheduling coordinator to immediately notify Buyer of any and all changes to the Day-Ahead Schedule and to provide a revised schedule as soon as possible, in either electronic format, via an internet website accessible to Buyer, Buyer's Authorized Representative, Buyer's Agent, Buyer's real time operators, and any other designated Scheduling representative of Buyer, or via email in the form of an excel spreadsheet (or any combination thereof), but in no event later than two (2) hours prior to the first updated hour.

(h) Seller shall provide forecasts and data required under this Section 7.2 in accordance with the following protocols: (i) DNP 3.0 TCP/IP for primary communications between the Facility and Buyer, (ii) DNP 3.0 Serial for backup communication between the Facility and Buyer, and (iii) DNP 3.0 for communication between the LADWP's Distributed Control Systems and Intelligent Electronic Devices (such as SEL Relays, ION Meters, and Areva Relays).

### **Section 7.3 Scheduled Outage; Curtailments.**

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during certain consecutive or nonconsecutive weeks of each Contract Year (not to exceed twelve (12) weeks per Contract Year), but in accordance with Prudent Utility Practices (such periods of time, the "**Major Maintenance Blockout**"). No later than one hundred twenty (120) days prior to the scheduled Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the most recent previous Major Maintenance Blockout notification shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices. No later than sixty (60) days prior to the scheduled Commercial Operation Date and the commencement of each Contract Year thereafter, Seller shall provide Buyer or Buyer's Agent with its non-binding written projection of all Scheduled Outages for the succeeding three (3) calendar years (the "**Scheduled Outage Projection**") reflecting a minimized schedule of scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with Buyer's maintenance scheduling requests consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (i) the anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (iii) the anticipated MW capacity of the Facility, if any, during the Scheduled Outage. Seller shall notify Buyer or Buyer's Agent of any change in the Scheduled Outage Projection as soon as practicable, but in no event later than thirty (30) days prior to the originally-scheduled date of the Scheduled Outage. Seller will use commercially reasonable efforts to accommodate reasonable

requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(b) In the event of a Forced Outage affecting at least ten percent (10%) of the installed capacity of the Facility, to the extent practicable, Seller shall notify Buyer or Buyer's Agent within two (2) hours after the commencement of the Forced Outage and, within seven (7) days thereafter, provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW capacity of the Facility, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

(c) Buyer may require Seller to reduce deliveries of all or any portion of the Facility Energy, and Seller shall comply with any such requirement of Buyer, at any time and for the duration specified by Buyer in a notice to Seller, including for curtailments required by Buyer due to (i) a System Emergency (other than due to a Force Majeure event as described in (ii)), (ii) an event of Force Majeure on Buyer's side of the Point of Delivery (curtailments under subsections (i) and (ii), "***Non-Compensable Curtailments***"), (iii) system improvements and/or scheduled and unscheduled repairs or maintenance on Buyer's side after the Point of Delivery, or periods of testing or commissioning of the Beacon Substation prior to commercial operation of the Beacon Substation (other than due a Force Majeure event as described in (ii) above), (iv) Buyer's failure to Schedule the Facility Energy from the Point of Delivery, and (v) for any other reason, in Buyer's sole discretion (curtailments under subsections (iii), (iv), or (v), "***Compensable Curtailments***"), provided that Buyer may not curtail Facility Energy pursuant to subsections (iii), (iv) and (v) of this Section 7.3(c) in an amount that is greater than seventy-five percent (75%) of the Expected Annual Generation in any Contract Year. Curtailments shall be measured in five (5) minute increments and in a manner that is consistent with the Scheduling Procedures.

(d) Buyer shall not pay Seller for any Non-Compensable Curtailments. Buyer shall only pay Seller for Compensable Curtailments that are in excess of fifty (50) hours calculated on a rolling basis over any two (2) Contract Years, as such amounts may be adjusted on a pro-rata basis during the Initial Stub Year and the Final Stub Year ("***Buyer's Non-Compensable Curtailment Hours***").

(e) During the Agreement Term, the Parties shall reasonably estimate the amount of curtailed Facility Energy that would have been realized had the curtailment not occurred in accordance with Section 7.3(c) ("***Deemed Delivered Energy***").

(f) The Contract Price that Buyer shall pay Seller for Compensable Curtailment is as follows: (i) Deemed Delivered Energy that is not Excess Energy at the Energy price set forth in Section 1 of Appendix A, and (ii) Deemed Delivered Energy that is Excess Energy at the Excess Energy Price set forth in Section 3 of Appendix A. For the avoidance of

doubt, Buyer shall not pay Seller for any Deemed Delivered Energy calculated during Buyer's Non-Compensable Curtailment Hours or during any Non-Compensable Curtailments.

(g) Seller shall use reasonable commercial efforts to sell the curtailed Facility Energy arising during any Compensable Curtailments, including the Environmental Attributes associated therewith, to third parties. Any proceeds from the sale of any curtailed Facility Energy to a third party purchaser shall be the property of Seller, and Buyer shall pay Seller the positive difference between the applicable price for such Facility Energy set forth in Appendix A and the third party sales price for such Facility Energy, including the sale of any Deemed Delivered Energy.

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

**Section 7.4 Title; Risk of Loss.** As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy at and from the Point of Delivery. Seller warrants that it will deliver all Energy and Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to and risk of loss as to all Energy and Environmental Attributes shall pass from Seller to Buyer at the Point of Delivery.

## ARTICLE VIII ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE

**Section 8.1 Transfer of Environmental Attributes.** In addition to the agreement between Buyer and Seller to purchase and sell Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, free and clear of all Liens, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Agreement Term, for all Delivered Energy and Replacement Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of such Environmental Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of (other than Liens on the proceeds of the Environmental Attributes in favor of Facility Lender) and will not in the future assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes. The consideration for the transfer of Environmental Attributes is contained with the relevant prices for Delivered Energy, as set forth in Appendix A.

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

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

**Section 8.4 Use of Accounting System to Transfer Environmental Attributes.** In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS or any successor system to evidence the transfer of any Environmental Attributes considered Renewable Energy Credits under applicable law or any voluntary program ("*WREGIS Certificates*") associated with Facility Energy or Replacement Energy in accordance with WREGIS reporting protocols and shall register the Facility with WREGIS. After the Facility is registered with WREGIS, at Buyer's option, Seller shall, to the extent permissible under WREGIS rules, transfer WREGIS Certificates using the Forward Certificate Transfer method, as described in WREGIS Operating Rules, from Seller's WREGIS account to up to three WREGIS accounts, as designated by Buyer. Seller shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer or Buyer's Authorized Representative, or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring of WREGIS Certificates. Forward Certificate Transfers shall occur monthly based on the certificate creation time-line established by the WREGIS Operating Rules then in effect. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer, Buyer's Authorized Representative, or its designees for purposes of any Renewable Energy Certificates attributed, accrued, realized, generated, produced, recognized or validated relative to the Facility Energy or Replacement Energy, or Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of Renewable Energy Certificates under this Agreement by delivering to Buyer an attestation in the form set forth in Appendix D for the Renewable Energy Certificates produced by the Facility, or Replacement Energy, measured in whole MWh, or by such other method as Buyer may designate. If any of the foregoing is or becomes inconsistent with the WREGIS rules, the Parties shall reasonably cooperate to amend the foregoing procedures in a manner reasonably requested by Buyer consistent with the then-effective WREGIS rules.

**Section 8.5 Further Assurances.** If the functions described in Section 8.4 are not accomplished via WREGIS, Seller will document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for Environmental Attributes (i) produced by the Facility or (ii) included with Replacement Energy for the preceding calendar month. The form of attestation is set forth as Appendix D. At Buyer's request, the Parties shall execute all such documents and instruments and take such other action in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer's Authorized Representatives as



Buyer may reasonably request. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

**Section 8.6 RPS and EPS Compliance.** Subject to Section 8.7, Seller warrants that, when complete, the Facility will be and shall, throughout the Agreement Term, remain RPS Compliant and EPS Compliant. Subject to Section 8.7, Seller shall assume all risks, costs or expenses associated with, arising from, or resulting from, its obligation to keep the Facility both RPS Compliant and, if required by applicable Requirements of Law, EPS Compliant, including any costs or expenses incurred by Seller and paid directly to any third parties in connection with or related to greenhouse gas emissions reporting, WREGIS, or maintenance of a CEC certification and verification (the “*Compliance Costs*”). From time to time and at any time requested by Buyer, Seller will furnish to Governmental Authorities, Buyer or any other Person designated by Buyer, all certificates and other documentation reasonably requested by Buyer in order to assist Buyer in qualifying the Facility as RPS Compliant and EPS Compliant, if required by applicable Requirements of Law.

**Section 8.7 Change in Law.** In the event of a Change in Law after the Effective Date that impacts the ability of the Facility to remain RPS Compliant or EPS Compliant, or that changes any Compliance Costs required to bring the Facility into RPS Compliance or EPS Compliance, Seller will take all commercially reasonable actions to continue to satisfy Seller’s warranty and obligations under Section 8.6. If, despite taking such commercially reasonable actions, Seller fails to meet its warranty under Section 8.6, then the Buyer shall pay Seller the Market Price Index, or such other market price index as the Parties may mutually agree upon, for time periods that are comparable to the time during which the Facility is not in compliance, whether a short-term period of noncompliance or a longer, permanent period of noncompliance, for the amount of Facility Energy or Replacement Energy that is delivered to Buyer.

## ARTICLE IX MAKEUP OF SHORTFALL ENERGY

**Section 9.1 Makeup of Shortfall.** If in any Contract Year (which, with respect to (a) the Initial Stub Year together with the first calendar year following the Initial Stub Year, and (b) the twenty-sixth (26<sup>th</sup>), or twenty-ninth (29<sup>th</sup>), if applicable, calendar year together with the Final Stub Year, shall be treated for purposes of this Article IX as a single Contract Year), the amount of Delivered Energy is less than the Guaranteed Generation for such Contract Year (such difference in amount for such Contract Year, the “*Shortfall Energy*”), then, subject to Section 9.2, Seller shall remedy such shortfall by delivering Facility Energy in excess of the Guaranteed Generation to the Point of Delivery, including all associated Environmental Attributes, to Buyer in an amount equal to the Shortfall Energy during the Contract Year immediately following the Contract Year in which the Shortfall Energy accrues (the “*Shortfall Make Up Period*”). The Shortfall Make Up Period may be extended, on a day-for-day basis, to allow Seller to make up Shortfall Energy that is due to the occurrence of Force Majeure Events declared by Seller, but in no event longer than two (2) Contract Years following the end of the Shortfall Make Up Period.

**Section 9.2 Replacement Energy.** If Seller fails to deliver any Shortfall Energy by the end of the Shortfall Make Up Period, Seller shall, within ninety (90)-days after the end of the Shortfall Make Up Period ("**Replacement Period**") on a delivery schedule consistent with the Facility's historic percentage of On Peak and Off Peak Delivered Energy, or other delivery schedules as mutually agreed upon by the Parties, provide Buyer with Replacement Energy at the Point of Delivery (or such other point as mutually agreed to in writing by the Parties) to replace such undelivered Shortfall Energy. As used in this Agreement, "**Replacement Energy**" means Energy produced by a facility (or facilities) other than the Facility that, at the time delivered to Buyer: (a) is both RPS Compliant and EPS Compliant, and (b) qualifies under California Public Utilities Code Section 399.16(b)(1). Seller shall also provide associated Capacity Rights and Environmental Attributes. Such Environmental Attributes shall have the same or comparable value, including with respect to the timeframe for retirement of such Environmental Attributes, if any, as the Environmental Attributes that would have been generated by the Facility during the period for which the Replacement Energy is being provided. If Seller cures Shortfall Energy with Replacement Energy, such deliveries of Replacement Energy shall be limited to an amount that shall not, at any time, exceed a total amount of MW per hour in excess of the Contract Capacity, including any hourly generation from the Facility, except as may be expressly agreed upon by Buyer in its sole discretion. If Seller fails to deliver Replacement Energy as described above, then Buyer may purchase Replacement Energy and associated Environmental Attributes, promptly notify Seller of the costs thereof, and Seller shall reimburse Buyer for Buyer's costs of such Replacement Energy and associated Environmental Attributes. If Seller fails to deliver Replacement Energy as described above, and Buyer thereafter elects not to purchase Replacement Energy and associated Environmental Attributes, Seller shall have no obligation to reimburse Buyer for Buyer's costs of such Replacement Energy and associated Environmental Attributes, and such Energy shall be deemed as Delivered Energy only for purposes of determining the Guaranteed Generation (but Seller shall not receive any payment therefor). If Buyer elects to purchase Replacement Energy and associated Environmental Attributes, and, despite using commercially reasonable efforts, cannot purchase Replacement Energy and associated Environmental Attributes, such Energy shall not be considered Deemed Delivered Energy for purposes of determining the Guaranteed Generation, and Seller shall be responsible for Shortfall Liquidated Damages as set forth in Section 9.3.

**Section 9.3 Shortfall Liquidated Damages.**

(a) If at the end of the Replacement Period there remains any Shortfall Energy that has not been cured with Facility Energy or Replacement Energy in accordance with Section 9.1 and Section 9.2, Seller shall immediately pay Buyer, as liquidated damages, an amount for each MWh of Shortfall Energy equal to the sum of the time weighted average of the (i) Market Price Index for such Energy and (ii) Green Value associated therewith (collectively, the "**Shortfall Liquidated Damages**").

(b) The Parties acknowledge and agree that the damages that Buyer would incur due to the failure to deliver the Shortfall Energy would be difficult or impossible to predict with certainty, and it is impractical and difficult to assess actual damages in those circumstances and, therefore, the payment of Shortfall Liquidated Damages is a fair and reasonable remedy for such damages. The provision of Shortfall Liquidated Damages shall be in lieu of actual damages for the occurrence of any Shortfall Energy hereunder that is not cured with Facility Energy

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

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

## **ARTICLE X CAPACITY RIGHTS**

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

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

**Section 10.3 Further Assurances.** Seller shall execute and deliver such necessary documents and instruments and take such other action as Buyer may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

## **ARTICLE XI BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS**

**Section 11.1 Billing and Payment.** Billing and payment for the Energy purchases by Buyer under this Agreement and for any other amounts due and payable by Buyer hereunder shall be as follows:

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

- (i) Startup and Test Energy billed pursuant to Appendix A, if any.
- (ii) Delivered Energy, including: (1) an accounting of the Guaranteed Generation for the applicable Contract Year, (2) an accounting of new or made-up Shortfall Energy and/or Replacement Energy, if applicable, and (3) a confirmation as to whether Seller met or exceeded the Guaranteed Generation.
- (iii) Excess Energy billed pursuant to Appendix A.
- (iv) Any reimbursement to Buyer for the purchase of Replacement Energy.
- (v) The amount of Buyer's Non-Compensable Curtailment Hours incurred during such period in accordance with Section 7.3, including the cumulative total of Buyer's Non-Compensable Curtailment Hours incurred during the current Contract Year and the prior Contract Year, including the current billing period, and consistent with the Scheduling Procedures
- (vi) Seller's reasonable calculation of the amount of Deemed Delivered Energy and amounts owed by Buyer in accordance with Section 7.3(e), (f), (g) and (h).
- (vii) The amount of money received by Seller, if any, associated with the sale of any curtailed Facility Energy under Section 7.3(g).
- (viii) Any other payments due to Buyer or to Seller under this Agreement, including amounts due to Buyer in connection with third party sales of curtailed Energy under Section 6.3 or Section 7.3(g).
- (b) Monthly invoices, to the extent applicable, shall be based on meter readings as described in Section 11.5.
- (c) Monthly invoices shall be sent to the address set forth in Appendix C or such other address as is provided by Buyer in writing.
- (d) Buyer shall pay the amounts set forth in each monthly invoice by wire transfer to the accounts designated on the invoice rendered by Seller on or before the thirtieth (30<sup>th</sup>) day after receipt by Buyer of the applicable invoice. Bills or portions of bills which are not paid by the due date shall thereafter accrue interest at the Interest Rate, from and including the date payment was due until the date such payment is made. Seller shall pay to Buyer any amount owed to Buyer as set forth in Section 11.1(a)(iv) and Section 11.1(a)(v) with respect to any month at the time Seller submits its next monthly invoice to Buyer, but in no event more than thirty (30) days after the date of the invoice showing any amount is owed to Buyer.
- (e) Attestations of Environmental Attribute transfers to Buyer pursuant to Section 8.1 shall accompany monthly invoices.

**Section 11.2 Disputed Invoices.** In the event any portion of any bill is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify

the other Party in writing of the basis for the dispute. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 14.3. Upon resolution of any dispute, the required amount of payment or refund shall be paid within ten (10) days after such determination, with interest accrued at the Interest Rate from and including the due date until the date such payment or refund is paid.

**Section 11.3 Buyer's Right of Setoff.** In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time, without notice to Seller or any other Person (any such notice being hereby expressly waived) to set off against any amount due Seller from Buyer under this Agreement, any amount due Buyer from Seller under this Agreement, including any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 9.2 if and to the extent paid in the first instance by Buyer.

#### **Section 11.4 Records and Audits.**

(a) Seller shall cause any subcontractors and suppliers providing services or supplies under this Agreement (such subcontractors or suppliers, "**Subcontractors**") to maintain, and Seller shall itself maintain, all records pertaining to the management of this Agreement, related subcontracts, and performance of services pursuant to this Agreement (including all billings, costs, metering, and Environmental Attributes), in their original form, including reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to verify all costs claimed to have been incurred and services performed pursuant to this Agreement. Buyer and the Authorized Auditors shall have the right to discuss any such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as may be reasonably requested, and all such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder, or, if the payment is made in the last year of the Delivery Term, no less than the four (4) years following the expiration or termination date of this Agreement. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at Seller's offices located at all reasonable times and without charge. The Authorized Auditors shall have the right to reproduce, photocopy, download, transcribe, and the like, any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. In addition, Seller, its Subcontractors and the subcontractors of all agreements entered into after the Effective Date and having a value in excess of \$25,000 (such subcontractors, "**Major Subcontractors**") shall be subject at any time with fourteen (14) days prior written notice to audits or examinations by Authorized Auditors to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. All such records subject to audit or examination shall be retained by the Major Subcontractor for a period of not less than four (4) years following the

final payment by Seller to such Major Subcontractor. Examinations and audits will be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to FAR, Part 30 and 31, *et seq.* accounting procedures, or a portion thereof, examinations and audits will utilize such information. To the extent that the Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller will be provided fourteen (14) days to review the Authorized Auditor's examination results or audit and respond to Buyer's prior to the examination's or audit's finalization and public release. If the Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within thirty (30) days of notice to Seller of the identified overpayment. Seller shall contractually require all Major Subcontractors to comply with the provisions of this Section by inserting this Section 11.4 in each Major Subcontractor contract and by contractually requiring each Major Subcontractor to insert this Section 11.4 in any of its subcontractor contracts related to services under this Agreement. In addition, Seller and its Major Subcontractors shall also include the following language in each Subcontractor contract: "The Southern California Public Power Authority is a third party beneficiary of the foregoing audit provision. The benefits of the audit provision shall inure solely for the benefit of the Southern California Public Power Authority. The designation of the Southern California Public Power Authority as a third party beneficiary of the audit provision shall not confer any rights or privileges on Seller, subcontractor or any other person/entity." Notwithstanding the foregoing, if the audit reveals that Buyer's overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. Such examination or audit expenses and costs shall be paid by Seller to Buyer within thirty (30) days of notice to Seller of such costs and expenses.

#### **Section 11.5 Electric Metering Devices.**

(a) The Facility Energy made available to Buyer or Buyer's Agent by Seller under this Agreement shall be measured using Electric Metering Devices procured, installed, owned and maintained by Seller at the high side of the step-up transformer at the Facility substation (the "**Project Substation**") as depicted and labeled "Revenue Metering System" in the single-line diagram attached to this Agreement as Appendix R. All such Electric Metering Devices used to provide data for the computation of payments shall be sealed and Seller shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 11.5.

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

placing backup meters at the same point of metering or installing one meter at each branch (i.e. gross, aux, and net) so the missing telemetry data may be calculated as a difference.

(c) Seller, at no expense to Buyer, shall inspect and test all such Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit a representative of Buyer or Buyer's Agent to witness and verify, such inspections and tests. Upon request by Buyer or Buyer's Agent, Seller shall perform additional inspections or tests of any such Electric Metering Devices and shall permit a qualified representative of Buyer or Buyer's Agent to inspect or witness the testing of any such Electric Metering Devices. The actual expense of any such requested additional inspection or testing shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyer and Buyer's Agent. Any representative of Buyer witnessing or verifying a test under this Section 11.5(c) shall (i) not interfere with Seller's performance of such test, and (ii) comply with any written site-specific rules or regulations.

(d) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than plus or minus one percent (+/- 1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Buyer's Check Meters or as far as can be reasonably ascertained by Buyer or Buyer's Agent from the best available data, subject to review and approval by Seller (such approval not to be unreasonably withheld). If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-third of the time elapsed since the preceding test of the Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.5 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

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

(f) At Buyer's or Buyer's Agent's option, Buyer may install, own and operate Electric Metering Devices at the Project Substation and/or the Point of Delivery ("**Buyer's Check Meters**"). Seller shall, and shall cause each of its contractors and subcontractors to grant to Buyer and Buyer's Agent rights of access to the Buyer's Check Meters during normal working hours and subject to Seller's, and Seller's contractors' and/or subcontractors' reasonable requirements and procedures in respect of safety. Commencing on the first date on which Startup and Test Energy is received from the Facility, and continuing throughout the Delivery Term,

Buyer shall provide to Seller on a real-time basis read-only access to Buyer's Check Meters. Buyer's Check Meters shall be for check purposes only and shall not be used for the measurement of Facility Energy, except as provided in Section 11.5(d) above. The installation, operation and maintenance of Buyer's Check Meters shall be performed entirely by Buyer or Buyer's Agent at Buyer's sole cost and expense.

**Section 11.6 Satisfaction of Metering Side Letter Obligations.** The Parties acknowledge and agree that the obligations of Buyer and Seller with respect to the Metering Side Letter shall be satisfied upon the execution and delivery of this Agreement.

## ARTICLE XII REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

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

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

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

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

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



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

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

(a) Each of the Seller Parties is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is qualified to do business in the State of California and has the legal power and authority to own its properties, and to carry on its business as now being conducted. Each of the Seller Parties has the legal power and authority to enter into this Agreement and each Ancillary Document to which it is a party and, subject to the receipt of additional regulatory approvals, to carry out the transactions contemplated hereby and thereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and each Ancillary Document to which it is a party.

(b) The execution, delivery and performance by each Seller Party of this Agreement and each Ancillary Document to which it is a party have been duly authorized by all necessary limited liability company action, and do not and will not require any consent or approval of such Seller Party's managing member or equity holders other than that which has been obtained. As of the Effective Date, Seller has delivered to Buyer (i) copies of all resolutions and other documents evidencing such limited liability company actions, certified by an authorized representative of such Seller Party as being true, correct and complete, and (ii) an incumbency certificate signed by the secretary of such Seller Party certifying as to the names and signatures of the authorized representatives of such Seller Party.

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

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

(e) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting any Seller Party before any Governmental Authority that purports to affect

the legality, validity or enforceability of this Agreement or any Ancillary Document to which it is a party.

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

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

(h) As of the Effective Date, the organizational structure and ownership of Seller and each Upstream Equity Owner, including a list of each of such entity's Principals, is as set forth in Section 2 of Schedule 12.2(h). Schedule 12.2(h) may be updated from time to time by agreement of Buyer and Seller to account for a Change in Control that has been consented to by Buyer in accordance with this Agreement.

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

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

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

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

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

(n) Seller has Site Control. Seller's agents and representatives have visited, inspected and become familiar with the Real Property and its surface physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, and topographical, solar radiation, and air and water quality conditions. Seller is familiar with all local and other conditions that may be material to Seller's performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, handling and storage of materials and equipment, and availability and quality of labor and utilities). Seller has determined that the Real Property constitutes an acceptable and suitable site for the construction and operation of the Facility and the associated transmission line in accordance herewith.

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

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

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

(a) Seller shall at all times maintain Site Control and keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with, by or on behalf of Seller from time to time pursuant to the Real Property Agreements, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, is grounds for a termination of Seller's rights under the Real Property Agreements.

(b) Seller may from time to time prior to the Commercial Operation Date supplement the Real Property Agreements listed in Appendix H to include such additional easements, rights-of-way and other agreements as may be required by Seller to perform its obligations under this Agreement. Seller shall provide Buyer with prior written notice of the addition of any Real Property Agreements, and the Parties shall incorporate them into Appendix H. Any such additional Real Property Agreements shall be subject to the terms and conditions of this Section 12.4. Seller shall at all times prevent the imposition of any Liens or encumbrances, other than Permitted Encumbrances, on the real property that is subject to the Real Property Agreements. In the event a Lien or encumbrance other than a Permitted Encumbrance is imposed on any property subject to a Real Property Agreement, Seller shall give

Buyer immediate notice thereof and shall take immediate action to release such Lien or encumbrance.

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

(d) Seller shall not develop or improve the Real Property other than so as to provide for the facilities and improvements of the Facility and the transmission line to be located thereon in accordance with this Agreement and the terms and conditions of any Permits and Environmental Documents. Notwithstanding the foregoing, prior to the Commercial Operation Date, Seller may remove any portions of, or rights or interests in, the Real Property, or amend or terminate any of the Real Property Agreements; provided that such action shall not reduce or have any other effect on the Contract Capacity, the Expected Annual Generation, the Guaranteed Generation, or the Facility as described in this Agreement, or cause Seller to be out of compliance with its Permits. Following the Commercial Operation Date, Seller may not remove any portions of or rights or interests in the Real Property under the Real Property Agreements or amend or terminate any of the Real Property Agreements, or otherwise alter, diminish, or otherwise impact any obligation of Seller under this Agreement, unless Buyer has provided prior written consent to Seller, such consent to be determined in Buyer's reasonable discretion.

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

(f) Seller shall give Buyer immediate notice of (i) any default notice received by Seller or the Lessor or delivered by Seller or the Lessor under any of the Real Property Agreements, or (ii) the commencement of any action or proceeding or arbitration pertaining to any Real Property Agreement. Buyer, at its option, may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller or the Lessor under a Real Property Agreement. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller or the Lessor, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration in connection with a Real Property Agreement.

(g) Upon any payment by Buyer under any of the Real Property Agreements to cure any default of Seller or the Lessor thereunder, and thereby prevent termination of any of

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

(h) In the event of a (i) complete taking of the Facility or any substantial portion thereof, or (ii) a partial taking of a portion of the Facility under a statute or by right of eminent domain or private purchase in lieu thereof, Seller or the Lessor shall pay Buyer, from the sum awarded to and received by Seller or the Lessor, including damages and interest, the amount of the loss in value of this Agreement to Buyer resulting from such complete or partial taking.

(i) Seller shall provide Buyer with evidence that the rent, fees or other payments payable by Seller under the Real Property Agreements have been paid at least ten (10) days prior to the date on which such rent, fees or other payments would be delinquent. If Seller does not provide Buyer with such evidence within five (5) days after receipt of written request for the same and if such rent, fees or other payments have not been paid, Buyer, as beneficiary under the Development Security and the Performance Security, may, but shall not be obligated to, cure such default by Seller as provided under Section 12.4(f).

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

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

(b) Seller shall provide Buyer with at least one hundred twenty (120) days' prior written notice of the consummation of a Tax Equity Financing, which notice shall include (i) introductory and contact information about and for any potential Tax Equity Investors, (ii) a summary of the provisions related to, and the structure surrounding, the power to control the management and policies of Seller, and any entity that is jointly-owned by any Upstream Equity Owner and such Tax Equity Investor arising in connection with the Tax Equity Financing, and (iii) a statement of the circumstances under which such provisions and structure could be modified by such Tax Equity Investor. Such notice shall be in addition to, and not in lieu of, any notice required under Section 14.6.

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

(d) It shall be a Default (which shall be subject to cure only if such Default is reasonably capable of being promptly and completely cured by Seller, and if not capable of being promptly and completely cured by Seller, shall be an immediate Default without opportunity to cure hereunder) should Seller enter into a Sale Leaseback Financing unless the Lessor or Lessors thereunder and Seller shall have concurrently entered into an agreement with Buyer providing for (i) substantially the terms set forth in Appendix E, (ii) an estoppel certificate certifying that this Agreement remains in full force and effect and binding on Seller and that each Real Property

Agreement remains in full force and effect and binding on the third parties thereto, and (iii) a binding obligation of such Lessor or Lessors and Seller, upon any exercise by Buyer of its Project Purchase Option by delivery of the Purchase Option Exercise Notice as provided under Section 2.5 of the Option Agreement, to terminate such Sale Leaseback Financing prior to the Closing of the purchase by Buyer of the Facility Assets (as such terms are defined in the Option Agreement) by the reconveyance of the Facility Assets or the Facility Site, as applicable, by such Lessor or Lessors to Seller and the termination of the lease of the Facility or the Facility Site, as applicable, by such Lessor or Lessors and Seller, and the transfer upon the Closing of the Facility from such Lessor to Seller, and from Seller to Buyer, or directly from Lessor to Buyer, in either case, in accordance with the terms and conditions set forth in the Option Agreement.

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

#### **Section 12.6 Additional Covenants of Seller.**

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

(b) Seller and each Seller Party shall maintain, and shall cause any Affiliates to maintain, in full force and effect, the Co-Tenancy Agreement and any Shared Facilities Agreement in form and substance approved by Buyer, and shall not permit any material amendment to or modification of, the Co-Tenancy Agreement or any Shared Facilities Agreement without the consent of Buyer.

(c) In recognition of emerging storage technologies and opportunities that will continue to evolve throughout the Agreement Term, the Parties shall cooperate to mutually agree upon the terms and conditions under which the use of any such storage technologies or opportunities may be incorporated into the Facility, including with respect to timing and scheduling of deliveries of Energy. The Parties shall mutually agree on amendments to this Agreement and the Option Agreement, if any, to address the addition of such storage technologies. Seller shall not incorporate or use storage technology or any kind in connection with the Facility without the prior written consent of Buyer.

### **ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES**

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

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

(b) **Performance Defaults.** Failure by either Party or Seller Party to perform any of its duties or obligations under this Agreement or the Option Agreement when and as due (other than (i) the failure to make any payment, which is addressed in Section 13.1(a), (ii) the failure to provide the Development Security in accordance with Section 2.1, which shall be an immediate Default and a "Security Default" as set forth in Section 13.1(e), (iii) the failure by Seller to perform under Section 3.3(b), for which Seller shall have ten (10) days to cure following written notice by Buyer, (iv) the failure by Seller to replenish the Development Security within the cure period provided under Section 3.3(d), (v) the failure of Seller to achieve the Commercial Operation Date by the Outside COD, which Buyer may declare to be an immediate Default, (vi) a Default under Section 12.5(d), and (vii) except as otherwise set forth in this Agreement), which is not cured within thirty (30) days after receipt of written notice thereof from the other Party; provided that if such failure cannot be cured within such thirty (30) day period, despite reasonable commercial efforts, such Party shall have up to ninety (90) days to cure.

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

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

(e) **Security Default.** The failure of Seller to timely issue, maintain or replace the Development Security or the Performance Security in compliance with the provisions of Section 3.3(d) or Section 5.6.

(f) **Insurance Default.** The failure of Seller to maintain and provide the required insurance for the required period of coverage as set forth in Appendix F, which is not cured within ten (10) days after receipt of written notice thereof from the Buyer.

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

(h) **Real Property Agreement Default.** Except as may be expressly permitted by this Agreement, any Real Property Agreement fails to be in effect or is terminated for any reason, or amended in any material respect, without Buyer's written consent, not to be unreasonably withheld.

(i) **Commercial Operation Date Default.** Failure by Seller to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date, as may be extended pursuant to Section 3.3(e), plus any extension for the payment of Daily Delay Damages for up to 270 days (but in no event beyond the Outside COD).

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

### **Section 13.2 Default Remedy.**

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may, at its sole option, (i) suspend service, (ii) sell Facility Energy, Environmental Attributes and Capacity Rights to third parties pursuant to and in accordance with Section 6.3, or (iii) continue to provide services pursuant to its obligations under this Agreement; provided that nothing in this Section 13.2(a) shall affect Seller's other rights and remedies set forth in this Section 13.2; and provided, further, that Facility Energy sold to third parties shall not count toward the Guaranteed Generation hereunder. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

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

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

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Development Security or Performance Security against any amounts then payable by Seller to Buyer under this Agreement, (ii) termination of this Agreement pursuant to Section 13.3, and (iii) exercise its rights under the Project Purchase Option, subject to the provisions of this Agreement, in each case upon notice of intent to terminate this Agreement to Seller. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(e) Notwithstanding the provisions of this Agreement and the rights of Buyer hereunder, the expiration or termination for any reason of this Agreement shall not cause the termination of, and shall have no other effect on, the Real Property Agreements or the Generator Interconnection Agreement.



### Section 13.3 Termination for Default.

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

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

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

(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment, which notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Termination Payment shall be zero.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding Dispute resolution as provided in Section 14.3(a). Following resolution of the Dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

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

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

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

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

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

(g) At the time for payment of any amount due under this Section, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 13.3(a)(ii)).

**Section 13.4 Cure Rights of Facility Lender and Buyer.** Buyer shall provide such consents to assignment, substantially in the form attached as Appendix O, as may be reasonably requested by Seller or any Facility Lender (other than a Tax Equity Investor); provided that the terms of such financing or refinancing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement (such consent, the “**Consent and Agreement**”). The Consent and Agreement shall provide such Facility Lender or its agent notice of the occurrence of any Default described in Section 13.1 and (if permitted under this Agreement) the opportunity to cure any such default, and shall require that the provisions of any Financing Agreement provide Buyer with the right, but not the obligation, at any time, to pay any or all amounts due from Seller thereunder, and to do any other act or thing required of Seller, in each case to cure any default of Seller thereunder, or to prevent the termination of such Financing Agreement or the exercise of any remedy by the Facility Lender thereunder that could preclude or impede Buyer from exercising its Project Purchase Option. Seller shall promptly repay Buyer for any costs or expenses incurred by Buyer in making any such payments or

otherwise incurred by Buyer in connection with curing a default by Seller. In addition, Buyer shall, if reasonably requested by a Tax Equity Investor, provide a written consent providing such Tax Equity Investor with the right, but not the obligation, at any time, to pay any or all amounts due from Seller to Buyer hereunder, and to do any other act or thing required of Seller, in each case to cure any default of Seller under this Agreement in a manner that is consistent with the applicable terms and conditions of this Agreement and the Option Agreement, and to provide a customary estoppel certificate, provided that the terms and conditions of any such consent, or any such estoppel certificate, shall have no (and could not reasonably be expected to have any) adverse effect on Buyer's rights under this Agreement or the Option Agreement, and, except for a reasonable additional cure period for the Tax Equity Investor to cure a default of Seller as set forth in the consent with such Tax Equity Investor, shall be consistent with the terms and conditions of this Agreement. Seller shall bear any costs and expenses, including reasonable attorneys' fees, incurred by Buyer in the negotiation of such consent and estoppel certificate required by a Tax Equity Investor hereunder.

#### ARTICLE XIV MISCELLANEOUS

**Section 14.1 Authorized Representative.** Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each, an "*Authorized Representative*"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after the Effective Date, each Party shall notify the other Party in writing of the identity of its Authorized Representative and alternate if designated. Each Party shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement. Prior to the Commercial Operation Date, the Authorized Representative of each Party will meet periodically to discuss issues related to the sharing of information on the development, construction, design and operation and maintenance of the Facility; provided, however, except as otherwise provided herein with respect to the scheduling of Startup and Test Energy, that Buyer shall have no right to approve Seller's schedules or budgets. Each Party by notice to the other Party may also designate a Person as its designee as provided in this Agreement and Buyer may appoint Buyer's Agent. To the extent that an Authorized Representative's contact information is not provided in Appendix C, at the time a Party designates such Authorized Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative's contact information.

**Section 14.2 Notices.** All notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be in writing and shall be deemed properly sent if delivered in person, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix C. The Parties may update Appendix C, from time to time, to designate another person, address or office to which notices shall be delivered by delivering notice to the other Parties in accordance with this Agreement. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

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

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

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

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 14.3(a) and Section 14.3(b) by the expiration of the thirty (30) day period set forth in Section 14.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 14.11 of this Agreement.

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

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

**Section 14.5 Force Majeure.**

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement (other than the obligations of a Party to make payment of amounts due under this Agreement) when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate; provided the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial occurrence of the claimed

Force Majeure) (the "*Force Majeure Notice*"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time the Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. Notwithstanding anything in this Agreement to the contrary, if Seller is unable to deliver or Buyer is unable to receive Excess Energy due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Excess Energy not delivered or received by reason thereof. It is understood by the Parties that, subject to the provisions of Section 7.3, the foregoing provisions shall not excuse any obligations of Seller with respect to delivery of the Guaranteed Generation under Article VI, or Shortfall Energy and Replacement Energy provided under Article IX, or Buyer's obligation to make Monthly Payments up to the time that Seller ceases deliveries of Energy due to Force Majeure. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term "*Force Majeure*" means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, terrorism, storm or flood, fire or explosion or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities (i) which prevents one Party from performing any of its obligations under this Agreement, (ii) which could not reasonably be anticipated as of the date of this Agreement, (iii) which is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such Affiliate or subcontractor is responsible), and (iv) which by the exercise of due diligence and acting in accordance with the Requirements the affected Party is unable to overcome or avoid or cause to be avoided; provided nothing in this clause (iv) shall be construed so as to require either Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise reasonable efforts to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each, an "*Unexcused Cause*"): (1) any requirement to meet an RPS Law or any change (whether voluntary or mandatory) in any EPS Law RPS Law, including due to a Change in Law; (2) the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement, except to the extent such failure was itself caused by an event of Force Majeure; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Energy at prices in excess of those provided in this Agreement or Buyer's ability to purchase any Energy at prices less than those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service unless such curtailment or interruption was itself caused by an event of Force Majeure; (7) failure of third parties to provide goods and services essential to a Party's performance, unless such failure was itself caused by an event of Force Majeure; (8) Facility or related equipment failure of any kind, unless such failure was itself caused by an event of Force

Majeure; or (9) any changes in the financial condition of Buyer, Seller, a Facility Lender or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement.

(c) Buyer may terminate the Agreement if a Force Majeure event occurs that, (i) prior to the achievement of the Commercial Operation Date, would delay completion of the Facility for a period not to exceed twenty four (24) months from the date of the occurrence of the Force Majeure event (following confirmation thereof by an independent engineer mutually acceptable to both Parties), or (ii) after the Commercial Operation Date, either (A) diminishes the production of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive months, or (B) renders the Facility inoperable and an independent engineer that is mutually acceptable to both Parties determines that the Facility cannot be repaired or replaced within a period not to exceed twenty four (24) months from the date of the occurrence of the Force Majeure event; provided that, for the avoidance of doubt, any election by Seller to complete, repair or replace the Facility following a confirmation by the independent engineer pursuant to clause (ii)(B) hereof that such repair or replacement of the Facility can be completed within a period not to exceed twenty four (24) months from the date of the occurrence of the Force Majeure event shall toll Buyer's termination right hereunder, so long as Seller immediately undertakes best efforts to complete such repair or replacement within such twenty four (24) month period, and such repairs or replacement are complete no more than thirty (30) months from the date of the occurrence of the Force Majeure event. If, thirty (30) months from the date of the occurrence of the Force Majeure event, Seller has not completed such repairs or replacement of the Facility, Buyer may terminate this Agreement.

(d) Any termination of this Agreement under this Section 14.5 shall be "no-fault" and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, the Parties shall discharge their payment obligations for any and all amounts hereunder that may be owing, including for any existing Shortfall Energy or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the Development Security or Performance Security, as applicable, less any amounts drawn by Buyer in accordance with this Agreement. The exercise by Buyer of its right to terminate the Agreement shall not render Buyer liable for any losses or damages incurred by Seller whatsoever.

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

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

the Ancillary Documents and agree to be bound by all the terms and conditions of this Agreement and Ancillary Documents, as applicable, or the successor entity shall acknowledge the continuing obligations of Seller to perform all of the obligations of Seller under this Agreement and the Ancillary Documents.

(b) Buyer may assign this Agreement or the Ancillary Documents, without the consent of Seller, to one or more members of Buyer, to a California municipal utility, to a joint powers authority established under the Act, or to a California municipal district that provides electric utility service to customers in its district, so long as, at the time of such assignment, such assignee has, and is reasonably forecasted to maintain, an investment grade rating from either Moody's of "Baa2" or Standard & Poor's of "BBB", or the equivalent ratings by any other credit rating agency of national standing, and so long as such credit rating is not on negative watch.

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

(d) Buyer's consent shall not be required in connection with the collateral assignment or pledge of (i) this Agreement or the Option Agreement to any Facility Lender, or (ii) all or a portion of the membership interests in Seller or a Seller Upstream Equity Owner, in either case, for the purpose of financing or refinancing of the development, construction, ownership and operation of the Facility; provided, however, that (1) the terms of such financing or refinancing, and the documentation relating thereto, comply with the applicable terms and conditions of this Agreement and the Option Agreement, as applicable, and (2) in connection with any such assignment or pledge and the exercise of remedies by any Facility Lender, the Facility Lender acknowledges and agrees to be bound by the requirement that the Facility be operated and maintained by a Qualified Operator. Seller shall provide Buyer with ninety (90) days' prior notice of any such collateral assignment or pledge. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Energy, Environmental Attributes or Capacity Rights (not including the proceeds thereof) to any Facility Lender.

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

(f) In no event shall Buyer be liable to any Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement or the Option Agreement, as applicable. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, such Facility Lender shall be bound by the covenants and agreements of Seller in this Agreement and the Option Agreement; provided, however, that until

the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of all or any portion of the Facility by Facility Lender shall be made only to an entity that is a Qualified Transferee.

(g) Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.6.

**Section 14.7 Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

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

**Section 14.9 Voluntary Execution.** Both Parties acknowledge that they have read and fully understand the content and effect of this Agreement that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

**Section 14.10 Entire Agreement; Amendments.** This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.



**Section 14.11 Governing Law.** This Agreement shall be governed by, interpreted and enforced in accordance with and construed under the laws of the State of California without regard to conflict of law principles.

**Section 14.12 Venue.** All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

**Section 14.13 Execution in Counterparts.** This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if both signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

**Section 14.14 Effect of Section Headings.** Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

**Section 14.15 Waiver.** The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from pursuing any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Each Party acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that either Party may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Each Party hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

**Section 14.16 Relationship of the Parties.** This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

**Section 14.17 Indemnification; Damage or Destruction; Insurance; Limit of Liability.**

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless Buyer, its Board of Directors, officers and employees, and, at the option of Buyer, defend Buyer, and any and all of its Board of Directors, officers, agents, employees, advisors,

and Authorized Representatives from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Seller's employees and agents, or damage or destruction to any property of either Party or third persons, or in any manner arising by reason of any breach of this Agreement by Seller, or by any failure of a representation of Seller to be true in all material respects, or by the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of Seller's officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of Buyer, its Board of Directors, officers, agents, or employees.

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

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

(d) **Condemnation or Other Taking.** For the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility or any portion thereof. Buyer may participate in any such proceeding and Seller will deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent, Seller shall not (i) agree to any compensation or award, nor (ii) take any action or fail to take any action which would cause the compensation to be determined. Subject to the consent of the Facility Lender, all awards and compensation for the taking or purchase in lieu of condemnation of the Facility or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility.

(e) **LIMITATION OF LIABILITY.** EXCEPT TO THE EXTENT INCLUDED IN (I) THE DAILY DELAY DAMAGES, SHORTFALL LIQUIDATED DAMAGES OR ANY OTHER LIQUIDATED DAMAGES, (II) INDEMNIFICATION OBLIGATIONS, AND (III) OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY HEREUNDER SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY AT LAW OR IN EQUITY, PROVIDED, HOWEVER, THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY ARISING OUT OF THE GROSS

NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER, OR ANY OF SELLER'S OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER.

**Section 14.18 Severability.** In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, provided that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

**Section 14.19 Confidentiality.**

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees, representatives and agents, as a condition to receiving confidential information hereunder, to keep confidential, except as required by applicable laws: (i) all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, either Party under this Agreement, and (ii) documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ((i) and (ii), the "**Confidential Information**"). The provisions of this Section 14.19 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information which (A) is disclosed with the prior written consent of the originating Party, (B) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (C) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation; or (D) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.19, disclose matters that are made confidential by this Agreement:

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

(ii) To Governmental Authorities and parties involved in any proceeding in which either Party is seeking a Permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; to Governmental Authorities or the public as required by any applicable law, regulation, order, rule, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that, at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

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

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

(f) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under the CPRA, then Buyer will notify Seller of the request and its intent to disclose the documents. Buyer, as required by the CPRA, will release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer from and against all suits, claims, and causes of action brought against Buyer for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include all actual costs incurred by Buyer, and specifically includes costs of experts and consultants as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against Buyer, through and including any appellate proceedings. Seller's obligations to Buyer under this indemnification provision shall be due and payable on a monthly, ongoing basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer, as well as all damages or liabilities of any nature.

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

of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Section 14.17(e).

**Section 14.20 Mobile-Sierra.** Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

**Section 14.21 Right of First Offer and Right of First Refusal.** Buyer shall have a "*Right of First Offer*" (or "*ROFO*") and a "*Right of First Refusal*" (or "*ROFR*") for any proposed sale of all or any portion of the Facility or the Facility Assets.

(a) Prior to Seller consummating a sale of all or any portion of the Facility or the Facility Assets, Seller shall provide notice to Buyer of Seller's proposed transaction, including the proposed purchase price and basic terms and conditions associated therewith (a "*Proposed Sale Notice*"). Upon receipt of a Proposed Sale Notice, Buyer shall have forty-five (45) days in which to notify Seller that Buyer may purchase the Facility Assets from Seller (a "*Proposed Purchase Notice*"). If Buyer provides Seller with a Proposed Purchase Notice (which notice shall, in the case of a ROFO, include Buyer's proposed purchase price for the Facility Assets, and in the case of a ROFR, include Buyer's response to the purchase price under consideration by Seller), then the Parties shall undertake for a period of up to ninety (90) days from the date of Buyer's Proposed Purchase Notice to reach an agreement on the terms and conditions of a sale of the Facility Assets to Buyer.

(b) With respect to a sale of the Facility or the Facility Assets, if (i) Buyer does not provide a Proposed Purchase Notice to Seller, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Facility Assets to Buyer within the ninety (90) day period set forth in Section 14.21(a), then Seller shall be free to negotiate the sale of the Facility Assets to any third party; provided, however, that (A) any sale of the Facility Assets to a third party shall include the assignment of this Agreement and Seller's rights under the Ancillary Documents (in accordance with Section 14.6), and (B) prior to consummating any such sale, Seller shall provide Buyer with a concise summary of the commercial terms negotiated by Seller with the third party (a "*Notice of Proposed Third Party Sale*"). If the proposed purchase price for the Facility Assets set forth in the Notice of Proposed Third Party Sale is equal to or less than ninety-five (95) percent of the purchase price included in the Proposed Purchase Notice or negotiated in connection with Buyer's exercise of the ROFO pursuant to Section 14.21(a), or otherwise on terms that are materially better than those last offered by Buyer, then Buyer shall have forty-five (45) days to exercise its Right of First Refusal to purchase the Facility Assets on substantially similar terms to those set forth in the Notice of Proposed Third Party Sale, subject

to any modifications required to conform the transaction to requirements for transactions entered into by public agencies. If Buyer does not elect to exercise its Right of First Refusal and purchase the Facility Assets within such forty-five (45) days, Seller shall be free to consummate the sale of the Facility Assets to the third party; provided that (A) such sale of the Facility Assets to a third party shall include the assignment of this Agreement and Seller's rights and obligations under the Ancillary Documents, and (B) such sale shall be on substantially similar terms and conditions presented to Buyer in the Notice of Proposed Third Party Sale.

(c) If Seller fails to (i) present a Notice of Proposed Third Party Sale within six (6) months after the expiration of the ninety (90) day period set forth in Section 14.21(a), or (ii) consummate the sale of the Facility Assets to a third party within forty-five (45) days after the expiration of the forty-five (45) day period set forth in Section 14.21(b), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO process and the ROFR process) hereunder before commencing or continuing negotiations with any third party or consummating a sale of the Facility Assets.

(d) Neither the ROFO nor the ROFR shall (i) apply to any Sale Leaseback Financing or to any sale by any Facility Lender in connection with the exercise of Facility Lender remedies under any Financing Agreement, nor (ii) limit Buyer's rights to exercise the Project Purchase Option.

**Section 14.22 No Dedication of Facilities.** Any undertaking by one Party to the other Party under any provisions of this Agreement shall not constitute the dedication of the Facility or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

**Section 14.23 Buyer's Business Policies.**

(a) **Recycling Policy.**

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

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

(b) **Non-Discrimination/Equal Employment Practices/Affirmative Action Construction & Non-Construction Agreements.**

(i) During the performance of this Agreement, Seller shall not discriminate in its employment practices against any employee or applicant for employment because of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital

status, domestic partner status, or medical condition. All subcontracts awarded by Seller under this Agreement shall contain a like nondiscrimination provision. The applicable provisions of Executive Order No. 11246 of September 24, 1965; Part 60-741 of 41 Code of Federal Regulations pertaining to handicapped workers, including 60-741.4 Affirmative Action Clause; and Sections 10.8 to 10.13 of the Los Angeles Administrative Code ("**LAAC**") pertaining to nondiscrimination in employment in the performance of City of Los Angeles contracts are incorporated herein by reference and made a part hereof as if they were fully set forth herein.

(ii) Any of the above-mentioned subcontracts shall be effective for twelve (12) months following the date of approval for the Affirmative Action practices. An Affirmative Action plan shall be in effect and on file with Buyer for the duration of this Agreement.

(c) **Small Business Enterprise ("SBE") and Disabled Veteran Business Enterprise ("DVBE") Opportunity Program.**

(i) It is the policy of Buyer to provide SBEs, DVBEs, Disadvantaged Business Enterprises ("**DBEs**"), Women Business Enterprises ("**WBEs**"), Minority Business Enterprises ("**MBEs**"), and all Other Business Enterprises ("**OBEs**") an equal opportunity to participate in the performance of all Buyer contracts. Buyer's goals for SBE/DVBE participation in performance of its contracts are twenty percent (20%) for SBEs and three percent (3%) for DVBEs. Seller shall assist Buyer in implementing this policy by taking all commercially reasonable steps to ensure that all available business enterprises, including SBEs and DVBEs, have an equal opportunity to compete for and participate in the work being requested by this Agreement.

(ii) Seller shall notify Buyer if Seller is a certified SBE, DVBE, DBE, WBE, or MBE. Seller shall provide to Buyer (A) the company name, contact person, address, and telephone number of each proposed Subcontractor that qualifies as an SBE, DVBE, DBE, WBE, or MBE, and (B) copies of all certifications of such Subcontractor as an SBE, DVBE, DBE, WBE, or MBE, as applicable.

(d) **Child Support Policy.** Seller and any of its Subcontractors shall fully comply with all applicable state and federal employment reporting requirements for Seller's and any Seller's Subcontractors' employees. Seller and any of its Subcontractors shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with the California Family Code. Seller and any of its Subcontractors shall certify that the principal owners thereof (which shall include any person who owns an interest of ten percent (10%) or more) are in compliance with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally. Seller and any of its Subcontractors shall certify that such compliance will be maintained throughout the Agreement Term. Failure of Seller or any its Subcontractors to fully comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignments or Notices of Assignment or failure of the principal owners to comply with any Wage and Earnings Assignments or Notices of Assignment applicable to them personally shall constitute an event of default under this Agreement. Failure of Seller or any its Subcontractors or principal owners thereof to cure the

event of default within ninety (90) days of notice of such event of default by Buyer shall subject this Agreement to termination.

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

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

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

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

(i) **Iran Contracting Act of 2010.** In accordance with California Public Contract Code Sections 2200-2208, all bidders submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit in the form attached to Appendix Q."

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

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

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IN WITNESS WHEREOF, each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below effective as of the Effective Date.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

Date: \_\_\_\_\_

By: \_\_\_\_\_  
FRED H. MASON  
President

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

64KT 8ME LLC a Delaware limited liability company

By: 8MINUTENERGY SPV2, LLC, a Delaware limited liability company,  
its Managing Member

By: 8MINUTENERGY RENEWABLES LLC, a Delaware limited liability company, its Managing Member

By: MABEL CAPITAL, INC., a Delaware corporation, its Managing Member

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Martin Hermann  
Title: President

By: 1ST AVENUE CAPITAL LLC, a Delaware limited liability company, its Managing Member

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Thomas Buttgenbach  
Title: Managing Member

[Signature Page of "Springbok 3" PPA]

**APPENDIX A**

**TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC**

**ENERGY PRICES; MONTHLY PAYMENTS**

1. **Payment for Startup and Test Energy.** Subject to the limitations in Section 3.3(b), Buyer shall purchase Startup and Test Energy, Environmental Attributes and Capacity Rights for an aggregate price equal to \$46.77 per MWh. All Startup and Test Energy shall be scheduled in accordance with the Scheduling Procedures set forth in Section 7.2.
2. **Payment for Delivered Energy.** Commencing on the Commercial Operation Date, Buyer shall make a Monthly Payment to Seller for all Delivered Energy (other than Startup and Test Energy and Excess Energy), Environmental Attributes and Capacity Rights pursuant to Section 11.1(a) for an aggregate price equal to \$51.97 per MWh.
3. **Payment for Excess Energy.** Buyer shall pay Seller for all Excess Energy, Environmental Attributes and Capacity Rights for an aggregate price equal to \$18.19 per MWh.

**APPENDIX B**  
**TO THE**  
**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**64KT 8me LLC**  
**FACILITY DESCRIPTION AND MILESTONE SCHEDULE**

**ARTICLE I. FACILITY DESCRIPTION**

1. Name of Facility: Solar photovoltaic powered electric generating facility known as the "Springbok 3 Solar Farm"
2. Facility Site: Kern County, California  
  
The generating facility site is located approximately 4.5 miles north-northwest of California City, and southeast of California State Route 14, and south-southwest of the unincorporated town of Cantil.
3. Owner: 64KT 8me LLC
4. Operator: 64KT 8me LLC, or its Affiliate
5. Equipment:
  - (a) Type of Facility: Photovoltaic solar generation
  - (b) Contract Capacity: Between 80 and 90MW-ac at the Point of Delivery
6. Target Commercial Operation Date: October 31, 2016
7. Other included facilities: Shared use pursuant to the Co-Tenancy Agreement of an existing 230-kV gen tie line connecting the Facility to LADWP at the Beacon Substation.

## ARTICLE II. MILESTONE SCHEDULE

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

*Shaded items are complete as of the Effective Date.*

	Milestone Date	Milestone Description
1.	Twenty (20) Business Days after Effective Date	Deliver Development Security
2.	July 1, 2016	NTP Milestone*
3.	October 31, 2016	First MW Milestone*
4.	November 30, 2016	Achieve initial synchronization
5.	December 31, 2016	GCOD*

APPENDIX C

TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC

BUYER AND SELLER BILLING, NOTIFICATION AND  
SCHEDULING CONTACT INFORMATION

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

1.1 If to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Attention: Executive Director

With a copy to:

Los Angeles Department of Water and Power  
RE: SCPPA Contract \_\_\_\_\_  
111 N. Hope Street, Room 1246  
Los Angeles, California 90012  
Attention: Manager of Power Systems Contracts – Jan Lukjaniec

Or, if sent electronically, under Section 4.3, Section 4.4, Section 4.5, or 4.6 send to all the emails listed below:

Minh.Le@ladwp.com  
Sam.Mannan@ladwp.com  
Michael.Webster@ladwp.com  
Jan.Lukjaniec@ladwp.com

1.2 If to Seller:

64KT 8me LLC  
c/o 8minutenergy Renewables, LLC  
5455 Wilshire Blvd., Ste 2010

Los Angeles, California 90036  
Telephone: 323-525-0900  
Facsimile: 310-424-7112  
Attention: Tom Buttgenbach

With copies to:

Chadbourne & Parke LLP  
1200 New Hampshire Ave., N.W.  
Washington, D. C. 20036  
Telephone: 202-974-5600  
Facsimile: 202-974-5602  
Attention: Robert Shapiro

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

2.1 If Billing to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Attention: Finance and Accounting

With a copy to:

Los Angeles Department of Water and Power  
P.O. Box 51211  
Room 424 JFB  
RE: SCPPA Contact \_\_\_\_\_  
Los Angeles, California 90012  
Accounting Division – Accounts Payable Section

Or, if sent electronically, under Sections 4.3, 4.4, 4.5, or 4.6 send to all the emails listed below:

Minh.Le@ladwp.com  
Sam.Mannan@ladwp.com  
Michael.Webster@ladwp.com  
Jan.Lukjaniec@ladwp.com

2.2 If Payment to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Attention: Finance and Accounting

With a copy to:

Los Angeles Department of Water and Power  
RE: SCPPA Contract \_\_\_\_\_  
111 N. Hope Street, Room 1246  
Los Angeles, California 90012  
Attention: Manager of Power Systems Contracts – Jan Lukjaniec

Or, if sent electronically, under Sections 4.3, 4.4, 4.5, or 4.6 send to all the emails listed below:

Minh.Le@ladwp.com  
Sam.Mannan@ladwp.com  
Michael.Webster@ladwp.com  
Jan.Lukjaniec@ladwp.com

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

If to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Attention: Executive Director

With a copy to:

Los Angeles Department of Water and Power  
RE: SCPPA Contract \_\_\_\_\_  
111 N. Hope Street, Room 1246  
Los Angeles, California 90012  
Attention: Manager of Power Systems Contracts – Jan Lukjaniec  
Telephone: 213-367-2382



Or, if sent electronically, under Section 4.3, Section 4.4, Section 4.5, or 4.6 send to all the emails listed below:

Minh.Le@ladwp.com

Sam.Mannan@ladwp.com

Michael.Webster@ladwp.com

Jan.Lukjaniec@ladwp.com

If to Seller:

64KT 8me LLC  
c/o 8minutenergy Renewables, LLC  
5455 Wilshire Blvd., Ste 2010  
Los Angeles, California 90036  
Telephone: 323-525-0900  
Facsimile: 310-424-7112  
Attention: Tom Buttgenbach

With copies to:

Chadbourne & Parke LLP  
1200 New Hampshire Ave., N.W.  
Washington, D. C. 20036  
Telephone: 202-974-5600  
Facsimile: 202-974-5602  
Attention: Robert Shapiro

4. Following the achievement of Commercial Operation, as defined in Appendix N, and throughout the Delivery Term, all notices related to scheduling of the Facility shall be sent to the following address:

If to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
Attention: Director of Project Administration

With a copy to:

Los Angeles Department of Water and Power  
RE: SCPPA Contract \_\_\_\_\_  
111 N. Hope Street, Room 1246  
Los Angeles, California 90012  
Attention: Manager of Power Systems Contracts – Jan Lukjaniec

Telephone: 213-367-2382

And electronically to the emails listed below:

[Minh.Le@ladwp.com](mailto:Minh.Le@ladwp.com)

[Sam.Mannan@ladwp.com](mailto:Sam.Mannan@ladwp.com)

If to Seller:

64KT 8me LLC  
c/o 8minutenergy Renewables, LLC  
5455 Wilshire Blvd., Ste 2010  
Los Angeles, California 90036  
Telephone: 323-525-0900  
Facsimile: 310-424-7112  
Attention: Tom Buttgenbach

With copies to:

Chadbourne & Parke LLP  
1200 New Hampshire Ave., N.W.  
Washington, D. C. 20036  
Telephone: 202-974-5600  
Facsimile: 202-974-5602  
Attention: Robert Shapiro

**APPENDIX D**  
**TO THE**  
**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**64KT 8me LLC**  
**FORM OF ATTESTATION**

\_\_\_\_\_**(Seller)** Environmental Attribute Attestation and Bill of Sale

\_\_\_\_\_**("Seller")** hereby sells, transfers and delivers to Southern California Public Power Authority ("**Buyer**") the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location:

Fuel Type:

Capacity (MW):\_\_\_\_\_ Operational Date:

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

<u>Dates</u>	<u>MWhrs generated</u>
_____ 20____	_____
_____ 20____	_____
_____ 20____	_____

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

Seller further attests, warrants and represents as follows:

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

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

Contact Person: \_\_\_\_\_ tel:

**APPENDIX E**  
**TO THE**  
**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**64KT 8ME LLC**  
**SALE LEASEBACK REQUIREMENTS**

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

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

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

(c) In the event of the termination, rejection, or disaffirmance by Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under the Lease pursuant to the Bankruptcy Code, Seller hereby presently, absolutely, irrevocably and unconditionally grants and assigns to Buyer the sole and exclusive right to make or refrain from making any election available to lessees under the Bankruptcy Code (including, without limitation, the election available pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), and any successor provision), and Seller agrees that any such election, if made by Seller without the prior written consent of Buyer (which Buyer would not anticipate granting due to the importance of the Lease as security), shall be void at inception and of no force or effect. Without limiting the generality of the foregoing sentence, Seller shall not, without Buyer's prior written consent, elect to treat the Lease or the leasehold estate created thereby as terminated under Section 365 of the Bankruptcy Code, after rejection or disaffirmance of the Lease by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor, and any such

election made without such consent shall be void at inception and of no force or effect. At the request of Buyer, Seller will join in any election made by Buyer under the Bankruptcy Code and will take no action in contravention of the rights granted to Buyer pursuant to this [insert Section].

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

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

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

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

**APPENDIX F**  
**TO THE**  
**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**64KT 8me LLC**  
**INSURANCE**

**I. GENERAL REQUIREMENTS**

With respect to all of the insurance required herein other than Builders' Risk, no later than thirty (30) days after the date of the Effective Date, and with respect to the Builders' Risk policy, no later than thirty (30) days prior to the start of construction of the Facility, Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form acceptable to Buyer's Risk Manager. Such insurance shall be maintained by Seller at Seller's sole cost and expense.

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

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

Said evidence of insurance shall contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) days prior notice thereof (ten (10) days for non-payment of premium) to Southern California Public Power Authority, 1160 Nicole Court, Glendora, CA 91740.

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

Failure to maintain and provide acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which Buyer may immediately terminate or suspend the Agreement.

Seller shall be responsible for all Major Subcontractors' compliance with the insurance requirements set forth herein, and shall be responsible for ensuring that all other Subcontractors obtain and maintain, throughout the performance of any work, types of insurance with limits and terms that are normal and customary for the industry and types of services being provided.

## **II. SPECIFIC COVERAGES REQUIRED**

### **A. Commercial Automobile Liability**

Seller shall provide Commercial Automobile Liability insurance which shall include coverage for liability arising out of the use of owned, non-owned, and hired vehicles for performance of the work as required to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than One Million Dollars (\$1,000,000) combined single limit per occurrence and shall apply to all operations of Seller.

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

### **B. Commercial General Liability**

Seller shall provide Commercial General Liability insurance on an occurrence basis ISO GL form or equivalent with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, Sudden and Accidental Pollution, Fire Legal Liability and Personal Injury coverages included. Sudden and Accidental Pollution shall provide coverage with limits of liability of not less than Ten Million Dollars (\$10,000,000), and all such other insurance shall provide coverage with limits of liability not less than Ten Million Dollars (\$10,000,000) combined single limit per occurrence and in the aggregate. The limits of liability are to be specific for this Agreement. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be on an endorsement to the policy acceptable to the Buyer's Risk Management Section, and shall provide for the following:

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

### **C. Excess Liability**

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies as provided for Buyer on an endorsement to the policy acceptable to Buyer's Risk Management Section. Such policy shall include, as



appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

**D. Workers' Compensation/Employer's Liability Insurance**

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than One Million Dollars (\$1,000,000) each accident and shall be a separate policy if not included with Workers' Compensation coverage. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such insurance shall be in the form of a Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's Risk Management Section. Workers' Compensation/Employer's Liability exposure may be self-insured provided that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

**E. Builders' Risk**

Builder's Risk insurance shall be of the "all risk" type, shall be written in completed value form, and shall protect Seller against risks of damage to buildings, structures, and materials and equipment that constitute part of the Facility, whether on site or in transit, unless transit is covered under a separate policy, including off-site storage. The amount of such insurance shall be not less than the insurable value of the work at completion. The Builder's Risk insurance shall provide for losses to be payable to Seller. The Builders' Risk policy shall insure against all risks of direct physical loss or damage to property from any cause including testing, ensuing loss or resulting damage, commissioning, earthquake and flood. Earthquake and flood insurance may be sublimited with limits acceptable to Buyer and Seller, such acceptance not to be unreasonably withheld. Seller shall provide evidence satisfactory to Buyer's Risk Manager demonstrating that the date of expiration of the Builders' Risk policy shall occur concurrently with, or subsequent to, the date upon which the Property All Risk policy required in Section II(F) is in full force and effect. Promptly following the delivery by Buyer of a Project Purchase Exercise Notice under the Option Agreement, Buyer shall be named as "a loss payee as our interests may appear" on Seller's Builder's Risk policy. Earthquake and flood insurance may be sublimited with limits based on commercially reasonable efforts that would be acceptable to Buyer, such acceptance not to be unreasonably withheld.

**F. Property All Risk Insurance**

Seller shall procure and maintain or cause to be procured and maintained an All Risk Physical Damage policy to insure the full replacement value of the property located at Facility as described in this Agreement. The policy shall include coverage for boiler and machinery breakdown, earthquake, flood, expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials, and/or faulty design. Earthquake and flood may be sublimited with limits acceptable to Buyer and Seller, such acceptance not to be unreasonably withheld. This policy shall incept as of the Commercial Operation Date. Promptly following the

delivery by Buyer of a Project Purchase Exercise Notice under the Option Agreement, Buyer shall be named as "a loss payee as our interests may appear" on Seller's Property All Risk policy. Earthquake and flood insurance may be sublimited with limits based on commercially reasonable efforts that would be acceptable to Buyer, such acceptance not to be unreasonably withheld.

**APPENDIX G**

**TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC**

**METEOROLOGICAL AND PYRANOMETER MEASUREMENTS**

**Monitored Meteorological Data Points:**

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

## APPENDIX H

**TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC**

### REAL PROPERTY AGREEMENTS

#### Facility Site

1. (a) Partial Assignment of Land Option and Purchase Agreement (the "Aquahelio Partial Assignment of Land Option"), dated September 17, 2015, by and among 63SU 8ME LLC, as assignor, and 64KT 8ME LLC, as assignee, which Aquahelio Partial Assignment of Land Option partially assigns certain rights under that certain (b) Land Option and Purchase Agreement, effective February 27, 2015, by and between Aquahelio Resources LLC and 63SU 8ME LLC, a memorandum of which was recorded March 13, 2015 as Instrument No. 0215028477 of the Official Records of Kern County, California.

#### Transmission Line

1. Roadway and Transmission Easement Agreement, dated June 12, 2015, by and among Springbok Land Company LLC, as grantor, and 62SK 8ME LLC, 63SU 8ME LLC and 64KT 8ME LLC, collectively, as grantees recorded June 12, 2015 as Instrument No. 0215075486 of the Official Records of Kern County, California (as to that certain portion of Section 3, the Bokal parcel).
2. Partial Assignment of Transmission Easement Agreement (the "King Partial Assignment"), dated June 12, 2015 and recorded June 12, 2015 as Instrument No. 0215075489, by and among Springbok Land Company LLC, as assignor, and 62SK 8me LLC, 63SU 8ME LLC and 64KT 8ME LLC, collectively, as assignees, which King Partial Assignment partially assigns certain rights under that certain Transmission Easement Agreement between Betty King, Trustee of the 2009 Betty A King Revocable Trust, as grantor, and 62SK 8me LLC, as grantee, dated as of February 3, 2014, and recorded on March 6, 2014, as Instrument No. 000214025308, as amended by that certain First Amendment to Transmission Easement Agreement dated as of March 26, 2015, between King and 62SK 8me LLC, and recorded on April 22, 2015, as Instrument No. 000215048641 and as assigned to Springbok Land Company, LLC by that certain Assignment of Transmission Easement recorded June 12, 2015 as Instrument No. 0215075482 all of the Official Records of Kern County, California.
3. Partial Assignment of Easement Agreement (the "Aquahelio Partial Assignment"), dated June 12, 2015, by and among Springbok Land Company, as assignor, and 62SK 8ME LLC, 63SU 8ME LLC and 64KT 8ME LLC, collectively, as assignees, which Aquahelio

Partial Assignment partially assigns certain rights under that certain Easement Agreement by and between AquaHelio Resources, LLC, a Delaware limited liability company, as grantor, and 62SK 8ME LLC, as grantee, dated as of July 28, 2014 to be effective June 12, 2015 and recorded June 12, 2015 as Instrument No. 0215075476, as amended by that certain Addendum No. 1 To Option Agreement And Escrow Instructions recorded June 12, 2015 as Instrument No. 0215075477, and further amended by that certain First Amendment To Easement Agreement, dated November 15, 2014, recorded on June 12, 2015 as Instrument No. 0215075478 as assigned to Springbok Land Company, LLC by that certain Assignment of Transmission Easement Agreement recorded June 12, 2015 as Instrument No. 0215075481, all of the Official Records of Kern County, California and as such Easement Agreement is to be amended pursuant to a First Amendment to Partially Assigned Transmission Easement Agreement, dated and recorded on October 23, 2015 as Instrument No. 0215149216 of the Official Records of Kern County, California, entered into by and between Springbok Land Company, LLC, 62SK 8ME LLC, 63SU 8ME LLC and 64KT 8ME LLC.

4. Roadway and Transmission Easement Agreement, dated June 12, 2015 and recorded June 12, 2015 as Instrument No. 0215075487 of the Official Records of Kern County, California, by and among Springbok Land Company LLC, as grantor, and 62SK 8ME LLC, 63SU 8ME LLC and 64KT 8ME LLC, collectively, as grantees (as to that certain portion of Section 10, the Rezai parcel).
5. Shared Driveway Easement Agreement, dated June 12, 2015 and recorded June 12, 2015 as Instrument No. 0215075485 of the Official Records of Kern County, California, by and among Springbok Land Company LLC, as grantor, and 62SK 8ME LLC, 63SU 8ME LLC, and 64KT 8ME LLC, collectively, as grantees.
6. Joint Substation Easement Agreement, dated June 12, 2015 and recorded June 12, 2015 as Instrument No. 0215075484 of the Official Records of Kern County, California, by and among Springbok Land Company LLC, as grantor, and 62SK 8ME LLC, 63SU 8ME LLC, and 64KT 8ME LLC, collectively, as grantees, as amended pursuant to the First Amendment of Joint Substation Easement Agreement, dated and recorded on October 23, 2015 as Instrument No. 0215149215 of the Official Records of Kern County, California, entered into by and between Springbok Land Company LLC, 62SK 8ME LLC, 63SU 8ME LLC and 64KT 8ME LLC.
7. Irrevocable License Agreement for Gen-Tie Line (Real Estate License Agreement No. 15-034 between 64KT 8ME LLC and the City of Los Angeles acting by and through its Department of Water and Power, dated as of December 17, 2015).

**APPENDIX I**  
**TO THE**  
**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**64KT 8me LLC**

**TABLE 1**

**EXPECTED ANNUAL GENERATION; GUARANTEED GENERATION**

To the extent that the size of the Facility reported pursuant to Section 6.5 is less than 90 MW(ac), the Expected Annual Generation and the Guaranteed Generation shall be (1) reduced in increments rounded up to the nearest 1 MW by an amount equal to the ratio of the expected size of the Facility reported by Seller divided by 90 MW(ac), and (2) multiplied by the applicable number of MWh per year specified below.

<b>Contract Year</b>	<b>Expected Annual Generation</b>	<b>Guaranteed Generation</b>
<b>Initial Stub Year</b>	<b>See note (1)</b>	<b>75% of Expected Annual Generation</b>
1	257,957	193,468
2	256,151	192,113
3	254,358	190,769
4	252,578	189,433
5	250,809	188,107
6	249,053	186,790
7	247,310	185,483
8	245,579	184,185
9	243,860	182,895
10	242,153	181,615
11	240,458	180,344
12	238,775	179,081
13	237,103	177,827
14	235,444	176,583
15	233,796	175,347
16	232,159	174,119
17	230,534	172,901
18	228,920	171,690
19	227,318	170,488
20	225,726	169,295
21	224,147	168,110

Contract Year	Expected Annual Generation	Guaranteed Generation
22	222,577	166,933
23	221,019	165,765
24	219,472	164,605
25	217,936	163,452
26	216,410	162,308
27*	214,896	161,172
28*	213,392	160,044
29*	211,898	158,924
Final Stub Year	See note (2)	75% of Expected Annual Generation

\*if applicable

- (1) The "*Expected Annual Generation*" for the Initial Stub Year equals 259,776 MWh, multiplied by the sum of the percentage (from the Expected Monthly Production Table below) of Energy generated during the months between the Commercial Operation Date and the end of the Initial Stub Year. For example, if the Commercial Operation Date is achieved on July 1, 2016, the Expected Annual Generation in the Initial Stub Year would be 259,776 MWh x 48.3% (July through December), and the Guaranteed Generation would be 75% of this number.
- (2) The Expected Annual Generation for the Final Stub Year equals 210,415 MWh multiplied by the sum of the percentage (from the Expected Monthly Production Table below) of Energy generated during the months from January 1 of the Final Stub Year to the end of the Final Stub Year. For example, if the Commercial Operation Date is achieved on July 1, 2016, the Expected Annual Generation in the Final Stub Year would be 210,415 MWh x 51.7% (January through June), and the Guaranteed Generation would be 75% of this number.

**TABLE 2**

**EXPECTED ENERGY MONTHLY PRODUCTION TABLE**

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

Month	Percent	Month	Percent
Jan	5.0%	Jul	11.1%
Feb	5.7%	Aug	10.5%
Mar	8.5%	Sep	9.1%

Month	Percent	Month	Percent
Apr	9.7%	Oct	7.4%
May	11.2%	Nov	5.5%
Jun	11.6%	Dec	4.7%
		Total	100.0%



**APPENDIX J**  
**TO THE**  
**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**64KT 8me LLC**  
**QUALITY ASSURANCE PROGRAM**

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

**Quality at Seller**

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

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

**The Quality Management Process**

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

Seller's project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller's project management team will target six (6) areas to monitor quality:

- 1) A written work plan with accompanying Q/A Manual (as defined below).
- 2) Detailed review of the Facility design at the planning and conceptual design phase.
- 3) Detailed review of Facility final design prior to construction.
- 4) A quality control program during construction to verify implementation is in compliance with design documents and document any changes.
- 5) Independent engineering review of the entire process, from design review through Commercial Operation.
- 6) A written maintenance manual for the Facility for the duration of the Commercial Operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Seller has purchased equipment and/or material and best industry practices.

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

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

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

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. It shall also provide the plan for detailed review of Facility conceptual design and final design, hold points, and methodology for document control and comment. Furthermore, it shall provide the plan and strategy for quality control and review during the construction of the Facility and for maintenance and operations during Commercial

Operation. The Q/A Manual shall strive; at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law.
- (b) The purchased materials, equipment and services comply with the Requirements.
- (c) The materials received at the site are inspected for compliance with specifications.
- (d) The subcontracted work is adequately inspected by third parties.
- (e) Proper methods are employed for the qualification of personnel who are performing work for the development, design and construction of the Facility.
- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained.
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions.
- (h) Detailed and complete plan for maintenance and operation during Commercial Operations consistent with manufacturers and suppliers recommendations and best industry practices.

### **Conceptual Design Review**

Seller shall have a team of professionals who develop and review the Facility layout and Facility conceptual design. The team shall consist of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed and meetings are held to assess optimization of the resource, constructability, minimization of cultural and biological impacts, land use restrictions, and landowner requirements. Preliminary road design will also be started and access to the Facility Site will be reviewed in detail. When this plan is ready for review, a formal plan and map shall be created and a final internal review is conducted. Following that shall be detailed studies for biological, cultural and other types of impacts completed by various third parties. The site plan will be reviewed, modified as necessary, and then used to begin the permitting and public review process. The site plan shall be further modified based on comments in that process. At that point, the site plan can be issued for construction, and final engineering can commence.

In parallel with this process, preliminary conceptual design will start for the major areas of the Facility, including the substation, transmission line, racking systems, and communications system; and road and grading done to develop construction estimates as well as materials specifications. All of these areas of conceptual designs shall be used to check and verify the assumptions used for development of the site plan.

Seller shall inform Buyer of, and shall invite Buyer to participate in, the Conceptual Design Review process.

### **Final Engineering Design**

Following finalization of the site plan, the detailed design will be done for the roads and grading, transmission line, and substation by third party engineering firms licensed to practice in the State of California. Each firm shall have its own quality assurance and checking procedures, however, Seller shall review the final work products in detail to check with conformance with this Agreement and provide comments as a second round of quality assurance. When Seller's comments have been incorporated, the design of each area will be considered final, and that design will then be submitted to an independent engineer for review and comment. This ensures that another entity, in addition to Seller, has done a comprehensive review of all areas of the Facility and details to ensure conformance with this Agreement.

In parallel with final design and checking activities, final geotechnical studies will be conducted at the Facility Site, and a final resource assessment will be performed with the issued-for-construction Facility layout. If existing subsurface conditions are different from what is expected, the racking locations could be slightly modified. Any changes of this nature would be documented in as-built design drawings and approved of in advance by Seller.

Seller shall inform Buyer of, and invite Buyer to participate in, the Final Engineering Design Review process.

### **Quality Assurance at the Construction Site**

Seller will engage a proven construction contractor to perform the construction activities. A Construction Quality Assurance Plan will be agreed upon between Seller and such contractor for all construction activity at the construction site. This Construction Quality Assurance Plan will be consistent with industry standards and norms and will assure all activities receive appropriate attention. Seller will perform active construction management oversight of the contractor during the construction of the Facility to further assure quality performance.

### **Quality Assurance and Quality Control ("Q/C") Activities After Commercial Operation**

Throughout the Agreement Term, Seller shall perform Q/A and Q/C activities on all materials and equipment associated with the Facility, including all photovoltaic solar power generation equipment, on a periodic basis, and at a minimum once every six (6) months. At the completion of such Q/A and Q/C activities, Seller shall provide Buyer a detailed report identifying all areas of inspections performed, a detailed checklist, results found, remedial actions taken, if any, and follow up for any corrective actions.

Seller shall provide Buyer with a schedule for performance actions needed as result of Q/A and Q/C activities. Buyer shall review the schedule, and provide comments to Seller.

### **QUALITY ASSURANCE (Q/A) AND QUALITY CONTROL (Q/C) CHECKLIST**

*[Buyer to provide form]*

**APPENDIX K**

**TO THE**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**64KT 8me LLC**

**PERMITS**

\*Shaded items have been obtained as of the Effective Date.

<b>Permits</b>	<b>Notes/Status/Agency</b>
CUP	County of Kern
CEQA Clearance – EIR	County of Kern
Incidental Take Permit	California Department of Fish and Wildlife
Streambed Alteration Agreement	California Department of Fish and Wildlife
RWQCB 401 Certification	Lahontan Regional Water Quality Control Board
General Permit for Construction (SWPPP)	Issuance of Waste Discharge Identification Number (WDID) by State Water Resources Control Board
Grading and Building Permits	Issued by Kern County
Dust Control Plan	Approval by Eastern Kern Air Pollution Control District

APPENDIX L  
(  
TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC  
OPTION AGREEMENT

[See attached.]

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**OPTION AGREEMENT**

**by and between**

**64KT 8me LLC  
as "Seller"**

**and**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
as "Buyer"**

**Dated as of December 17, 2015**

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## OPTION AGREEMENT

THIS OPTION AGREEMENT is entered into as of this 17th day of December, 2015, by and between 64KT 8me LLC, a limited liability company organized and existing under the laws of the State of Delaware ("***Seller***"), and SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ("***Buyer***") a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act (California Government Section 6500 *et seq.*). Each of Buyer and Seller is referred to individually in this Agreement as a "***Party***" and together they are referred to as the "***Parties***."

### RECITALS

WHEREAS, Seller and Buyer have entered into that certain Power Purchase Agreement of even date herewith (the "***PPA***") relating to the purchase by Buyer of the Facility Energy, Capacity Rights and associated Environmental Attributes (each as defined in the PPA) generated by a solar photovoltaic facility to be developed, constructed, owned or leased (in accordance with the PPA) and operated by Seller in Kern County, California; and

WHEREAS, Seller desires to grant to Buyer, and Buyer wishes to have, an option, exercisable at various times as set forth herein, to purchase the Facility Assets (as defined herein) on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and Buyer entering into the PPA, and in consideration of the agreements herein and in the other Operative Documents (as defined herein) and in reliance upon the representations and warranties therein and herein Buyer and Seller, intending to be legally bound, hereby agree as follows:

### ARTICLE I DEFINITIONS

1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Agreement, including in its Recitals, Schedules and Exhibits, shall have the meanings given in Exhibit 1.1. Capitalized terms used herein but not defined in Exhibit 1.1 shall have their meanings ascribed thereto in the PPA.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein, the rules of interpretation set forth in the PPA shall apply to this Agreement.

### ARTICLE II OPTION TO PURCHASE; CLOSING

2.1 Option to Purchase. Seller hereby grants Buyer an option, on the terms and conditions set forth in this Agreement, to purchase all of Seller's right, title and interest in and to the Facility Assets, but not the Excluded Assets, and to assume the Assumed Liabilities, but not the Excluded Liabilities, on and subject to the terms and conditions set forth in this Agreement (the "***Project Purchase Option***"). The Project Purchase Option may only be exercised with respect to all of Seller's right, title and interest in and to the Facility Assets, and not with respect to only a portion thereof.

2.2 Exercise of Project Purchase Option. Buyer may exercise the Project Purchase Option in accordance with the provisions of Section 2.4 and Section 2.5 at any time:

(a) during the six (6) month period commencing on the date that is twelve (12) months prior to the fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date, in which case the Closing Date shall occur no earlier than the fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date and no later than eighteen (18) months after the delivery by Buyer of a Purchase Option Exercise Notice; or

(b) during the six (6) month period commencing on the date that is twelve (12) months prior to the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date, in which case the Closing Date shall occur no earlier than the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date and no later than eighteen (18) months after the delivery by Buyer of a Purchase Option Exercise Notice; or

(c) during the seven (7) month period commencing on the date that is eighteen (18) months prior to the twenty-seventh (27<sup>th</sup>) anniversary of the Commercial Operation Date and ending eleven (11) months prior to the twenty-seventh (27<sup>th</sup>) anniversary of the Commercial Operation Date, in which case the Closing Date shall occur no earlier than the twenty-seventh (27<sup>th</sup>) anniversary of the Commercial Operation Date and no later than thirty (30) days after the twenty-seventh (27<sup>th</sup>) anniversary of the Commercial Operation Date, as such deadline may be reasonably extended to accommodate Buyer's bond closing for the purchase of the Facility Assets; or

(d) if the Parties opt to extend the Delivery Term under Section 2.2(b) of the PPA, during the six (6) month period commencing on the date that is eighteen (18) months prior to the thirtieth (30<sup>th</sup>) anniversary of the Commercial Operation Date and ending twelve (12) months prior to the thirtieth (30<sup>th</sup>) anniversary of the Commercial Operation Date, in which case the Closing Date shall occur no earlier than the thirtieth (30<sup>th</sup>) anniversary of the Commercial Operation Date and no later than thirty (30) days after the thirtieth (30<sup>th</sup>) anniversary of the Commercial Operation Date, as such deadline may be reasonably extended to accommodate Buyer's bond closing for the purchase of the Facility Assets; or

(e) during the sixty (60) day period commencing on the date on which a notice of intent to terminate is provided by Buyer to Seller pursuant to Section 13.2(d) of the PPA;

provided, that in no event shall Buyer be permitted to exercise the Project Purchase Option under Section 2.2(e) prior to the expiration of the sixth (6<sup>th</sup>) anniversary of the Commercial Operation Date. Each opportunity of Buyer to exercise the Project Purchase Option set forth in Sections 2.2(a) through 2.2(e) above shall be referred to herein as a "***Purchase Option Opportunity***."

Seller acknowledges that Buyer has no obligation to exercise the Project Purchase Option and that Buyer may decline to exercise the Project Purchase Option for any or no reason, as Buyer deems appropriate in its sole discretion.

2.3 Environmental Review. Seller acknowledges and agrees that the Facility is subject to environmental review under CEQA.

2.4 Tentative Exercise Notice. Buyer shall exercise the Project Purchase Option (if at all) by delivering to Seller a written notice of exercise signed by Buyer (the "**Purchase Option Tentative Exercise Notice**") within the periods of time specified in Section 2.2. Within forty five (45) days after it receives the Purchase Option Tentative Exercise Notice, Seller will deliver to Buyer (the date of such delivery being the "**Schedule Delivery Date**") the following, dated as of the Schedule Delivery Date: (a) Schedule 3.3 (Real Property Matters); (b) Schedule 3.4 (Seller's Consents); (c) Schedule 3.5 (Excluded Assets); (d) Schedule 3.6 (Liens); (e) Schedule 3.7 (Environmental Matters); (f) Schedule 3.8 (Liabilities); (g) Schedule 3.9 (Tax Matters); (h) Schedule 3.10 (Compliance with Laws); (i) Schedule 3.11 (Litigation); (j) Schedule 3.12 (Contracts); (k) Schedule 3.13 (Intellectual Property); (l) Schedule 3.15 (Non-Environmental Permits); (m) Schedule 3.17 (Employee Matters) and (n) Schedule 3.18 (General Matters) ((a) through (n) collectively, the "**Seller Disclosure Schedules**"), each of which shall be applicable to the Facility and be reasonably acceptable to Buyer, and which shall list, as required, any qualifications required to make the representations in Article III true and correct. Thereupon, Buyer will deliver to Seller Schedule 4.3 (Buyer's Consents, and, together with the Seller Disclosure Schedules, the "**Disclosure Schedules**"). Each Disclosure Schedule shall include and set forth the properties, materials, instruments, matters and all other specifications and information as indicated in the form of such Disclosure Schedule attached to this Agreement.

2.5 Fair Market Value; Exercise Notice.

(a) The Fair Market Value shall be determined in accordance with Exhibit 2.5 following the later to occur of: (i) the delivery of the Seller Disclosure Schedules, and (ii) forty five (45) days after Buyer delivers the Purchase Option Tentative Exercise Notice.

(b) After the Disclosure Schedules have been delivered and the Fair Market Value has been determined pursuant to Section 2.5(a), Buyer may elect, in its sole discretion to (i) decline to exercise the Project Purchase Option with respect to the applicable Purchase Option Opportunity, or (ii) exercise the Project Purchase Option for the Final Purchase Price determined in accordance with Exhibit 2.5. If Buyer elects to exercise the Project Purchase Option, upon determination of the Final Purchase Price in accordance with Exhibit 2.5, Buyer shall give written notice (the "**Purchase Option Exercise Notice**") to Seller no later than the Purchase Option Exercise Deadline, which notice shall state that Buyer is electing to exercise the Project Purchase Option under this Agreement and designating the applicable Closing Date. If Buyer elects not to exercise the Project Purchase Option, Buyer shall notify Seller of such election. The delivery of a Purchase Option Exercise Notice by Buyer shall constitute a binding and irrevocable commitment by Buyer to purchase, and shall create a binding obligation of Seller to sell,

the Facility Assets as specified herein (subject to Section 5.7, the provisions set forth in Exhibit 2.5, and the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII) by the applicable Closing Date.

(c) If Buyer (i) declines to exercise the Project Purchase Option pursuant to Section 2.5(b)(i), or (ii) fails to timely deliver a Purchase Option Tentative Exercise Notice or Purchase Option Exercise Notice with respect to any Purchase Option Opportunity within the deadlines therefor under Sections 2.4 and 2.5 respectively, then Buyer's right to exercise the Project Purchase Option with respect to such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not effect Buyer's right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity).

2.6 Memorandum of Option. Concurrently with the execution of this Agreement, the Parties shall execute and acknowledge a memorandum of option in form and substance acceptable to Buyer, and Seller shall record such memorandum in the Official Records of Kern County, California. Seller shall be responsible for payment of all fees and Taxes associated with such recording.

2.7 Closing. In the event Buyer delivers a Purchase Option Exercise Notice, the closing of the purchase and sale of the Facility Assets (the "Closing") shall occur at 11:59 p.m. local time on the Closing Date designated pursuant to Section 2.5(b), or such later date within the following fourteen (14) days as shall be thereafter designated by Buyer due to conditions affecting Buyer's bond financing with respect to the acquisition of the Facility Assets. The Closing shall be held at the offices of Buyer in Glendora, California, or such other location in California that Buyer designates in a timely notice to Seller, unless the Parties otherwise agree. All events at the Closing shall be deemed to occur simultaneously, unless otherwise provided herein. In the event the Closing has not occurred by the Closing Date in respect of a Purchase Option Opportunity, then Buyer (in the case of the conditions set forth in Article VII) or Seller (in the case of the conditions set forth in Article VIII), upon written notice to the other Party and without liability, may terminate the Project Purchase Option with respect to such Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective (but such termination shall not effect Buyer's right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity); provided that a Party cannot terminate any Project Purchase Option with respect to a Purchase Option Opportunity if the failure of the Closing to occur is the result of the failure on the part of such Party to perform its obligations under this Agreement.

2.8 NO ADDITIONAL WARRANTIES. OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPLICITLY SET FORTH IN THIS AGREEMENT, NO OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, SHALL BE GIVEN OR DEEMED GIVEN AS TO THE FACILITY OR THE FACILITY ASSETS CONSTITUTING THE FACILITY.

2.9 Assumed Liabilities. At the Closing, Buyer shall assume and agree to pay for, perform, fulfill and discharge from and after the Closing, the liabilities and obligations relating to the Facility Assets or the Business that are first required to be performed after the Closing or

arising or occurring after the Closing, other than the Excluded Liabilities (collectively, the "*Assumed Liabilities*").

2.10 Excluded Liabilities. Anything in this Agreement to the contrary notwithstanding, Buyer shall not assume, and shall not be deemed to have assumed, and shall have no liability with respect to (whether asserted before or after the Closing and regardless of whether the same or the basis therefor may have been disclosed to Buyer by Seller or otherwise be known to Buyer), any liabilities or obligations of any nature, fixed or contingent or known or unknown related to the Facility Assets or the Business other than as specifically set forth in Section 2.9 (with all such unassumed obligations referred to in this Agreement as the "*Excluded Liabilities*"). Without limiting the generality of the preceding sentence, it is agreed that Buyer shall have no liability with respect to any of the following liabilities or obligations (whether asserted before or after the Closing and regardless whether the same or the basis therefor may have been disclosed to Buyer by Seller or otherwise be known to Buyer), all of which are included in the Excluded Liabilities:

(a) Any liability or obligation of Seller in respect of Taxes attributable to Facility Assets for taxable periods ending on or prior to the Closing, including any supplemental tax liability related to activity or state of facts at the Facility conducted on or before the Closing that arises after the Closing, except that Buyer will be obligated to pay its prorated portion of current property taxes as provided below and all property taxes related to any periods beginning after the Closing;

(b) Any liability or obligation of Seller relating to the Facility Assets or the Business, including arising out of Seller's ownership and operation of the Facility Assets, arising or occurring prior to the Closing;

(c) Any liability or obligation of Seller arising out of Seller's ownership and operation of any assets other than the Facility or any business other than the Business at any time;

(d) Any liability or obligation of Seller under any Contract (including with respect to any contractors or subcontractors thereunder) other than an Assumed Contract or a permit other than a Transferred Permit;

(e) Any liability or obligation under any Assumed Contract or a Transferred Permit to the extent such liability or obligation arises from or relates to any breach by Seller of any provision of any such Assumed Contracts or Transferred Permits prior to the Closing;

(f) Any liability or obligation arising from or relating to any period of time or event occurring prior to the Closing or that, with notice or lapse of time, could constitute or result in a breach of any Assumed Contracts or Transferred Permit;

(g) Any liability or obligation that is not ascertainable, in nature and amount, solely by reference to the express written terms of any Assumed Contracts or Transferred Permits;



(h) Any liability or obligation of Seller arising from or relating to any breach by Seller of any provision of this Agreement, or arising from a breach by Seller, or any event, circumstance or condition occurring or existing prior the Closing that, with notice or lapse of time, constitutes or results in a breach by Seller under this Agreement, the PPA (including the Ancillary Documents), or any of the Operative Documents;

(i) Any liability or obligation under any Contract entered into during the Applicable Diligence Period and not assumed by Buyer pursuant to Section 5.10;

(j) Any liability or obligation of Seller with respect to the employment or termination of any employee or group of employees by Seller, or the terms thereof, whether union or nonunion, whether the liability or obligation calls for performance or observance before or after the Closing and whether the liability or obligation arises from a collective bargaining agreement, pension trust fund plan, or other agreement or arrangement to which Seller is a party or by which Seller is bound (whether oral or written and whether express or implied in fact or in law) or any past practice or custom or otherwise, it being understood and agreed that after the Closing, Buyer will itself be specifying the terms on which it offers employment to any individual to whom it, in its sole discretion, chooses to offer employment and will not be bound by any term of employment in effect at or at any time prior to the Closing;

(k) Any liability or obligation of Seller for pension fund payments or unfunded pension fund liabilities;

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

(m) Any liability or obligation of Seller or its Affiliates arising out of or related to any claim or loss against Seller or its Affiliates or any third-party claims or losses which adversely affects the Facility Assets and which shall have been asserted prior to the Closing or to the extent the basis of which shall have arisen exclusively prior to the Closing;

(n) Any liability or obligation of Seller or its Affiliates to a third party arising from any indemnification claim, injury to or death of any person or damage to or destruction of any property (and including workers' compensation claims, discrimination, wrongful discharge, or unfair labor practice), whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Seller or its Affiliates arising prior to the Closing; and

(o) Any liability or obligation of Seller or its Affiliates representing Facility Debt incurred by Seller or its Affiliates or Liens or encumbrances other than Closing Permitted Encumbrances.

Seller shall pay or otherwise discharge, or cause the payment or discharge, of all Excluded Liabilities prior to the Closing, and shall provide Buyer with evidence thereof at Closing that is reasonably satisfactory to Buyer.

2.11 Schedule Updating: Final Purchase Price.

(a) No later than the date that is thirty (30) days prior to the designated Closing Date (the "Updated Schedule Delivery Date"), Seller shall have provided Buyer with updated Seller Disclosure Schedules which shall be the final Seller Disclosure Schedules for purposes of its representation and warranties made under Article III as of the Closing. Notwithstanding the foregoing, any update included in an updated Seller Disclosure Schedule delivered pursuant to this Section 2.11(a) shall have no effect for purposes of determining the satisfaction of any condition to Closing set forth in Article VII and shall not alter the effect of Buyer's right to terminate this Agreement pursuant to Section 10.2.

(b) At the Closing, upon the terms and subject to the conditions set forth herein, Buyer shall, in exchange for the sale, transfer, assignment, conveyance and delivery of the Facility Assets by Seller, and the assumption by Buyer of the Assumed Liabilities in accordance with this Agreement, pay Seller the Final Purchase Price determined in accordance with Exhibit 2.5. Such Final Purchase Price shall be paid by Buyer by wire transfer of immediately available funds to an account designated in writing by Seller. The Parties agree to allocate the Final Purchase Price (and all other capitalizable costs) among the Facility Assets in accordance with Code §1060 and the U.S. Department of Treasury regulations thereunder (and any similar provision of state, local, or non-U.S. law, as appropriate).

2.12 Proration. Buyer and Seller agree that any items normally prorated, including those listed below, relating to the Business and the Facility Assets, shall be prorated as of the Closing, with Seller being liable therefor to the extent such items relate to periods on or prior to the Closing Date, and Buyer being liable to the extent such items relate to periods after the Closing with, to the extent practicable, a cash settlement on the Closing:

(a) personal property and real estate Taxes, assessments and other charges, if any, by the applicable municipality, on the basis of the applicable municipality's fiscal year, on or with respect to the Business;

(b) rent, Taxes and other items payable by or to Seller under any of the Assumed Contracts assigned to and assumed by Buyer hereunder which are associated with the Facility Assets;

(c) any Permit, registration, compliance, assurance fees or other fees with respect to any Permit comprising part of the Facility Assets; and

(d) sewer rents and charges for water, telephone, electricity and other utilities.

In connection with the prorations referred to in this Section 2.12, in the event that the actual amounts for such items are not available on the Closing Date, the proration to be used as of the Closing Date shall be based upon actual Taxes or fees for the preceding year (or such other appropriate period of time) for which actual Taxes or fees are available. The prorated amounts of Taxes or fees shall be adjusted upon the request of Seller, on the one hand, or Buyer, on the other hand, within sixty (60) days following the date on which actual amounts become available. Seller and Buyer shall furnish each other with such documents and other records as may be reasonably requested in order to confirm any adjustments to the proration calculations made pursuant to this Section 2.12.

2.13 Closing Costs; Transfer Taxes and Fees. Seller shall be solely responsible for all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed by reason of the transfer of the Facility Assets as provided hereunder ("**Transfer Taxes**"), and any deficiency, interest or penalty asserted with respect thereto, under applicable Laws. Seller shall provide Buyer with evidence satisfactory to Buyer that all Transfer Taxes have been paid by Seller. If any other Taxes are erroneously imposed on a Party but such Party elects to nonetheless pay such Taxes on behalf of the other Party, the initial Party shall have the right to seek reimbursement for its payment of such erroneously-imposed Taxes from the other Party, and such other Party shall be obligated to reimburse the initial Party for such payment. The reimbursing Party shall have no right to argue that payment of any such Taxes by the initial Party is an admission or acknowledgment that such Taxes were properly imposed on the initial Party.

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

2.15 Closing Obligations. At the Closing: (a) Seller will deliver (or will have delivered) to Buyer each of the certificates, instruments, documents and agreements referred to in Article VII to be provided by Seller on or prior to the Closing, and (b) Buyer will deliver (or will have delivered) to Seller (i) the Final Purchase Price, and (ii) each of the certificates, instruments, documents and agreements referred to in Article VIII to be provided by Buyer on or prior to the Closing.

2.16 Bulk Sales Law. Unless waived by Buyer or otherwise not applicable, Seller shall, prior to the Closing, comply with the requirements of sellers under any applicable bulk sales law.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Upon the exercise of the Project Purchase Option, Seller represents and warrants to Buyer as follows as of the Schedule Delivery Date and the Closing Date and, with respect to Sections 3.1 and 3.2, the Effective Date (with the understanding that, following the Schedule Delivery Date, Seller shall have the right, until it delivers final Seller Disclosure

Schedules as provided in Section 2.11(a), to update any information contained in the Seller Disclosure Schedules if the occurrence of events or the discovery of new information makes the revision of such Seller Disclosure Schedules necessary, but subject to a Purchase Price adjustment as set forth in Exhibit 2.5 and the limitations on the effect of such revisions set forth in Section 2.11(a):

3.1 Organization and Good Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its state of organization and is qualified to do business in the State of California, and has the legal power and authority to own its properties, to carry on its Business as now being conducted and to enter into and perform its obligations under this Agreement and each of the Operative Documents to which Seller is a party.

3.2 Authority; Absence of Conflict or Breach. The sale of the Facility Assets and the execution, delivery and performance by Seller of this Agreement and each of the Operative Documents have been duly authorized by all necessary limited liability company action on the part of Seller and the owners of any interest in Seller and do not require any consent or approval other than those which have already been obtained or otherwise as disclosed in the Seller Disclosure Schedules. This Agreement and each of the Operative Documents to which Seller is a party constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law. The execution and delivery of this Agreement and each of the Operative Documents to which Seller is a party, the consummation of the sale of the Facility Assets and the fulfillment of and compliance with the provisions of this Agreement and the Operative Documents to which Seller is a party do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements of Law, or any Organizational Documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of Seller (except as contemplated hereby).

3.3 Real Property Matters.

(a) If Seller entered into a sale-leaseback financing of the Facility Site in accordance with the PPA, the Lessor has provided Buyer evidence satisfactory to Buyer of a binding obligation of such Lessor or Lessors and Seller to terminate such Sale Leaseback Financing on or prior to the Closing by the (i) reconveyance of the Facility Site by such Lessor or Lessors to Seller and the termination of the lease of the Facility Site by such Lessor or Lessors and Seller, or (ii) transfer of the Facility Site directly by such Lessor or Lessors to Buyer, provided that any such transfer from Lessor directly to Buyer shall be on the same terms and conditions as a transfer of the Facility Site from Seller to Buyer as set forth in this Agreement.

(b) As of the Closing Date, Schedule 3.3 contains a true, correct and complete list of any Contracts, including the Land Documents, that provide Seller with any rights in or to real property ("**Real Property Contracts**"), including rights in the nature of leases, easements, licenses, rights of way, franchise agreements, restrictive covenants, purchase agreements, agreements to relinquish or limit surface access rights with regards to minerals, options to purchase or lease, or applications for or bids to Governmental Authorities with respect to any of the foregoing interests in real property (collectively, "**Real Property Interests**"), as well as leases (including farm and grazing leases) and other agreements that grant or purport to grant, or reserve or purport to reserve to third parties, interests in or to the land which is subject to Real Property Interests ("**Third Party Property Interests**"). True, correct and complete copies of the Real Property Contracts have been delivered to Buyer. As of the Closing Date, Seller holds no Real Property Interests other than those that are set forth in such Real Property Contracts. Neither Seller, nor to Seller's Knowledge, any counterparty thereto, is in default in any material respect of any material obligation with respect to the Real Property Contracts. Each of the Real Property Interests granted by a Real Property Contract provides legal, valid, and enforceable rights in favor of Seller and constitutes a legal, valid and binding obligation of Seller and, to Seller's Knowledge, of the other parties thereto. True, correct and complete copies of all title reports, surveys, mineral reports for any severed minerals (including any evaluation as to feasibility or likelihood of mineral extraction and any separate chain of title for severed minerals), material records searches (for any governmental records not included in any title reports) and exception documents referenced in such reports, policies, or searches have been delivered to Buyer.

(c) Seller has not received any written notice of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning or land use law, regulation or rule or other law, order, regulation, rule or requirement relating to or affecting any of the Real Property Interests.

(d) Seller has not previously severed any mining, mineral or water rights from any of the Real Property Interests and has disclosed to Buyer any information regarding any severed mining, mineral or water rights affecting the Real Property Interests.

(e) Other than with respect to the Real Property Contracts or Permits, Seller has not received any written notice that any agreements with any Governmental Authority or public or private utility affect the Real Property Interests.

(f) Each of the Real Property Interests has been legally subdivided and is assessed for real estate tax purposes as one or more wholly independent tax lot or lots, separate from any adjoining land or improvements not constituting a part of such lot or lots, and no other land or improvements is assessed and taxed together with any Real Property Interests or any portion thereof.

(g) None of the Real Property Interests has been designated as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et*

seq. or any regulation adopted in accordance therewith, and there has been no occurrence or condition on any real property adjoining any of the Real Property Interests that is reasonably likely to cause such Real Property Interest or any part thereof to be designated as border zone property.

3.4 Consents. Except as set forth in Schedule 3.4, including the Consent required under the Federal Power Act, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the sale of the Facility Assets or the execution and delivery by Seller of this Agreement or any of the Operative Documents to which it is a party or in order for Seller to perform its obligations hereunder or thereunder.

3.5 Assets of the Business. The Facility Assets constitute all of the assets, properties, rights, privileges, claims and Contracts of every kind and nature, real or personal, tangible or intangible, absolute or contingent, wherever located, owned or used (including those necessary to access and utilize any common use facilities) necessary to conduct its operations on the Premises, to operate the Facility, and to sell and deliver Energy generated by the Facility, in substantially the same manner as it has historically been operated. The Facility Assets are free from material defects caused by errors or omissions in design, engineering or construction, and are generally consistent with the description of the Facility set forth in the PPA. Except as provided in Schedule 3.5, the Fixtures and Equipment are in good repair and operating condition, ordinary wear and tear excepted.

3.6 Title to Facility Assets. On the Schedule Delivery Date, Seller has good (and with respect to real property, marketable) title to all of the Facility Assets, free and clear of all Liens, except for the Purchase Option Permitted Encumbrances. At the Closing, Seller shall deliver and Buyer shall acquire good (and, with respect to the real property, marketable) title to all of the Facility Assets free and clear of all Liens, except for Closing Permitted Encumbrances.

3.7 Environmental. Except as set forth in Schedule 3.7:

(a) There are no pending or outstanding or threatened Agency Actions concerning the Facility or the Premises with respect to Environmental Laws applicable to Seller, the Facility or the Premises, or to Seller's ownership, operation and use of the Facility. Seller is, and at all times has been, and has owned (except in connection with any Sale Leaseback Financing) and operated (or its designated Qualified Operator has operated) the Facility and the Premises in compliance with all applicable Environmental Laws. There are no writs, injunctions, decrees, Orders or judgments outstanding, or any notices, actions, suits, Proceedings or investigations outstanding or pending or threatened involving Seller relating to (i) its compliance with any Environmental Laws with respect to any of the Facility Assets, the Premises, or any other asset owned or used by Seller or in which it has or had an interest in connection with the Facility, or (ii) the Release of any Hazardous Substances at the Premises.

(b) All Permits required by Environmental Laws and necessary for the operation of the Facility have been obtained and are currently in full force and effect. Seller's operations at the Premises and in connection with the Facility Assets are in

compliance with all the requirements of such Permits. Seller is not in possession of any current written notice of violation or other notification from any Governmental Authority or from any other Person alleging that Seller has committed any act, or failed to act, in any manner or under any circumstance that would preclude continued operation of the Facility Assets, including the Premises, under any of these Permits.

(c) Each of the Facility Assets and Seller are in compliance with all Environmental Laws. There are currently no circumstances or conditions existing on the Premises which could reasonably be expected to prevent or substantially interfere with Seller's compliance with Environmental Laws in connection with Seller's operation of the Facility Assets and use of the Premises.

(d) Hazardous Substances have not been generated, used, treated or stored on, or transported to or from, any of the Premises in violation of Environmental Laws.

(e) There is no asbestos contained in or forming any part of any building, building component, structure or other asset that is part of the Facility Assets, and no asbestos is or has been stored, disposed of or otherwise been present at the Premises or on or in any of the Facility Assets, and Seller does not have any liability for asbestos in connection with the use, operation, renovation or demolition of any of the Facility Assets.

(f) There has been no Release or threatened Release of Hazardous Substances by Seller or any party under the reasonable control of Seller, and to Seller's Knowledge, there has been no Release or threatened Release of Hazardous Substances by any other party at, on, under or from any of the Premises or at, on, under or from any property adjoining any of the Premises, other than in compliance with applicable Environmental Laws or as has previously been remediated in accordance with applicable Environmental Laws.

(g) In connection with its ownership and operation of the Facility Assets, Seller has disposed of all wastes, including those containing any Hazardous Substances, in compliance with all applicable Environmental Laws, and Seller has not received any notice or demand letter from any Person claiming Seller may be liable for any on- or off-site Release or threatened Release of Hazardous Substances. Seller has not received written notice from any Person or Governmental Authority indicating that there has been ongoing or past Release of Hazardous Substances at, from or migrating beneath of on to any of the Real Property Interests.

(h) There are not now, and never have been, any above-ground or underground storage tanks or PCB-containing transformers or equipment located at the Premises.

(i) Seller has provided Buyer with all reports, surveys, studies, correspondence, investigations, tests and environmental sampling and analyses (whether commissioned by Seller or otherwise) concerning the wildlife, cultural resources, natural resources and the Environmental Condition of any of the Facility Assets, Hazardous

Substances in, at, on and under the Premises, regardless of whether such Environmental Conditions were caused by or arose from Seller's operation of the Facility or ownership of all or any portion of the Facility Assets, Seller's compliance with applicable Environmental Laws in the operation of the Facility, the use of the Facility Assets, or otherwise.

(j) Seller has not received any written request for information nor any written notification that it is a potentially responsible party under CERCLA or any similar state Environmental Laws, including any such request or notification relating directly or indirectly to any of the Facility Assets, and none of the Premises is proposed to be listed or is listed on the National Priorities List under CERCLA or any similar state Environmental Laws requiring environmental investigation or cleanup.

3.8 No Undisclosed Liabilities. Seller has no liabilities (absolute, accrued, contingent or otherwise) in excess of Twenty Five Thousand Dollars (\$25,000) in the aggregate, except for (a) those set forth in Schedule 3.5, Schedule 3.7, Schedule 3.8, Schedule 3.9, Schedule 3.10, or Schedule 3.11, (b) those otherwise disclosed in writing to Buyer or explicitly set forth in any of the Assumed Contracts or Permits, (c) those constituting Excluded Liabilities, or (d) those disclosed in the Financial Statements.

3.9 Taxes. As of the Schedule Delivery Date, and again as of the designated Closing Date, any Liens for Taxes are set forth in Schedule 3.9, and:

(a) There are no Liens for Taxes on any of the Facility Assets, except for Purchase Option Permitted Encumbrances and, upon the Closing, Closing Permitted Encumbrances.

(b) The Facility Assets do not include any equity interest in any corporation or other entity.

(c) Seller has filed or caused to be filed with the appropriate Governmental Authorities all Tax Returns and reports relating to Seller or the Facility Assets required to be filed, all such Tax Returns were correct and complete in all respects and all Taxes of Seller due and payable have been paid whether or not shown to be due on such Tax Returns and reports.

(d) Seller has not received any notice from any Governmental Authority of, and has no other Knowledge of, any outstanding claims or assessments with respect to any Tax relating to the Facility Assets and no such claim is pending or is presently being asserted against the Seller or with respect to any of the Facility Assets.

(e) Seller has no Knowledge of any proposed tax assessment against the Facility Assets, other than a proposed tax assessment that is being actively contested by Seller in good faith and by appropriate proceedings, so long as the results of any such actively-contested assessment could not reasonably be expected to have a Material Adverse Effect hereunder.



(f) Seller has timely paid all Taxes shown to be due on such Tax Returns, all Tax assessments received, and all Taxes that have or may become due under applicable Law with respect to all periods or portions thereof ending on or prior to the Closing Date.

(g) Seller is not a party to any pending Tax audit, investigation, action or Proceeding with any Governmental Authority, and there is no threatened audit, investigation, action or Proceeding by any Governmental Authority with respect to any of the Facility Assets. Seller has not received written notice of any claim by any Governmental Authority in any jurisdiction where it does not file Tax Returns or pay Taxes that it is or may be subject to Tax by that jurisdiction.

(h) Seller has timely withheld and timely paid all Taxes that are required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor or other Person.

3.10 Compliance With Laws. Except as set forth in Schedule 3.10, Seller is in full compliance in all respects with all Laws applicable to the Facility Assets and operation and use of the Facility, and there are no condemnations or similar proceedings applicable to any part of the Facility.

3.11 Litigation. Except as set forth in Schedule 3.11:

(a) There are no Proceedings pending, or to Seller's Knowledge threatened, against Seller which could result, or have resulted in (i) the institution of legal proceedings to prohibit or restrain the operation of the Facility or any material portion thereof, or the consummation of the transactions contemplated hereby, or (ii) a claim for damages for which Buyer could be liable or that could place any Lien on the Facility Assets;

(b) There are no existing Orders, writs, injunctions, judgments or decrees of any court, arbitrator, tribunal or other Governmental Authority against Seller which could result, or has resulted in (i) the institution of legal proceedings to prohibit or restrain the operation of the Facility or any material portion thereof, or the consummation of the transactions contemplated hereby, or (ii) a claim for damages for which Buyer could be liable or that could place any Lien on the Facility Assets.

3.12 Assumed Contracts. Seller has delivered or made available to Buyer true and complete copies of all Material Contracts. Except as set forth in Schedule 3.12, all Assumed Contracts are in full force and effect, and neither Seller, nor to Seller's Knowledge, any other party thereto, is in default under or in breach of any of them, nor does any event or condition exist that after notice or lapse of time or both could constitute a default thereunder or breach thereof on the part of Seller, or to Seller's Knowledge, any other party thereto (except for defaults, events of default and other events as to which requisite waivers have been, or prior to Closing will have been, obtained). Except as set forth in Schedule 3.12, no approval, consent, or waiver of or by any Person that has not already been obtained is needed in order that the Assumed Contracts continue in full force and effect following the consummation of the transactions contemplated by this Agreement, and no Assumed Contract includes any provision,

the effect of which may be to terminate (or give rise to a right of termination under) such Assumed Contract, to give rise to, enlarge, or accelerate any obligations of Seller thereunder, or to give additional rights to any other Person, upon or by reason of the consummation of the transactions contemplated by this Agreement.

### 3.13 Intellectual Property.

(a) Except as set forth in Schedule 3.13, Seller is the licensee of, or has such rights under the patents, patent applications, inventions, improvements, computer programs, computer applications, operating programs, other programs and software, including system documentation and instructions, engineering, construction and other drawings (other than drawings not needed for the operation, maintenance or repair of the Facility), designs, technology, know-how, trade secrets, trademarks, trademark applications, trade names, copyrights and other proprietary rights and proprietary information (to the extent any of the foregoing are necessary to operate and/or maintain the Facility in substantially the same manner as it has been operated and maintained during the Operations Period, collectively, the "*Intellectual Property Assets*"). Except as set forth in Schedule 3.13, none of the Intellectual Property Assets infringes on or conflicts with the intellectual property rights of others. No assignment or Consent from any third party is necessary to transfer, license, assign or convey to Buyer, as appropriate, any of the Intellectual Property Assets. Seller has the right to use, and from and after the Closing Date, Buyer shall have the right to use, the Intellectual Property Assets in connection with its ongoing operation and maintenance of the Facility. Seller has the right to and shall transfer such Intellectual Property Assets to Buyer.

(b) Except as set forth in Schedule 3.13, there have been no claims, and there is no basis for any claim, challenging the scope, validity or enforceability of any of the Intellectual Property Assets. Except as set forth in Schedule 3.13, there are no instances where it has been held, or to Seller's Knowledge claimed or alleged, whether directly or indirectly, and, to Seller's Knowledge, there is no basis upon which a claim may be made, that any activity of Seller relating to the operation or maintenance of the Facility, infringes or may infringe upon, is in violation of, or misappropriates, any rights of a third party.

(c) Schedule 3.13 lists all of the intellectual property, including software used in connection with the operation and/or maintenance of the Facility as of the Schedule Delivery Date, including control room operating system software, all of which will remain available at the Facility for use by Buyer.

3.14 Brokers or Finders. Neither Seller nor any of its officers, directors, employees, shareholders or Affiliates has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Buyer or any of its Affiliates to pay any finder's fee, brokerage fees or commission or similar payment in connection with the transactions contemplated hereby.

3.15 Permits. All non-environmental Permits required by Law and necessary or useful for the operation of the Facility have been obtained, are currently in effect, are final and

non-appealable, and are transferrable to Buyer. Seller's operations at the Premises and in connection with the Facility Assets are in compliance with all the requirements of such Permits, and as of Closing, Seller is not in possession of, and to the Knowledge of Seller, there is no basis for the issuance of, any written notice of violation or other notification from any Governmental Authority or from any other Person alleging that the Facility is in violation of such Permits or that Seller has committed any act, or failed to act, in any manner or under any circumstance that could have a Material Adverse Effect on the continued operation of the Facility Assets, including the Premises, by Buyer under any of these Permits. Seller has made available to Buyer complete and correct copies of each such Permit, together with all amendments thereto. No suspension, cancellation or termination of any such Permit is, to Seller's Knowledge, threatened or imminent.

3.16 Investment Company Act. Seller is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act.

3.17 Employees and Employee Benefit Plans. Except as set forth in Schedule 3.17, Seller does not have and has never had any employees, and Seller does not maintain or contribute to, and has not ever maintained or contributed to, any pension, profit-sharing, deferred compensation, bonus, stock, option, share, appreciation right, severance, group or individual health, dental, medical, life, insurance, survivor benefit or similar plan, policy or arrangement for the benefit of any director, officer, consultant or employee, whether active or terminated, of Seller.

3.18 General Representation. Except as set forth in Schedule 3.18, no representation or warranty made by Seller, its agents and Representatives in this Agreement, including the schedules and exhibits hereto, or any of the Operative Documents, or in any certificate or other agreement delivered by Seller to Buyer in connection with the transactions contemplated hereby or thereby, contains any untrue statement of a fact, or omits to state a fact necessary in order to make the statements contained herein, in light of the circumstances in which they were made, not misleading. All information contained in the Provided Materials is or will be, or is or will be consistent with, the information which has been used by Seller in the management of the Business and also with what has been or will be reported to Seller's management, equity holders and the Facility Lender in connection with the Business.

3.19 Regulatory Status. The Facility is an "Exempt Wholesale Generator," as that term is defined under 18 C.F.R. § 366.1, and is also a "public utility" under the Federal Power Act, and the regulations of the Federal Energy Regulatory Commission ("**FERC**") thereunder (collectively, the "**FPA**"). The status of Seller and the Facility hereunder is not subject to any pending or threatened challenge, petition or investigation by or before the FERC. Seller requires no authorization under the FPA to execute, deliver, and perform its obligations under this Agreement, apart from such authorizations from FERC that have already been received as of the Closing Date. The Facility is interconnected to the electrical grid pursuant to a valid and effective agreement for such interconnection, which agreement is sufficient to permit the delivery of the Facility's entire net electrical output to the therein-specified point of interconnection.

**ARTICLE IV  
REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows as of the Closing Date:

4.1 Organization. Buyer is a validly existing joint powers agency formed under the laws of the State of California and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into and perform its obligations under this Agreement and each of the Operative Documents to which Buyer is a party.

4.2 Authority: Absence of Conflict or Breach. The purchase of the Facility Assets and the execution, delivery and performance by Buyer of this Agreement and each of the Operative Documents executed and delivered by Buyer in connection with such purchase have been duly authorized by all necessary action on the part of each of Buyer's Members and do not require any consent or approval of Buyer's regulatory or governing bodies other than that which has been obtained; provided that further authorizations from Buyer and Buyer's Members will be required for Buyer to exercise the Project Purchase Option. This Agreement and each of the Operative Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

4.3 Consents. Except as set forth in Schedule 4.3, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the purchase of the Facility Assets or the execution and delivery by Buyer of any of the Operative Documents to which it is a party or in order for Buyer to perform its obligations hereunder.

4.4 Brokers or Finders. Neither Buyer nor any of Buyer's Members, officers, directors, employees, shareholders or Affiliates has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Seller or any of its Affiliates to pay any finder's fee, brokerage fees, or commission or similar payment in connection with the transactions contemplated hereby.

4.5 Litigation. There are no Proceedings pending, or to Buyer's knowledge, threatened, against Buyer which could reasonably be expected to materially adversely affect its ability to perform its obligations with respect to the purchase of the Facility Assets pursuant to the Project Purchase Option.

**ARTICLE V  
COVENANTS OF SELLER PRIOR TO CLOSING DATE**

5.1 Access to Materials. Prior to the Schedule Delivery Date, Seller will furnish to Buyer all information required to be furnished pursuant to Section 3.7(j). Between the Schedule Delivery Date and the earlier of (a) the Closing Date or (b) the date upon which Buyer has declined to exercise the applicable Purchase Option Opportunity, such Purchase Option Opportunity has expired or is no longer in effect, or the Agreement has terminated (such period,

the "***Applicable Diligence Period***"), upon reasonable advance notice, Seller will (i) afford Buyer and its Representatives (and the Qualified Appraiser) full and complete access during normal business hours to the Facility and to Seller's personnel, Assumed Contracts, Permits, Books and Records, properties and other documents and data (provided that Buyer shall observe, and shall cause its Representatives to observe, all of Seller's security protocols), (ii) furnish Buyer and Buyer's Representatives (and the Qualified Appraiser) with copies of all such Assumed Contracts, Permits, Books and Records, and other existing documents and data in Seller's possession or to which Seller has access with respect to the Facility or pertaining to the design of the Facility (including design schematics, blueprints or other similar documents) and other Facility Assets as Buyer or the Qualified Appraiser may reasonably request, and (iii) furnish Buyer and its Representatives (and the Qualified Appraiser) with such additional financial, operating, and other data and information of or pertaining to the Business in Seller's possession or to which Seller has access as Buyer and its representatives (and the Qualified Appraiser) may reasonably request (all such Assumed Contracts, Books and Records, documents, data and information required to be furnished by Seller under this Section 5.1 shall hereinafter be referred to as "***Provided Materials***"). Buyer shall have the right to diligently review the Provided Materials. The Provided Materials may be redacted as necessary to allow for disclosure to Buyer and the Qualified Appraiser to the extent any Provided Materials are (A) subject to confidentiality, non-disclosure or similar agreements in favor of third parties whose consent to disclose cannot be obtained by the Closing, (B) legally-privileged information of Seller, or (C) concerning any alleged dispute or pending litigation, investigation or Proceeding involving Seller or its Affiliates that is protected by or subject to a court order or the attorney-client privilege.

5.2 Investigations. During the Applicable Diligence Period, upon reasonable advance notice (but not less than twenty four (24) hours), Seller shall afford Buyer and its Representatives (and the Qualified Appraiser), with reasonable access to the Facility Assets for the purpose of inspecting the same, to conduct any performance tests or physical inspections or otherwise, including to conduct a phase 1 environmental site assessment, during normal business hours and in such manner so as not to materially disturb or interfere with the normal operations of the Facility Assets.

5.3 Financial Statements. On the Schedule Delivery Date, Seller will deliver to Buyer unaudited balance sheets and unaudited statements of income and cash flow of Seller for the three (3) most recent fiscal years of Seller, prepared in material compliance with GAAP. From and after the Schedule Delivery Date, as soon as available and in any event during the Applicable Diligence Period or the end of each fiscal quarter of Seller, Seller will provide Buyer with unaudited statements of income and cash flow for such quarter, setting forth in comparative form figures for the corresponding period of the preceding fiscal year. All Financial Statements (as defined below) shall be accompanied by a certificate signed by an authorized officer of Seller stating that such financial statements present fairly in all material respects the financial condition of Seller and that the same have been prepared in compliance with GAAP. Seller will also deliver to Buyer copies of all financial statements or other financial information delivered to any Facility Lender during the Applicable Diligence Period contemporaneously with the delivery thereof to such Facility Lender. The financial statements required to be provided by Seller to Buyer under this Section are collectively referred to as the "***Financial Statements***."

5.4 Operation of the Business. During the Applicable Diligence Period, Seller will conduct its Business with respect to the Facility in accordance with the ordinary course of business consistent with past practices and Prudent Utility Practices.

5.5 Disposition of Assets. During the Applicable Diligence Period, unless required by any Material Contract existing prior to the Schedule Delivery Date, Seller shall not (a) sell or otherwise dispose of or encumber (other than Purchase Option Permitted Encumbrances) any of the Facility Assets or any other property or assets which are primarily related to the operation, maintenance and use of the Facility (other than sales, leases, transfers or dispositions in the ordinary course of business consistent with past practice and Prudent Utility Practices), or (b) except as may be required by their terms, and except in the ordinary course of business consistent with past practice, modify, subordinate, amend, terminate, cancel, sever or surrender, or permit or suffer the modification, subordination, amendment, termination, cancellation, severance or surrender of any Material Contract, Permit or Warranties, without the prior written approval of Buyer.

5.6 Required Approvals. As promptly as practicable following Buyer's delivery of the Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Seller will make, and thereafter diligently pursue during the Applicable Diligence Period, all registrations, qualifications or filings to be identified in Schedule 3.4 or necessary or appropriate to obtain all the Consents therein identified.

5.7 Notification. During the Applicable Diligence Period, Seller shall give prompt notice (each notice, a "Change Notice") to Buyer of the occurrence or non-occurrence of any event, change, effect or development of any kind which would or might result in: (a) any representation or warranty of Seller contained in any Operative Document or this Agreement being untrue or incorrect in any material respect on the date such representation or warranty is to be made or otherwise result in a Material Adverse Effect, or (b) a breach of any of Seller's covenants under this Agreement or any Operative Document. Each Change Notice must include a detailed description of the event, change, effect, development or failure and a description of the action Seller has taken and proposes to take with respect thereto. The delivery of a Change Notice will not be deemed to (i) modify any representation or warranty hereunder, (ii) modify any condition set forth in Article VII, or (iii) limit or otherwise affect the remedies available hereunder to Buyer. Buyer shall thereafter have the right, but not the obligation, to either (A) terminate the Project Purchase Option with respect to the applicable Purchase Option Opportunity, in which case such Purchase Option Opportunity shall no longer be effective; provided, however, that such termination shall not affect Buyer's right to exercise any Project Purchase Option with respect to a future Purchase Option Opportunity, or (B) proceed with the Closing despite the existence of the Change Notice and to have the Final Purchase Price reduced in accordance with Schedule 2.5 as a result of the matters disclosed in the Change Notice.

5.8 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Seller will, and will cause its Affiliates to, use all commercially reasonable efforts to satisfy the conditions in Article VII and Article VIII to be performed by Seller and its Affiliates.

5.9 Waivers of Claims. During the Applicable Diligence Period, Seller shall not incur, create, assume or otherwise become liable for indebtedness for borrowed money, or issue

any debt securities, other than those that are discharged at or prior to Closing, nor shall it waive or release any right that it has relating to the Facility Assets or any Assumed Liabilities. If any Assumed Contract necessary for the operation of the Facility expires or is terminated prior to the Closing Date, Seller will replace same with a contract approved by Buyer, such approval not to be unreasonably withheld. The preceding sentence shall not be deemed a limitation of the obligations of Seller under Section 5.5.

5.10 Additional Contracts. Any Contract entered into by Seller during the Applicable Diligence Period shall be an Excluded Liability unless Buyer agrees in writing to include such Contract as an Assumed Contract.

5.11 Transitional Services. During the period between Buyer's delivery of the Purchase Option Tentative Exercise Notice until the earliest to occur of (a) Buyer's delivery of the Purchase Option Exercise Notice, (b) the Purchase Option Exercise Deadline, (c) termination of the relevant Purchase Option Opportunity, or (d) termination of this Agreement, Buyer and Seller shall negotiate in good faith an agreement for transition operation and maintenance services upon terms and conditions to be mutually agreed upon by both Parties, in form and substance consistent with Exhibit 5.11.

## ARTICLE VI COVENANTS OF BUYER PRIOR TO CLOSING DATE

6.1 Notification. During the Applicable Diligence Period, Buyer shall give reasonable notice to Seller of the occurrence or non-occurrence of any event, change, effect or development of which Buyer has knowledge and that would cause (a) any representation or warranty of Buyer contained in any Operative Document or this Agreement to be untrue or incorrect in any material respect on the date such representation or warranty is to be made, or (b) a breach of any of Buyer's covenants under this Agreement or any Operative Document. Each Change Notice must include a detailed description of the event, change, effect, development or failure and a description of the action Buyer has taken and proposes to take with respect thereto. The delivery of a Change Notice will not be deemed to (i) modify any representation or warranty hereunder, (ii) modify any condition set forth in Article VII, or (iii) limit or otherwise affect the remedies available hereunder to Seller.

6.2 Required Approvals. As promptly as practicable following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Buyer will make, and thereafter during the Applicable Diligence Period pursue, all registrations, qualifications or filings identified in Schedule 4.3 or necessary or appropriate to obtain any Consent therein identified, consistent with and based upon Seller's acknowledgement and agreement in Section 2.3.

6.3 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Buyer will use reasonable efforts to cause the conditions in Article VII and Article VIII to be performed by Buyer, to be satisfied.

**ARTICLE VII**  
**CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE**

Buyer's obligation to purchase the Facility Assets and to take the other actions required to be taken by Buyer at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer in its sole discretion, in whole or in part):

7.1 Accuracy of Representations. All of Seller's representations and warranties in this Agreement and the other Operative Documents (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date when deemed made.

7.2 Seller's Performance. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

7.3 Consents. Each of the Consents identified in Schedule 3.4 and Schedule 4.3 must have been obtained and must be in full force and effect.

7.4 Additional Seller Documents. Seller shall deliver each of the following documents to Buyer:

(a) legal opinion of Seller's counsel, dated the Closing Date, with respect to the enforceability and due authorization by Seller of the sale of the Facility Assets pursuant to this Agreement and related matters, in form and substance reasonably acceptable to Buyer;

(b) a written certificate, in form and substance satisfactory to Buyer, executed and delivered by Seller by its authorized officer, certifying that each of the conditions specified in Sections 7.1, 7.2, and 7.3, have been satisfied;

(c) a Bill of Sale, dated as of the Closing Date, in form and substance reasonably acceptable to Buyer ("**Bill of Sale**"), and executed by Seller by its authorized officer;

(d) agreements and related documentation effective to transfer to Buyer the Real Property Interests, Permits, the Assumed Contracts, and any other Facility Assets (together with the Bill of Sale, the "**Asset Assignment Documents**") in form and substance reasonably acceptable to Buyer, executed by Seller by its authorized officer;

(e) an irrevocable commitment by a title company acceptable to Buyer to issue an extended coverage owner's policy of title insurance based upon a recent ALTA survey, including such endorsements as Buyer may reasonably require, insuring Buyer in the amount of the Final Purchase Price, that title to the Premises (in fee, leasehold and/or



easement, as applicable) is vested in Buyer, subject only to those exceptions that are Closing Permitted Encumbrances;

(f) confirmation in writing by Seller that any existing operations and maintenance agreement with respect to the Facility shall terminate upon the Closing Date (unless Buyer elects to assume such agreement, in which case such agreement shall be deemed an Assumed Contract);

(g) duly executed pay-off letters for the release or termination of all Liens securing Facility Debt, if any, that acknowledge repayment in full of such Facility Debt (unless Buyer otherwise agrees in writing that any such Liens shall not be released or terminated);

(h) evidence satisfactory to Buyer of the (i) reconveyance of the Facility Site by Lessor or Lessors to Seller and the termination of the lease of the Facility by such Lessor or Lessors and Seller or (ii) transfer of the Facility Site directly by such Lessor or Lessors to Buyer on the same terms and conditions as a transfer of the Facility Site from Seller to Buyer as set forth in this Agreement; and

(i) such other documents as Buyer may reasonably request for the purpose of (i) evidencing the accuracy of any of Seller's representations and warranties, (ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, including under Section 2.3, or (iii) evidencing the satisfaction of any condition referred to in this Article VII.

7.5 Litigation. No Proceeding shall have been instituted or any other action taken or Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending, to delay, restrain or prohibit any part of the transactions contemplated by this Agreement or to seek any divestiture or to revoke or suspend any Permit by reason of any or all of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of all or any part of the transactions contemplated by this Agreement would constitute a violation of the Laws or Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit all or any part of the transactions contemplated by this Agreement or to require such divestiture, revocation or suspension; unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding, action, Law or Environmental Law to the satisfaction of Buyer.

7.6 Liens. Title to the Facility Assets shall be free and clear at the Closing of all Liens other than Closing Permitted Encumbrances (which shall include any Lien approved in writing by Buyer as a Permitted Encumbrance following the Schedule Delivery Date).

7.7 No Material Adverse Effect. During the Applicable Diligence Period, no action shall have been taken or omitted and no event shall have occurred or be threatened which has had or could reasonably be expected to result in a Material Adverse Effect.

**ARTICLE VIII**  
**CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE**

Seller's obligation to sell the Facility Assets and to take the other actions required to be taken by Seller at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in its sole discretion, in whole or in part):

8.1 Accuracy of Representations. All of Buyer's representations and warranties in this Agreement and the other Operative Documents (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and as of the date when deemed made.

8.2 Buyer's Performance.

(a) All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b) Buyer must have paid the Final Purchase Price to Seller.

8.3 Consents. Each of the Consents identified in Schedule 3.4 and Schedule 4.3 must have been obtained and must be in full force and effect.

8.4 Additional Buyer Documents. Buyer shall deliver each of the following documents to Seller:

(a) a legal opinion with respect to the enforceability and due authorization by Buyer (but not with respect to any of Buyer's Members) of this Agreement and the purchase of the Facility Assets; and

(b) the Bill of Sale and other Asset Assignment Documents (as delivered by Seller pursuant to Section 7.4) executed by Buyer by its authorized Representative.

8.5 Litigation. No Proceeding shall have been instituted or any other action taken or Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending to delay, restrain or prohibit any material part of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Agreement would constitute a violation of the Laws or Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit any part of the transactions contemplated by this Agreement, unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding, action, Law or Environmental Law to the satisfaction of Seller.

**ARTICLE IX**  
**MUTUAL COVENANTS, TAXES AND OTHER MATTERS**

9.1 Tax Matters. Seller, at its own expense, will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to its portion of any Transfer Taxes, and, if required by applicable Law, Seller will join in the execution of any such Tax Returns or other documentation and will take such positions in such returns as are reasonably requested by Buyer.

(a) With respect to Taxes to be prorated in accordance with Section 2.12 only, Buyer shall prepare and timely file all Tax Returns required to be filed with respect to the Facility Assets, if any, and shall duly and timely pay all such Taxes, whether imposed on Buyer or Seller, shown to be due on such Tax Returns. Buyer shall make such Tax Returns available for Seller's review and approval no later than fifteen (15) Business Days prior to the due date for filing such Tax Return. Within ten (10) Business Days after receipt of such Tax Return, Seller shall pay to Buyer Seller's proportionate share of the amount shown as due on such Tax Return, determined in accordance with Section 2.12. Without duplication, Seller shall indemnify and hold Buyer harmless from and against any and all Taxes which may be suffered or incurred relating to ownership, sale, operation or use of the Facility Assets prior to the Closing Date.

(b) Each of Buyer and Seller shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative Proceeding relating to liability for Taxes, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, Proceedings or determination. Each Party will take any and all commercially reasonable steps, act in good faith, and cooperate fully, to permit the other Party to comply with its/their obligations and secure its/their rights to indemnification hereunder.

(c) Seller will be entitled to any refunds or credits of Taxes relating to the Facility Assets for the period on or prior to the Closing Date (and such refunds and credits shall be Excluded Assets), and Buyer shall be entitled to such refunds or credits of Taxes relating to the Facility Assets for the period after the Closing Date. Each of Buyer and Seller will promptly notify and forward to the other Party the amounts of any such refunds or credits received by such Party, but to which the other Party is entitled, within sixty (60) days after receipt thereof.

(d) After the Closing, Buyer will notify Seller in writing, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any Representative thereof, of any pending or threatened tax audit, or any pending or threatened Proceeding that involves Taxes relating to the Facility Assets for the period prior to the Closing, and furnish Seller with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Facility Assets for the period prior to the

Closing. After the Closing, Seller will notify Buyer in writing, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any Representative thereof, of any pending or threatened tax audit, or any pending or threatened judicial or administrative Proceeding that involves Taxes relating to the Facility Assets for the period after the Closing, and furnish Buyer with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Facility Assets for the period after the Closing.

(e) Notwithstanding any provision of this Agreement to the contrary, with respect to any claim for refund, audit, examination, notice of deficiency or assessment or any Proceeding that involves Taxes relating to the Facility Assets (collectively, "**Tax Claim**"), each of Buyer and Seller will reasonably cooperate with the other Party in prosecuting or contesting any Tax Claim, including making available original books, records, documents and information for inspection, copying and, if necessary, introduction of evidence at any such Tax Claim contest or Proceeding and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder with respect to such Tax Claim or to testify at Proceedings relating to such Tax Claim. Seller will control all Proceedings taken in connection with any Tax Claim that pertains entirely to any period prior to the Closing, and Buyer will control all Proceedings taken in connection with any Tax Claim that pertains to any period commencing after the Closing, and Seller and Buyer will jointly control all Proceedings taken in connection with any Tax Claim pertaining to any period commencing prior to and ending after the Closing; provided, however, that Seller shall take all necessary action to remove any Liens on the Facility Assets relating to any Tax Claim that pertains to the period prior to or including the Closing. Buyer shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period prior to the Closing; Seller shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period after the Closing and neither Buyer nor Seller shall have the right to settle or otherwise compromise any Tax Claim which pertains to the period both prior to and after the Closing without the other Party's prior written consent, which consent shall not be unreasonably withheld or delayed.

9.2 Seller Cooperation Post-Closing. In furtherance, and not in limitation of, the transitional services agreement to be executed in connection with Section 5.11, Seller agrees that, for a period of two (2) years after the Closing, it will use good faith efforts to respond to Buyer's inquiries relating to the Facility or the Facility Assets.

9.3 Risk of Loss.

(a) Promptly following the delivery by Buyer of a Project Purchase Exercise Notice, Seller shall make Buyer a named insured under Seller's all-risk property insurance policy through the Applicable Diligence Period. If, during the Applicable Diligence Period, all or any portion of the Facility is damaged or destroyed in whole or in part by a Material Casualty Event or becomes subject to or threatened with any condemnation or eminent domain proceeding (the "**Affected Portion**"), and the amount

that is the greater of the (i) fair market value of the Affected Portion (such value to be determined as of the date immediately prior to such damage, destruction or actual or threatened condemnation or eminent domain proceeding) or (ii) the cost of repair of the Affected Portion, as determined by a qualified independent engineer (which engineer has appropriate training and sufficient experience to evaluate the proper repair scope) (such greater amount, the "*Diminished Amount*") is equal to or greater than three percent (3%) of the then-current Fair Market Value, then such Fair Market Value shall be reduced by an amount equal to one hundred percent (100%) of the Diminished Amount; provided, that (1) Seller shall be responsible for the satisfaction of any deductible under its all-risk property insurance policy, and (2) if Seller replaces the Affected Portion prior to the Closing Date to the reasonable satisfaction of Buyer, the Fair Market Value shall be adjusted to the Fair Market Value at the time immediately prior to the occurrence of the Material Casualty Event.

(b) If, during the Applicable Diligence Period, all or any portion of the Facility is damaged or destroyed in whole or in part by a Material Casualty Event or becomes subject to or threatened with any condemnation or eminent domain proceeding, such that it cannot reasonably be expected (as determined by the Qualified Appraiser(s)) that, (i) in the case of a Material Casualty Event, the Facility will be fully repaired within sixty (60) days after the Closing Date or (ii) in the case of a condemnation or eminent domain proceeding, such condemnation or eminent domain proceeding would have a Material Adverse Effect, then Buyer may, in its sole discretion, elect to terminate this Agreement or withdraw from the present Project Purchase Opportunity.

#### 9.4 Liabilities.

(a) From and after Closing, Buyer shall assume, shall pay, perform and discharge when due, and, as between Buyer and Seller, shall be solely responsible for, the Assumed Liabilities. Other than as set forth in Section 9.1, Seller shall have no liability or obligation for the Assumed Liabilities from and after the Closing Date (and Buyer shall have no liability or obligation for the Assumed Liabilities prior to the Closing Date).

(b) Except for the Assumed Liabilities, Buyer shall not assume by virtue of this Agreement or the transactions contemplated by this Agreement, and shall have no liability under this Agreement for, the Excluded Liabilities.

9.5 Insurance. Buyer acknowledges and agrees that, effective upon the Closing, Seller's insurance policies in respect of the Facility and the Facility Assets shall be terminated or modified to exclude coverage of the Facility Assets, except to the extent required to address a Material Casualty Event under Section 9.3. Buyer acknowledges and agrees that it may need to provide to certain Governmental Authorities and third parties evidence of replacement or substitute insurance coverage for the continued operation of the Facility Assets following the Closing.

## ARTICLE X TERM AND TERMINATION

10.1 Term. This Agreement shall become effective when it is executed by each of the Parties and delivered to the other Party and the term of this Agreement shall continue for the Agreement Term (including any survival periods set forth in Section 2.3 of the PPA), or such other period as may be provided in this Agreement, but in any event up to and including the Closing Date, if any, unless terminated earlier as provided in Section 10.2.

10.2 Termination Events. This Agreement may, by notice given prior to the Closing, be terminated:

(a) by either Buyer or Seller upon (i) a failure by the other Party to perform any of its duties or obligations under this Agreement when and as due which is not cured to the reasonable satisfaction of the Party obligated to perform such duties or obligations under this Agreement by the earlier of the Closing Date or the date that is thirty (30) days after receipt of written notice thereof from the other Party, or (ii) an inaccuracy in any material respect of any representation, warranty, certification or other statement made by the other Party herein or in any other document contemplated hereby or in any Operative Document at any time given by a Party in writing pursuant hereto or thereto, or in connection herewith or therewith at the time made or deemed to be made;

(b) either (i) by Buyer if satisfaction of any of the conditions in Article VII has become impossible due to an event outside of Buyer's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not previously waived such condition; or (ii) by Seller if satisfaction of any of the conditions in Article VIII has become impossible due to an event outside of Seller's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Seller to comply with its obligations under this Agreement) and Seller has not previously waived such condition on or before the Closing Date; or

(c) (i) by Seller, if a Default of Buyer shall have occurred under the PPA and the PPA is terminated prior to or concurrently with this Agreement, or (ii) by either Party, if the other Party or such other Party's Affiliates shall contest the validity or enforceability of the PPA or any provision thereof in writing or deny that it has any further liability thereunder.

10.3 Effect of Termination. In the event of termination of this Agreement:

(a) To the extent reasonably available, upon a request from the other Party, each Party will redeliver all documents, work papers and other material of the other Party relating to the transactions contemplated hereby or by the other Operative Documents to the Party furnishing the same, whether so obtained before or after the execution hereof, and each Party will withdraw any applications for approval of transfer of Permits and surrender any Permits already transferred, as necessary;

(b) The provisions of Article XII shall survive in full force and effect;

(c) Neither Party shall have any liability or further obligation to the other Party, except as stated in subsections (a) and (b) of this Section 10.3, and except for any breach of representation, warranty or obligation arising under this Agreement or otherwise occurring prior to the proper termination of this Agreement. The foregoing provisions shall not limit or restrict the availability of specific performance or other injunctive relief to the extent that specific performance or such other relief would otherwise be available to a Party hereunder; and

(d) The PPA shall remain in full force and effect in accordance with its terms.

## ARTICLE XI LIMITATION OF LIABILITY

11.1 Survival of Representations, Etc. The representations, warranties, covenants and agreements of Seller and Buyer contained herein shall survive the consummation of the transactions contemplated hereby and the Closing Date, without regard to any investigation made by either of the Parties or, subject to Section 11.2, the fact that the damaged Party had knowledge of any misrepresentation or breach of warranty or covenant at the time of Closing or at any other time, until the expiration of two (2) years after the Closing Date (a) other than with respect to the representation and warranties set forth in (a) Sections 3.1, 3.2, 3.5, 3.6 and 3.9, which shall survive for the applicable statute of limitations, and (b) Section 3.7, which shall survive upon expiration of five (5) years after the Closing Date (at which time, in each case, the other Party shall be precluded from making a claim or commencing a cause of action with respect thereto). The termination of any representation and warranty provided herein shall not affect the rights of a Party in respect of a Claim made by such Party with specificity and in a writing received by the other Party prior to the expiration of the applicable survival period provided herein.

### 11.2 Limitation of Liability.

(a) If the Closing occurs, neither Party shall have any liability or obligation for breach of any representation or warranty under this Agreement or any Operative Document unless the aggregate amount for which such party would be liable but for this provision exceeds fifty thousand dollars (\$50,000) (the "***Deductible Amount***"); provided, however, that individual claims of ten thousand dollars (\$10,000) or less shall not be aggregated for purposes of calculating the Deductible Amount; and provided further, that upon reaching the Deductible Amount, such Party shall become liable to the other Party for the aggregate amount for which Seller is liable hereunder, including all amounts up to the Deductible Amount.

(b) Notwithstanding anything contained in this Agreement to the contrary:

(i) in no event shall Seller's aggregate liability under this Agreement or any Operative Document to Buyer under any theory of liability (whether contract, tort, strict liability or otherwise) exceed one hundred percent (100%) of

the Final Purchase Price, provided that the foregoing limitation shall not apply (A) to the extent based upon a breach of any representation or warranty made in Section 3.1, 3.2, 3.4, 3.6, 3.7, 3.9, 3.13 or 3.14 or (B) to bodily injury or property damage arising from activities conducted on any Premises on or prior to the Closing Date or from Hazardous Substances that were present at or on the Premises on or prior to the Closing Date or that were released by Seller or any other Person for whose conduct Seller is held responsible at any time on or prior to the Closing Date.

(ii) In no event shall either Party have any liability under this Agreement or any Operative Document following the Closing for any event, circumstance or condition arising from Facility Assets to the extent that, prior to the Purchase Option Exercise Deadline, the other Party (1) had actual knowledge of such event, circumstance or condition, and (2) such event, circumstance or condition was disclosed to such Party in a Disclosure Schedule, and (3) such event has been included in the determination of Fair Market Value.

## ARTICLE XII GENERAL PROVISIONS

### 12.1 Indemnification.

(a) Seller undertakes and agrees to indemnify and hold harmless Buyer, and its officers, agents, employees, attorneys, consultants, advisors, and representatives (collectively, "**Indemnitees**") from and against any and all charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, arising by reason of any (i) material breach of this Agreement or any of the Operative Documents by Seller, (ii) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is qualified by materiality to have been true when made, (iii) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is not so qualified by materiality to have been true in all material respects when made, or (iv) Excluded Liabilities.

(b) Buyer shall promptly notify Seller of any action, suit, proceeding, demand, or breach (a "**Claim**") with respect to which Buyer claims indemnification; *provided, however*, that failure of Buyer to give such notice shall not relieve Seller of its obligations under this Section 12.1, unless such failure or delay actually and demonstrably prejudices Seller's ability to effectively defend such Claim. If such Claim relates to any action, suit, proceeding, or demand instituted by a third party against Buyer (a "**Third Party Claim**"), Buyer shall notify Seller thereof, and upon receipt of notice from Buyer, Seller shall be entitled to participate in the defense of such Third Party Claim, and if and only if each of the conditions set forth in clauses (i) through (iii) below is satisfied, Seller shall be entitled to assume the defense of such Third Party Claim, and in the case of such an assumption, Seller shall have the authority to negotiate, compromise, and settle such Third Party Claim (provided that Seller shall not settle any such Third Party Claim



without consent of Buyer, not to be unreasonably withheld or delayed, unless such settlement (x) includes a full and complete release of Buyer and Indemnitees by the claimant, (y) does not include an admission of guilt or responsibility of Buyer, and (z) does not include any non-monetary conditions that would be binding on Buyer);

(i) Seller has selected counsel to handle the defense that is reasonably acceptable to Buyer;

(ii) Buyer does not give Seller written notice, which shall be given within sixty (60) days of Buyer's notice to Seller of the Claim that, in the exercise of its reasonable discretion, matters of policy or a conflict of interest make separate representation by Buyer's own counsel advisable; and

(iii) Seller establishes to the reasonable satisfaction of Buyer that Seller has (and will continue to have) adequate financial resources to satisfy and discharge such Claim.

(c) Buyer shall retain the right to participate in the defense of any Third Party Claim, the defense of which has been assumed by Seller pursuant hereto, but Buyer shall bear and shall be solely responsible for its own costs and expenses in connection with such participation, unless such Claim is determined by a court of competent jurisdiction against Seller and Buyer, in which case, Seller shall be solely responsible for Buyer's reasonable and documented costs and expenses in connection with Buyer's participation. In the event Seller shall fail or not be entitled to assume the defense of any Third Party Claim, then Buyer shall control the defense and settlement thereof, and Seller shall be responsible for (i) the reasonable and documented costs and expenses of a single counsel selected by Buyer, and (ii) any judgment on or settlement of such Third Party Claim entered into by Buyer with the consent of Seller (not to be unreasonably withheld or delayed), which shall be conclusive and binding on Seller for all purposes.

(d) Any liability for indemnification under this Section 12.1 shall be determined without duplication of recovery by Indemnitees.

(e) No individual Representative of either Party shall be personally liable for any losses under the provisions contained in this Section 12.1. Nothing herein shall relieve either Party of any liability to make any payment expressly required to be made by such Party pursuant to this Agreement.

12.2 Expenses. Except as otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants. Both Parties agree that, in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement.

12.3 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted in accordance with Exhibit 1.1 and according to the application of the rules on interpretation of contracts.

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

12.5 Notices. All notices, requests, demands, consents, waivers, and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when given in the manner set forth in Section 14.2 of the PPA.

12.6 Entire Agreement; Amendments.

(a) This Agreement (including all Schedules and Exhibits) and the PPA contain the entire understanding concerning the subject matter herein and supersede and replace any prior negotiations, discussions or agreements between the Parties concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement or the other documents of even date herewith between the Parties that induced the other Party to sign this document.

(b) This Agreement may be amended or modified only by an instrument in writing signed by both Parties.

12.7 Further Assurances. The Parties agree to furnish upon request to the other Party such further information, to execute and deliver to the other Party such other documents, and to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the other Operative Documents.

12.8 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

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

12.10 Consequential or Punitive Damages. Neither Party shall be liable to the other Party for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity, including damages for lost revenues, income or profits.

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

12.12 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.13 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California without consideration of conflicts of law principles. The venue for any litigation relating to this Agreement shall be in Los Angeles, California and each Party hereby waives any objections on the basis of *forum non-conveniens* or otherwise with respect to the venue of any such action being heard in Los Angeles, California.

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

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

12.16 Third Party Beneficiaries. Except as expressly provided herein, this Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

12.17 Provisions of PPA. The provisions of Section 14.3 ("Dispute Resolution"), Section 14.6 ("Assignment of Agreement"), Section 14.17(a) ("Indemnification"), Section 14.19 ("Confidentiality") and Section 14.21 ("Mobile Sierra") of the PPA are incorporated herein in their entirety, *mutatis mutandis*.

12.18 First Priority Interests. The rights of Buyer under this Agreement shall be prior and superior to the rights of the Facility Lender, and prior and superior to any other person or entity that subsequently acquires an interest in the Facility.

12.19 Exhibits and Schedules. The Exhibits and Schedules referred to in and attached to this Agreement are incorporated herein in full by this reference. To the extent that the terms and conditions of an Exhibit or Schedule conflict with the terms and conditions of the main body of this Agreement, the terms and conditions of the main body of this Agreement shall control.

12.20 Relationship with PPA. Except as otherwise specifically stated herein, this Agreement is independent of the PPA and, as a separate agreement, shall survive the amendment, modification, or termination of the PPA, except as otherwise provided herein. In the event of a conflict between this Agreement and the PPA, this Agreement shall control.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

**SELLER:**

64KT 8ME LLC, a Delaware limited liability company

By: 8MINUTENERGY SPV2, LLC, a Delaware limited liability company,  
its Managing Member

By: 8MINUTENERGY RENEWABLES LLC, a Delaware limited liability company, its Managing Member

By: MABEL CAPITAL, INC., a Delaware corporation, its Managing Member

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Martin Hermann  
Title: President

By: 1ST AVENUE CAPITAL LLC,  
a Delaware limited liability company, its Managing Member

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Thomas Buttgenbach  
Title: Managing Member

**BUYER:**

**SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
FRED H. MASON  
President

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

EXHIBIT 1.1  
to  
OPTION AGREEMENT  
dated as of December 17, 2015  
by and between  
64KT 8ME LLC  
and  
SCPPA

DEFINITIONS

***"Affected Portion"*** shall have the meaning ascribed to it in Section 9.3(a).

***"Affiliate"*** means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with, such Person, or is a director or officer of such Person or of an Affiliate of such Person. A Person shall be deemed to be "controlled by" another Person if such other Person holds or beneficially owns, directly or indirectly, fifty percent (50%) or more of the equity interests in the Person specified, or fifty percent (50%) or more of any class of voting securities of the Person specified.

***"Agency Action"*** means any notice of violation, complaint, order, consent order, consent agreement, assessment of a fine or penalty or other similar demand for action brought by a Governmental Authority having the requisite authority and jurisdiction to bring such action.

***"Agreement"*** means this Option Agreement.

***"Applicable Diligence Period"*** shall have the meaning ascribed to it in Section 5.1.

***"Asset Assignment Documents"*** shall have the meaning ascribed to it in Section 7.4(d).

***"Assumed Contracts"*** means all of Seller's rights under the Contracts to which Seller is a party or to which the Facility is subject, as set forth in Schedule 3.3 and Schedule 3.12.

***"Assumed Liabilities"*** shall have the meaning ascribed to it in Section 2.9.

***"Bill of Sale"*** means the document described in Section 7.4(c).

***"Books and Records"*** means, to the extent relating to any period of time prior to the Closing, (a) all books, records, purchasing records, lists, files and papers in the possession of Seller or its agents pertaining to the Facility Assets and the Facility, and all records and lists concerning suppliers to and personnel of the Facility or Taxes with respect thereto; (b) all ledgers, and reports, plans, drawings, maps, photographs, technical manuals and operating records of every kind maintained by Seller with respect to the Facility, whether in hard copy or electronic format; and (c) all software used by Seller primarily in connection with the operation of the Facility, in each case to the extent transferable; provided that Books and Records may

include inextricable information or data unrelated to the Facility, in which case such information or data may be redacted.

***"Business"*** means the business of owning and operating the Facility.

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

***"Buyer"*** shall have the meaning ascribed to it in the first paragraph of this Agreement.

***"CEQA"*** means the California Environmental Quality Act.

***"CERCLA"*** means the federal Comprehensive Environmental Response, Compensation and Liability Act.

***"Change Notice"*** shall have the meaning ascribed to it in Section 5.7.

***"Claim"*** shall have the meaning ascribed to it in Section 12.1(b).

***"Closing"*** shall have the meaning ascribed to it in Section 2.7.

***"Closing Date"*** means the date on which the Closing is required to take place, as set forth in Section 2.7.

***"Closing Permitted Encumbrances"*** means any Purchase Option Permitted Encumbrances other than those (i) that secure any form of Facility Debt, if any, or any other monetary obligation (other than Liens for Taxes not yet due), (ii) arising under subsection (d) or subsection (f) (other than Liens imposed or asserted by Buyer) under the definition of "Purchase Option Permitted Encumbrances," and (iii) otherwise accepted by Buyer in writing.

***"Code"*** means the Internal Revenue Code of 1986.

***"Consent"*** means any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (including any Governmental Approval).

***"Contract"*** means any agreement, arrangement, lease, commitment, sales order, purchase order, indenture, mortgage, right, warrant or instrument, which provides for ownership or operation of the Facility or the Premises and is intended to, or purports to be, or is required to be binding and enforceable as contemplated under this Agreement, including the Land Documents, but excluding the Permits.

***"Diminished Amount"*** shall have the meaning ascribed to it in Section 9.3(a).

***"Disclosure Schedules"*** shall have the meaning ascribed to it in Section 2.4.

***“Environment”*** includes (a) the navigable waters, the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act and (b) any other surface water, ground water, drinking water supply, stream sediments, soil, land surface or subsurface strata, or ambient air, plant and animal life, and any other environmental medium or natural resource within the United States, or a foreign nation or under jurisdiction of the United States or a foreign nation.

***“Environmental Conditions”*** means the presence of Hazardous Substances which have been Released into the Environment or the presence of Hazardous Substances that could reasonably be expected to pose a threat of Release of Hazardous Substances into the Environment.

***“Environmental Law”*** means any applicable current or future treaty, constitution, law, statute, ordinance, rule, Order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance or other requirements or obligations concerning protection of health, or safety (in each case, to the extent relating to exposure to Hazardous Substances), natural resources or the environment and includes all Hazardous Substances Law.

***“Excluded Assets”*** means, notwithstanding any other provision of this Agreement, the following assets:

- (a) cash, certificates of deposit and other bank deposits, treasury bills and other cash equivalents or other investments, on hand or in bank accounts, and all of Seller's bank accounts, intercompany accounts and accounts receivable;
- (b) accounts and notes receivable relating to the period prior to the Closing Date, including amounts owing under the PPA;
- (c) all of Seller's rights under the PPA and any other Contract between Seller and Buyer or between Seller and any other third party for the sale of Facility Energy or Capacity Rights from the Facility;
- (d) any Contract between Seller and its Affiliates, other than for on-going operations and maintenance of the Facility on commercially reasonable terms;
- (e) any Contract that is not an Assumed Contract;
- (f) any computers not used primarily in connection with the Facility, any communication or data network systems not used primarily in connection with the Facility, and any other equipment not reasonably required to operate the Facility;
- (g) all refunds or credits, if any, of Taxes due to or from Seller and (i) accrued prior to the Closing or (ii) which otherwise cannot be assigned by Law;



(h) all corporate, financial and tax records of Seller that (i) do not relate in whole or in part to the Facility, (ii) relate solely to any Excluded Asset, (iii) relate solely to any Excluded Liability, (iv) relate to the organization, existence, capitalization or debt financing of Seller, (v) relate to information about Seller or its Affiliates pertaining to energy or project evaluation methodologies, economic evaluation of the Facility Assets (other than the Financial Statements), energy or other economic predictive models, or (vi) do not constitute Books and Records;

(i) all rights to claims, refunds or adjustments against Buyer or any other third parties arising out of the period prior to the Closing Date;

(j) Seller's insurance policies; and

(k) the assets identified as "Excluded Assets" in Schedule 3.5.

**"Excluded Liabilities"** shall have the meaning set forth in Section 2.10.

**"Facility Assets"** means the following assets (excluding those assets constituting Excluded Assets):

1. the Premises;
2. all Assumed Contracts;
3. all Fixtures and Equipment;
4. all Books and Records;
5. all Permits;
6. all Intellectual Property Assets;
7. all Supplies;
8. all Transmission Assets;
9. all Warranties; and
10. all other assets, properties, rights, privileges, claims and Contracts of every kind and nature, real or personal, tangible or intangible, absolute or contingent, wherever located, owned or used (including those necessary to access to utilize any common use facilities), comprising the Facility.

**"Facility Debt"** means the obligations of Seller arising solely in connection with the Facility secured by a Lien of a Facility Lender in compliance with the provisions of Section 14.6(d) of the PPA, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, or benefit monetization, swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing, and specifically excluding any obligations associated with any equity investment or Tax Equity Financing provided to Seller, or any Affiliate of Seller, to support the development, construction and operation of the Facility.

**"Fair Market Value"** shall mean, with respect to a particular time of calculation, the amount a willing buyer would pay for the Facility Assets and all rights and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell on the

applicable Closing Date, taking into account all relevant facts and circumstances relating to the Facility Assets, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities and the Disclosure Schedules, as of the Closing Date, and assuming (1) compliance with the terms and provisions of the PPA through the Agreement Term, including delivery of the generation for the then-remaining Agreement Term at the Contract Price, and (2) that the Facility is able to generate revenue for the remaining Useful Life of the Facility Assets at a price per MWh equal to the then fair market price for Energy, Capacity Rights, Environmental Attributes and other products generated by the Facility (except in the case Buyer is exercising its Project Purchase Option as a result of a Default of Seller under the PPA, in which case the Energy, Capacity Rights, Environmental Attributes and other products generated by the Facility will be assumed to be sold at their fair market price as of the Closing Date for the remaining Useful Life of the Facility Assets), as determined in accordance with Exhibit 2.5.

**"FERC"** shall have the meaning ascribed to it in Section 3.19.

**"Final Purchase Price"** shall have the meaning ascribed to it in Exhibit 2.5.

**"Financial Statements"** shall have the meaning ascribed to it in Section 5.3.

**"Fixtures and Equipment"** means the fixtures, equipment (including solar panels, control rooms and other auxiliaries, furniture, office equipment, communications equipment, fixtures, furnishings, machinery, vehicles, computers, air conditioning ventilation and heating equipment and control stations), but excluding Supplies and other tangible personal property located on the Premises and owned or used by Seller in connection with the operation of the Facility.

**"FPA"** shall have the meaning ascribed to it in Section 3.19.

**"GAAP"** means generally accepted accounting principles that are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors in effect for the applicable period of Seller.

**"Governmental Approval"** means any Consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law or Environmental Law.

**"Governmental Authority"** means any federal, state, local, foreign or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority.

**"Hazardous Substances"** means any substance, material or waste that is regulated by or forms the basis of liability now or hereafter under, any Hazardous Substances Law or Environmental Law, including any material, substance or waste that is (a) defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any

Environmental Law, (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance.

**"Hazardous Substances Law"** means any current or future treaty, constitution, law, statute, ordinance, rule, Order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance concerning the generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Substances, including, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act of 1976, CERCLA, the Toxic Substances Control Act, the Oil Pollution Act, the Safe Drinking Water Act, and includes the Occupational Safety and Health Act of 1970, to the extent that it relates to the handling of and exposure to hazardous or toxic materials or similar substances.

**"Indemnitees"** shall have the meaning ascribed to it in Section 12.1(a).

**"Intellectual Property Assets"** shall have the meaning ascribed to it in Section 3.13(a).

**"Investment Company Act"** means the Investment Company Act of 1940.

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

**"Land Documents"** means the documents listed in Exhibit H of the PPA, as may be updated.

**"Law"** means any Order, and any federal, state, local, or foreign law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any Governmental Authority, but excluding Environmental Laws.

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

**"Material Adverse Effect"** means a material adverse change (or changes taken together) in, or effect on, Seller, the Facility, the business, condition (financial or otherwise), results of operations or prospects of the Business, or any of the Facility Assets.

**"Material Casualty Event"** means any physical damage or destruction to all or a portion of the Facility that would materially and adversely affect the capacity or output of the Facility, or Buyer's ownership or operation of the Facility Assets as of and following the Closing.

**"Material Contract"** means any Contract to which Seller is a party or which is related to the Facility that meets any of the criteria listed below (other than (i) Contracts constituting the

Premises, and (ii) Contracts which can be terminated by Seller upon thirty (30) days' notice (or less) without material liability):

(a) any partnership, limited partnership, limited liability company, joint venture, strategic alliance or similar Contract (other than Seller's Organizational Documents);

(b) any Contract relating to outstanding indebtedness (other than with respect to trade accounts payable);

(c) any Contract whereby either Seller has made or has an obligation to make an investment in or loan to any other Person or assumed any liability or obligation of any Person;

(d) any Contract with any Person involving payments (for goods, equipment, services, or otherwise) by Seller in excess of Five Thousand Dollars (\$5,000) per annum, other than master service agreements under which no statement of work is currently active or pending and for which no payments are due as of the Schedule Delivery Date;

(e) any Contract that grants the other party or any third party "most favored nation" status or any type of special discount rights other than in the ordinary course;

(f) any Contract which limits the ability of Seller to compete in any line of business or in any geographic area;

(g) any Contract that is an agreement for the acquisition of real property or for the disposition of any real property, or for the disposition of a material portion of any personal property included in the Facility Assets, other than in the ordinary course;

(h) any Contract that contains ongoing indemnification rights or obligations, or provides credit support relating to indemnification rights or obligations;

(i) any Contract that grants any options or preferential rights to a third party to purchase any Facility Asset; and/or

(j) any Contract licensing the use of any material Intellectual Property Asset.

**"Maximum Purchase Price"** shall have the meaning ascribed to it in Exhibit 2.5.

**"Minimum Purchase Price"** shall have the meaning ascribed to it in Exhibit 2.5.

**"National Priorities List"** means the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories and that guides the Environmental Protection Agency in determining which sites warrant further investigation.

**"Operations Period"** means the six (6) month period of time prior to the delivery by Buyer of the Purchase Option Exercise Notice.

**"Operative Documents"** means each of the agreements, instruments, certificates and other documents executed and delivered by a Party under this Agreement in connection with the performance and consummation of the transaction contemplated by this Agreement, but excluding the PPA and Ancillary Documents as defined in the PPA.

**"Order"** means any final, non-appealable award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority, or by any arbitrator.

**"Organizational Documents"** means as applicable, (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; (c) the certificate of organization and the operating agreement of a limited liability company; and (d) any amendment to any of the foregoing.

**"Party"** and **"Parties"** shall have the meaning ascribed to it in the preamble to this Agreement.

**"Permit"** means any permit, license, franchise, concession, consent, authorization, approval, registration, filing or similar act of or made with any Governmental Authority that are used by or necessary to operate the Facility.

**"Person"** means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

**"PPA"** shall have the meaning ascribed to it in the recitals to this Agreement.

**"Premises"** means the fee, leasehold, easement and other Real Property Interests held by Seller in connection with the ownership or operation of the Facility, together with all buildings, improvements, structures and fixtures thereon owned by Seller, and all easements, privileges, rights-of-way, lands underlying any adjacent streets or roads, appurtenants, licenses and other rights owned by Seller pertaining to or accruing to the benefit of such property.

**"Proceeding"** means any action, order, writ, judgment or decree outstanding, arbitration, audit, hearing, investigation, claim, litigation, or suit (whether civil, criminal, regulatory, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Person.

**"Project Purchase Option"** shall have the meaning ascribed to it in Section 2.1.

**"Provided Materials"** shall have the meaning ascribed to it in Section 5.1.

***“Purchase Option Exercise Deadline”*** means a period of one hundred eighty (180) days after the date of delivery of the Disclosure Schedules for the applicable Purchase Option Opportunity.

***“Purchase Option Exercise Notice”*** shall have the meaning ascribed to it in Section 2.5.

***“Purchase Option Opportunity”*** shall have the meaning ascribed to it in Section 2.2.

***“Purchase Option Permitted Encumbrances”*** means (a) any Lien approved by Buyer in a writing or set forth in Schedule 3.6; (b) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer that has been posted or provided in such manner and amount as to assure Buyer that any Taxes determined to be due will be promptly paid in full when such contest is determined; (c) zoning, building codes and other land use laws regulating the use or occupancy of the Premises or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over the Premises; (d) suppliers’, vendors’, mechanics’, workman’s, repairman’s, employees’ or other like Liens arising in the ordinary course of business for work or service performed, or materials furnished in connection with, the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, and (ii) a bond or other security reasonably acceptable to Buyer has been posted or provided in such manner and amount as to assure Buyer that any amounts determined to be due will be promptly paid in full when such contest is determined; (e) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations which do not materially impair the Premises affected thereby for the purpose for which title was acquired or materially interfere with or impair the operation of the Facility Assets; and (f) Liens created or reserved pursuant to or contemplated by the PPA, this Agreement or any Performance Security under the PPA.

***“Purchase Option Tentative Exercise Notice”*** shall have the meaning ascribed to it in Section 2.4.

***“Qualified Appraiser”*** means a nationally recognized, California-licensed, Certified General Real Estate Appraiser, which shall (a) be qualified to appraise independent electric generating businesses, (b) have been engaged in the appraisal or business valuation and consulting business for a period of not less than five (5) years, (c) be qualified and have expertise at calculating forward projections of power curves and valuations, and (d) not be associated with Seller, Buyer or any of their respective Affiliates.

***“Real Property Contracts”*** shall have the meaning ascribed to it in Section 3.3(a).

***“Real Property Interests”*** shall have the meaning ascribed to it in Section 3.3(a).

***"Release"*** means any physical release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances in the Environment, including the movement of Hazardous Substances through or in the Environment, including the Premises.

***"Representative"*** means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors,

***"Requirements of Law"*** means Laws, Permits (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements) and Environmental Laws.

***"Schedule Delivery Date"*** shall have the meaning ascribed to it in Section 2.4.

***"Seller"*** shall have the meaning ascribed to it in the first paragraph of this Agreement.

***"Seller Disclosure Schedules"*** shall have the meaning ascribed to it in Section 2.4.

***"Supplies"*** means those supplies, inventories and spare parts on the Premises or otherwise dedicated to the Facility as of the Closing Date.

***"Tax Claim"*** shall have the meaning ascribed to it in Section 9.1(e).

***"Tax Return"*** means any return, report, information return or other document (including any related or supporting information) required to be supplied to any authority with respect to Taxes.

***"Taxes"*** means all taxes, charges, fees, levies, penalties or other similar assessments imposed by any United States federal, state or local, or foreign taxing authority, including, income, excise, property, sales, use, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions attributable thereto.

***"Third Party Claims"*** shall have the meaning ascribed to it in Section 12.1(b).

***"Third Party Property Interests"*** shall have the meaning ascribed to it in Section 3.3(a).

***"Transfer Taxes"*** shall have the meaning ascribed to it in Section 3.3(a).

***"Transmission Assets"*** means the fixtures, equipment (including transformers and switchgear) and other tangible property interests owned by Seller and required for the interconnection and transmission of Energy to the Point of Delivery.

***"Treasury"*** means the regulations issued by the U.S. Department of Treasury under the Internal Revenue Code.

*“Updated Schedule Delivery Date”* shall have the meaning ascribed to it in Section 2.11(a).

*“Useful Life of the Facility Assets”* shall mean no less than thirty-five (35) years from the Commercial Operation Date.

*“Warranties”* means all rights of Seller under or pursuant to all third-party warranties, representations and guarantees made by manufacturers and suppliers in connection with the Facility Assets or services furnished to Seller pertaining to the Facility or affecting the Facility Assets.



**EXHIBIT 2.5**  
to  
**OPTION AGREEMENT**  
dated as of December 17, 2015  
by and between  
64KT 8ME LLC  
and  
SCPPA

**PURCHASE PRICE**

The "*Fair Market Value*," as defined for purposes of this Agreement in Exhibit 1.1, shall be determined in accordance with this Exhibit 2.5.

Within fifteen (15) days following the delivery of the Disclosure Schedules, the Parties shall meet and attempt to agree on the Fair Market Value based on the Disclosure Schedules. If the Parties are unable to agree on the Fair Market Value within thirty (30) days after the delivery of the Disclosure Schedules, the Parties shall, within fourteen (14) additional days, jointly select a Qualified Appraiser. If the Parties cannot agree on a Qualified Appraiser within such fourteen (14) day period, then each of Seller and Buyer shall select an independent recognized appraiser, which independent appraisers shall, within fourteen (14) days of being selected by each of Buyer and Seller, agree upon and appoint a third Qualified Appraiser to perform the appraisal. If the two selected appraisers cannot agree on a third Qualified Appraiser within such fourteen (14) day period, then either Party may apply to the American Arbitration Association to make such an appointment. The appraisal of Fair Market Value shall be completed within thirty (30) days of the appointment of the Qualified Appraiser.

The Fair Market Value shall be adjusted from time to time by the amount (as determined by the Parties in good faith, or absent their mutual agreement, by the Qualified Appraiser using the same methodology set forth in paragraph 2 above) necessary to compensate Buyer for (i) any differences between the Seller Disclosure Schedules originally delivered to Buyer on the Schedule Delivery Date and any updated Seller Disclosure Schedules delivered to Buyer from time to time prior to Closing, (ii) any item or omission in a Seller Disclosure Schedule that is not resolved to the reasonable satisfaction of Buyer, (iii) any differences in Facility Assets, Excluded Assets, Assumed Liabilities or Excluded Liabilities from the Schedule Delivery Date to the Closing, (iv) the inability of Seller to satisfy any of the Buyer Closing Conditions set forth in Article VII, (v) a Material Casualty Event or any real or threatened condemnation or eminent domain proceeding as described under Section 9.3(a) of the Agreement, or (vi) any issue that requires the delivery of a Change Notice.

The "*Final Purchase Price*" to be paid by Buyer at the Closing shall be an amount equal to the greater of (a) the Fair Market Value or (b) the "*Minimum Purchase Price*" (as set forth in the second column below for the applicable anniversary of the Commercial Operation Date or upon an Event of Default, as applicable), provided that in the event that

the Fair Market Value is determined to be either (i) greater than the “*Maximum Purchase Price*” (as set forth in the third column below for the applicable anniversary of the Commercial Operation Date), then Buyer, upon written notice to Seller, may, without liability, terminate the Project Purchase Option with respect to the relevant Purchase Option Opportunity, or (ii) less than the Minimum Purchase Price, then Seller, upon written notice to Buyer, may without liability terminate the Project Purchase Option with respect to the relevant Purchase Option Opportunity, and, in the case of (i) or (ii), such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not affect Buyer’s right to exercise any Project Purchase Option with respect to any future Purchase Option Opportunity); except that in the event the Fair Market Value is determined to be less than the Minimum Purchase Price, Buyer may, but shall not be obligated to, upon written notice provided to Seller within forty five (45) days following determination of Fair Market Value, elect to pay Seller the Minimum Purchase Price, and in that event the Minimum Purchase Price shall be the Final Purchase Price at Closing. Notwithstanding anything herein to the contrary, if the exercise of a Project Purchase Option arises under Section 2.2(e): (A) Seller shall have no right under subsection (ii) above to terminate the Project Purchase Option, and (B) Buyer shall have the right, in its sole discretion, to determine that the Final Purchase Price is not acceptable to Buyer, in which case Buyer shall notify Seller that it is terminating such Purchase Option Opportunity, which termination shall be without liability to Buyer.

The Minimum Purchase Price and the Maximum Purchase Price shall be as follows, corresponding to the Purchase Option Opportunity:

Purchase Option Opportunity	Minimum Purchase Price (\$ millions)	Maximum Purchase Price (\$ millions)
15 <sup>th</sup> Anniversary of Commercial Operation Date	110.4	127.02
20 <sup>th</sup> Anniversary of Commercial Operation Date	82.2	94.5
27 <sup>th</sup> Anniversary of Commercial Operation Date	34.8	41.76
30 <sup>th</sup> Anniversary of Commercial Operation Date	29.52	35.46
Event of Default	The aggregate amount of outstanding Facility Debt immediately prior to Closing, if any; otherwise, none.	N/A

The foregoing Minimum Purchase Price and Maximum Purchase Price amounts are based on a Facility that is 90 MW(ac) as of the Commercial Operation Date. If the Facility as of the Commercial Operation Date is more or less than 90 MW(ac), the Minimum Purchase Price and Maximum Purchase Price amounts shall be adjusted on a proportionate basis based on the size of the Facility as of the Commercial Operation Date, rounded to the nearest one percent (1%) of the

actual size (in MW(ac)) of the Facility. For example, if the Facility is 88 MW(ac), the purchase price will be 98% of the Minimum Purchase Price and Maximum Purchase Price set forth above, or \$108.192 million and \$124.480 million at the time of the 15th anniversary of the Commercial Operation Date.

**EXHIBIT 5.11**  
**FORM OF TRANSITION SERVICES AGREEMENT**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

This **TRANSITION SERVICES AGREEMENT** (this "Agreement") is entered into on [•], 20[ ] (the "Effective Date"), by and between [ ], a [ ] ("Seller") and SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Power Act (California Government Section 6500 *et seq.*) ("Buyer"). Seller and Buyer are hereinafter sometimes collectively referred to as the "Parties," and each individually as a "Party."

**WITNESSETH:**

WHEREAS, the Parties have entered into that certain Option Agreement, dated as of December 17, 2015 (the "Option Agreement"), pursuant to which, among other things, Seller has agreed to sell, transfer, assign, convey and deliver to Buyer, and Buyer has agreed to purchase, receive and assume from Seller, the Facility Assets (as defined in the Option Agreement), upon the terms and subject to the conditions set forth in the Option Agreement; and

WHEREAS, Section 5.11 of the Option Agreement provides that Seller or its Affiliates will provide Buyer with transitional operation and maintenance services; and

WHEREAS, Buyer hereby requests that Seller (or its Affiliates) perform certain transitional operation and maintenance services for a period of time following the Closing Date to facilitate the transition of the operations of the Facility to Buyer; and

WHEREAS, Seller is willing to provide, or cause its Affiliates to provide, such services to Buyer subject to the terms and conditions set forth herein:

NOW, THEREFORE, in consideration of the premises and the covenants set forth herein and the benefits to be derived herefrom, the Parties hereby agree as follows:

**ARTICLE I**  
**DEFINED TERMS**

Capitalized terms used in this Agreement shall have (unless provided elsewhere in this Agreement) the meanings given to such terms in the Option Agreement and as set forth below:

"Services" means the services that are listed on Schedule 1 attached hereto; provided, however, that the term "Services" shall not include the services listed under the heading "Excluded Services" on Schedule 1 attached hereto.

## ARTICLE II DESCRIPTION OF SERVICES

2.1 Seller's Undertakings. The purpose of this Agreement is to give Buyer the option, but not the obligation, to receive the Services from Seller or Seller's Affiliates on an interim basis in order to permit Buyer the opportunity to obtain alternate sources of supply of such Services prior to the expiration of the Initial Term, or if extended, the Extension Term (as such terms are defined in Section 3.1 below). Seller agrees to provide, or to cause the provision through its Affiliates, the Services to Buyer during the Initial Term or Extension Term, if any, in accordance with the terms and conditions of this Agreement, in a professional, workmanlike manner, subject to the applicable Laws and in a manner that is substantially the same as the manner in which such Services were performed prior to the date of this Agreement.

2.2 Resources Committed. Seller shall provide the Services set forth on Schedule 1, provided that Seller shall not be required to provide any services to Buyer that neither Seller nor its Affiliates previously provided and/or performed in connection with the ownership of the Facility Assets or the Business prior to the Closing Date. Nothing herein shall require Seller to install equipment, acquire licenses, expand any systems or services or expend or devote any resources beyond the level provided by Seller and its Affiliates to the Business during the Operations Period. In connection with the performance of the Services, Seller may, at its sole cost and expense and at all times on an arms-length basis: (a) subcontract with a non-Affiliate and/or personnel of a non-Affiliate to perform any portion of the Services to be performed hereunder; (b) utilize personnel who are employees of Affiliates of Seller; or (c) subcontract work to Affiliates of Seller; provided that all such personnel and subcontractors shall be fully qualified to perform the applicable Services pursuant to the terms and conditions of this Agreement and Buyer shall have consented in writing to such personnel and subcontracts, such consent not to be unreasonably withheld or delayed.

## ARTICLE III TERM AND TERMINATION

3.1 Term. The initial term of this Agreement (the "Initial Term") shall commence as of the Closing Date and shall continue in effect for a maximum of six (6) months; provided, however, that following the expiration of the Initial Term this Agreement may be extended for one or more additional terms, each not to exceed two (2) months (each such two (2) month extensions, an "Extension Term" and collectively with the Initial Term, the "Term") if Buyer provides written notice not less than thirty (30) days prior to the expiration of the Initial Term.

3.2 Termination of Entire Agreement. Notwithstanding anything herein or elsewhere to the contrary, this Agreement may be terminated and the transactions contemplated hereby abandoned, at any time, upon the occurrence of any of the following events or conditions:

(a) upon the mutual written agreement of the Parties to terminate this Agreement;

(b) by Seller, upon Buyer's breach of a material obligation under this Agreement (including Buyer's failure to pay Seller amounts owing hereunder) and such breach is not remedied to Seller's reasonable satisfaction within thirty (30) days after notice to Buyer of such breach; or

(c) by Buyer, upon Seller's breach of a material obligation under this Agreement and such breach is not remedied to Buyer's reasonable satisfaction within fifteen (15) days after notice to Seller of such breach or if such breach is not capable of rectification within fifteen (15) days, if Seller has not promptly commenced to rectify the breach within such fifteen (15)-day period and is not proceeding diligently to rectify the breach; provided, however, that such right to continue to rectify a breach shall end upon expiration of this Agreement.

In the event of termination of this Agreement pursuant to this Section 3.2, no Party will have any further liability or obligation hereunder, except that any such termination will not affect (i) the provisions of Section 4.1, Article V and Article VI, which will survive any such termination, or (ii) the rights and obligations of the Parties accruing prior to such termination.

3.3 Termination of Particular Service. Notwithstanding anything herein or elsewhere to the contrary, Buyer shall have the right, upon thirty (30) days written notice to Seller, to terminate this Agreement as to any Service listed on Schedule 1. Upon the effectiveness of the termination of any particular Service, Seller shall no longer be required to provide such Service to Buyer, and Buyer shall incur no additional obligations to pay Seller the fee associated with the provision of such Service, other than obligations that have accrued prior to the termination of such Service, including, without limitation, any third-party fees, penalties or other payments related to the termination by Seller of such Service.

3.4 Termination Procedures. Upon any termination of this Agreement (in whole or in part), each Party shall cooperate with the other Party as reasonably necessary to assist Buyer in transferring responsibility for the provision of the terminated Service(s) to Buyer (or any third party as designated in writing by Buyer).

#### **ARTICLE IV FEES, BILLING, AND PAYMENT**

4.1 Compensation. Buyer shall, in accordance with Section 4.2, (a) pay Seller the fees set forth on Schedule 1 attached hereto for the provision of each particular Service provided under this Agreement and (b) except as set forth in Section 3.3 above, reimburse Seller for any incidental, out-of-pocket expenses reasonably incurred by Seller or Seller's Affiliates in connection with performing the Services. All amounts paid by Buyer to Seller hereunder shall be paid in full without any deduction or withholding for taxes or any other fees or expenses.

4.2 Billing and Payment. After the end of each calendar month, Seller shall send to Buyer an invoice, setting forth a description of the Services provided during the prior calendar

month and identifying the fees that are to be paid. Buyer shall pay to Seller the amounts due and payable on each such invoice within sixty (60) days after its receipt thereof. If Buyer in good faith disputes any portion of an invoice, and Buyer notifies Seller in writing of the nature and basis of such good faith dispute within sixty (60) days after Buyer's receipt of such invoice, Buyer shall have the right to withhold payment of the disputed portion and Buyer shall pay only the undisputed portion. Seller shall be entitled to a late fee on any undisputed amounts, and any amounts not disputed in good faith by Buyer, due hereunder that remain unpaid following the date due hereunder at the rate of one percent (1%) per month.

4.3 Access. During the Term, Buyer will provide Seller, Seller's Affiliates and their respective authorized representatives, at each such Party's sole risk, reasonable access (during regular business hours and upon reasonable prior notice), to Buyer and its employees, representatives, facilities and books and records as Seller, Seller's Affiliates and their respective authorized representatives may reasonably request which are reasonably necessary for providing the Services and not subject to confidentiality restrictions; provided, that (i) Buyer shall have the right to have a representative present for any communication with employees or representatives of Buyer; (ii) such access and activities incidental thereto shall be undertaken in accordance with applicable Laws and Buyer's generally applicable policies and procedures; and (iii) Buyer shall have the right to impose reasonable restrictions and requirements for safety purposes. Buyer grants to Seller and its representatives access to the Facility for a period of thirty (30) days after the expiration or termination of this Agreement so that Seller may demobilize its work force, including the removal of its personal property that was brought to the Facility by Seller to provide the Services.

4.4 Records Retention. Each Party shall retain all records relating to this Agreement for so long as required by any Governmental Authority having jurisdiction.

## ARTICLE V INDEMNIFICATION; LIMITATION OF LIABILITY

5.1 Indemnification. Seller shall indemnify, defend and hold harmless Buyer and its officers, directors, employees, agents and representatives from and against any and all suits, sanctions, liabilities, legal proceedings, claims, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorneys' fees and expenses, for injury or death of persons or physical loss of or damage to property of Persons to the extent arising Seller's (including its employees or agents) negligence, breach or willful misconduct in connection with the performance of Services under this Agreement. Seller shall also indemnify, defend and hold harmless Buyer and its officers, directors, employees, agents and representatives from and against any and all regulatory penalties or fines and reasonable expenses (including attorneys' fees and expenses) to the extent arising from the Seller's violation of any law, regulation, or government approval in connection with the performance of this Agreement.

5.2 Limitation of Liability. Seller's liability to Buyer in connection with its performance of the Services hereunder, regardless of whether such liability arises in contract, tort or otherwise, shall not exceed Five Million Dollars (\$5,000,000). NOTWITHSTANDING

ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER, OR ANY OF ITS AFFILIATES, HAVE ANY LIABILITY HEREUNDER TO BUYER OR ITS AFFILIATES IN RESPECT OF ANY INCIDENTAL, SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, OR EXPENSES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF SERVICES HEREUNDER.

## **ARTICLE VI RELATIONSHIP OF PARTIES**

This Agreement is not intended to and shall not be construed as creating a joint venture, partnership, agency or other association within the meaning of the common law or under the laws of the state in which any Party is incorporated, organized, or conducting business. Except for the obligations arising from the authorized activities of Seller as described herein, no Party shall be responsible for the obligations or actions of any other Party, each Party being severally responsible only for its obligations and actions arising hereunder. It is the intent of the Parties that with respect to performing the Services, the Seller and its Affiliates are independent contractors, and shall provide the Services in accordance with the reasonable instructions provided by authorized representatives of Buyer, subject to the provisions of this Agreement.

## **ARTICLE VII FORCE MAJEURE**

7.1 Force Majeure Event. No Party shall be liable to any other Party for its failure or delay in performing its obligations hereunder (other than its obligation to pay money for Services rendered hereunder) due to any contingency beyond such Party's reasonable control (a "force majeure event") including, without limitation, acts of God, fires, floods, wars, acts of war, sabotage, terrorism, accidents, labor disputes (whether or not such disputes are within the power of the Party to settle), shortages, governmental laws, ordinances, rules or regulations.

7.2 Notice of Force Majeure Event. Each Party affected by a force majeure event will give notice to the other Party as promptly as practicable of the nature and probable duration of the force majeure event as well as of the anticipated termination of such force majeure event. The Party affected by force majeure will use commercially reasonable efforts to remove the force majeure event and, in the case of Seller, to resume the performance of the Services as soon as reasonably practicable after such removal.

## **ARTICLE VIII CONFIDENTIALITY**

This Agreement is subject to the terms and conditions of Section 14.19 of that certain Power Purchase Agreement between the Parties.



## ARTICLE IX MISCELLANEOUS

9.1 Operational Coordination. Buyer designates [ ] as Buyer's representative[s] for purposes of operational coordination under this Agreement. Seller designates [ ] as Seller's representative[s] for purposes of operational coordination under this Agreement. Either Party may change its designee for purposes of this Section 9.1 by providing notice thereof to the other Party in accordance with this Section.

9.2 Notices. All notices and other communications required or permitted to be given or delivered hereunder shall be in writing signed by or on behalf of the Party making the same, shall specify the Section under this Agreement pursuant to which it is given or made and shall be delivered personally, transmitted by facsimile with answerback confirmed or sent by recognized overnight courier service or United States mail, postage prepaid and return receipt requested, directed to the Party intended at the address or facsimile number set forth in Section 12.4 of the Option Agreement, or at such other address or facsimile number as may be designated by such Party by notice given to the other Party in the manner aforesaid, and shall be effective upon receipt. Such address may be changed from time to time by means of a notice given in the manner provided in this Section 9.2.

9.3 Waiver. The failure of a Party at any time or times to enforce or require performance of any provision hereof shall in no way operate as a waiver or affect the right of such Party at a later time to enforce the same. No waiver by a Party of any condition or the breach of any term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach, or a waiver of any other condition or of any breach of any other term, covenant, representation or warranty contained in this Agreement. Any waiver of an obligation, agreement or condition contained herein shall be valid and effective only if in writing and signed by the Party making such waiver.

9.4 Severability. In the event any provision of this Agreement is held to be invalid by a court or arbitrator of competent jurisdiction, the invalidity of any such provision shall in no way affect any other provision contained herein; provided, however, that any such invalidity does not materially prejudice either Buyer or Seller in their respective rights and obligations contained in the valid provisions of this Agreement.

9.5 Dispute. In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 9.5 (a "Dispute"), either Party (the "Notifying Party") may deliver to the other Party (the "Recipient Party") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice. The Recipient Party shall within five (5) business days following

receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party. In the event a Dispute is not resolved pursuant to the procedures set forth herein by the expiration of the thirty (30) day period set forth above, then either Party may pursue any legal remedy available to it in accordance with the provisions of this Agreement. In the event of a dispute regarding payments due hereunder, each Party shall continue to perform its respective obligations hereunder pending the resolution of such dispute.

9.6 Governing Law; Venue. This Agreement shall be governed by, interpreted and enforced in accordance with laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the Dispute resolution process set forth above, the Parties must comply with California law governing claims against public entities and presentment of such claims. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*. Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement.

9.7 No Third Party Beneficiaries. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer any rights or remedies under or by reason of this Agreement on any persons other than the Parties and their respective successors and assigns permitted hereby, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third person to any Party to this Agreement, and no provision of this Agreement shall give any third persons any right of subrogation or action over and against any Party to this Agreement.

9.8 Counterparts. This Agreement may be executed in any number of original or facsimile counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same agreement, and each of which shall be deemed an original, and this Agreement shall become binding when one or more such counterparts have been signed by each of the Parties and delivered to the other Parties.

9.9 Assignment; Delegation. No Party may assign any right, interest, or obligation granted it under this Agreement without the express written consent of the other Party. Subject to the foregoing, this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the Parties and their permitted successors and assigns.

9.10 Entire Agreement; Amendments. This Agreement (including Schedule 1 hereto) and the Option Agreement (a) constitute the entire agreement among the Parties with respect to

the subject matter hereof and (b) supersede all prior statements, representations, discussions and understandings relating to such subject matter. This Agreement shall only be amended or modified by a written instrument signed by a duly authorized representative of each of the Parties.

9.11 Headings. The headings of Articles and Sections contained in this Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of or to affect in any way the meaning or interpretation of this Agreement.

[SIGNATURE PAGE FOLLOWS]

The Parties have caused this Agreement to be executed and delivered as of the date first set forth above by their duly authorized representatives.

**SELLER**

64KT 8me LLC

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

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

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

**BUYER**

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

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

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

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

SCHEDULE 1  
TO TRANSITION SERVICES AGREEMENT

SERVICES

Following the Closing Date, during the Initial Term and, if applicable, the Extension Term, Seller shall perform (or shall cause its Affiliates to perform) the following Services:

1. Access, Information and Training. Seller shall provide Buyer and Buyer's representatives, agents, employees and personnel ("Buyer's Personnel") with access, information and training as may be reasonably required so that the transfer of the duties and responsibilities of Seller cause as little disruption as possible to the Facility.
2. System Monitoring. Seller shall conduct system monitoring or assist Buyer's Personnel with conducting system monitoring, including, as applicable, continued upkeep and operation of any operations center that monitors project metrics or hosts SCADA activities, retrieval and storage of performance data and remote or on-Premises monitoring and support.
3. Preventative and Scheduled Maintenance. Seller shall perform or assist Buyer's Personnel with performing maintenance duties for the Facility Assets, which may include, but are not limited to, the following duties:
  - Regular inspection, repair and functional testing of Facility components, including, as necessary, of photovoltaic modules, mounting systems, combiner boxes and fuse boxes, inverter shelters, power conversion station performers, switchgear and other components.
  - Regular inspection, repair and functional testing of inverters in compliance with, and to ensure continued coverage under, any applicable warranties.
  - Regular inspection and repair, adjustment or cleaning, in accordance with manufacturers' recommendations, of filters, cable connections, warning labels, paint and exterior, operators and handles, weather stripping, relays, transistors and other items.
  - Visual inspection of the Facility and the Premises and correction of undesirable conditions, including fencing, shading, vegetation, animal damage, erosion, corrosion and discolored panels.
  - Inspection and correction of loose electrical connections and ground connections.
  - Training regarding Seller's Quality Assurance Program (as defined in the Power Purchase Agreement between the Parties), and provision of and training regarding Seller's operation and maintenance plan and related records.

- Maintain records of service history and information and training regarding such maintenance.
  - Maintenance and testing of sensors and meters.
4. Emergency Response. Seller shall provide or assist Buyer's Personnel with providing responses to emergency events that reduce or halt power production and with performing unscheduled repairs. Seller shall provide, and provide training regarding, any documents, plans or protocols Seller has developed in relation to such events.
  5. Warranty Management. Seller shall verify and enforce or assist Buyer's Personnel with verifying and enforcing all warranties applicable to the Facility Assets.
  6. Spare Parts Inventory Management. Seller shall maintain or assist Buyer's Personnel with maintaining spare parts inventories for the Facility and documentation related to the usage and location of spare parts. Seller shall assist Buyer's Personnel in determining appropriate quantities of inventory and with the procurement of goods and materials that Buyer will need for continued operating and maintenance of the Facility.
  7. Performance Reporting. Seller shall continue to generate or assist Buyer's Personnel with generating appropriate reports from Facility data.
  8. Compliance with Requirements. Seller shall comply with, assist Buyer's Personnel in complying with, and provide information and training regarding compliance with all applicable permits, Operative Documents, Assumed Contracts, warranties, and other requirements applicable to the Facility Assets.
  9. Data Transfer. Seller shall transfer the data from the Computerized Maintenance Management System ("CMMS") to Buyer.

**B. Excluded Services.**

*[Seller and Buyer shall mutually agree on any Excluded Services on or before the Closing Date.]*

**C. Fees for Services.**

*[Seller and Buyer shall mutually agree on fees for Services on or before the Closing Date.]*

**SCHEDULE 3.3**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**REAL PROPERTY MATTERS**

[All Real Property Contracts and Real Property Interests of Seller  
to be set forth in accordance with Section 3.3 shall be specified and briefly described in this  
Schedule]

**SCHEDULE 3.4**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**SELLER'S CONSENTS**

[All Consents of Seller which are necessary or incidental to the Facility  
shall be specified and briefly described in this Schedule]



**SCHEDULE 3.5**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**CERTAIN EXCLUDED ASSETS**

[Any assets that Seller specifically intends to exclude  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.6**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**  
  
**LIENS**

[All Liens that are to be set forth in accordance with Section 3.6 shall be specified and fully described in this Schedule.]

**SCHEDULE 3.7**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**ENVIRONMENTAL MATTERS**

[All environmental matters referred to in Section 3.7  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.8**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**LIABILITIES**

[All liabilities referred to in Section 3.8  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.9**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**TAX MATTERS**

[All tax matters referred to in Section 3.9  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.10**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**COMPLIANCE WITH LAWS**

[All non-compliance with laws referred to in Section 3.10  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.11**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**LITIGATION**

[All litigation proceedings referred to in Section 3.11  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.12**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**CONTRACTS**

[All Contract matters referred to in Section 3.12 of the Agreement  
shall be specified and briefly described in this Schedule]



**SCHEDULE 3.13**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**INTELLECTUAL PROPERTY**

[All Intellectual Property Asset matters referred to in Section 3.13 with respect to the Facility shall be specified and briefly described in this Schedule]

**SCHEDULE 3.15**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**NON-ENVIRONMENTAL PERMITS**

[All Non-Environmental Permits matters referred to in Section 3.15 with respect to the Facility shall be specified and briefly described in this Schedule]

**SCHEDULE 3.17**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**EMPLOYEE MATTERS**

[All Employee matters referred to in Section 3.17  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.18**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**GENERAL MATTERS**

[All general representation matters referred to in Section 3.18  
shall be specified and briefly described in this Schedule]

**SCHEDULE 4.3**  
**to**  
**OPTION AGREEMENT**  
**dated as of December 17, 2015**  
**by and between**  
**64KT 8me LLC**  
**and**  
**SCPPA**

**BUYER'S CONSENTS**

[All Consents of Buyer which are necessary or incidental to the Closing  
shall be specified and briefly described in this Schedule]



APPENDIX M-1

TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC

FORM OF LETTER OF CREDIT

IRREVOCABLE AND UNCONDITIONAL, STANDBY  
LETTER OF CREDIT NO. \_\_\_\_\_

Applicant:

\_\_\_\_\_

Beneficiary:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, California 91740  
Telephone: (626) 793-9364  
Facsimile: (626) 793-9461

Amount: [\_\_\_\_\_]

Expiration Date: [\_\_\_\_\_]¹

Expiration Place: [\_\_\_\_\_]

Ladies and Gentlemen:

We hereby issue our Irrevocable Unconditional, Standby Letter of Credit ("Letter of Credit") in favor of the beneficiary by order and for the account of the applicant, and on behalf of 64KT 8ME LLC, which is available at sight for USD \$[XX,XXX,XXX] by sight payment:

- (a) upon presentation to us at our office at [*bank's address*], of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II (collectively, the "Documents"); or
- (b) upon presentation to us of your Documents by facsimile at fax number [\_\_\_\_\_].

¹ Note: To be one year after issuance, subject to automatic renewals.

Upon presentation to us of your Documents in conformity with the foregoing, on the next Business Day after such presentation (unless such presentation occurs after 1:00 p.m., Pacific Time on the day of such presentation, in which event payment will be made on the second Business Day), but without any other delay whatsoever, irrevocably and without reserve or condition, we will make payment to your order in the account at the bank designated by you in the demand in immediately available funds. Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the Amount specified above.

We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business by virtue of an interruption of the nature described in the "Uniform Customs and Practices for Documentary Credits (2007 Revision) of the International Chamber of Commerce Publication No. 600 ("Uniform Customs") Article 36, this Letter of Credit will be duly honored if the specified Documents are presented by you within thirty (30) days after such office is reopened for business.

"Business Day" means a day other than a Saturday, Sunday or any other day on which banking institutions in the State of California are authorized or required by law to close.

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

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

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit in the form of Exhibit III. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment. The expiration date shall also be amended as provided in the following paragraph.

This Letter of Credit shall expire on the earliest to occur of (1) the Expiration Date or (2) our receipt of written confirmation from the Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit. This Letter of Credit shall automatically renew for a term of one year (and the Expiration Date shall automatically be extended for such period) upon the Expiration Date unless we provide the Beneficiary and the

Exhibit M-1-2



Applicant with a notice of non-renewal (each such notice a "Notice of Non-Renewal") in a customary form on our letterhead at least thirty (30) days prior to the then existing Expiration Date. It is agreed that a Notice of Non-Renewal shall be deemed given without any further action by us with respect to any extension of the Expiration Date to any date occurring after [ ]<sup>2</sup>. To the extent a Notice of Non-Renewal has been provided to the Beneficiary and Applicant in accordance herewith, the Beneficiary is authorized to draw on us up to the stated amount of this Letter of Credit, by presentation to us, in the manner specified herein of (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II.

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

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

"The undersigned does hereby certify that [drawer] is the successor by operation of law to Southern California Public Power Authority, the Beneficiary named in [name of banks] Letter of Credit No. \_\_\_\_\_."

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the Uniform Customs. As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California.

Yours faithfully,

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

<sup>2</sup> Prior to term conversion, this date shall not exceed 60 days after the Scheduled Construction Loan Maturity Date. From and after term conversion, this date shall not exceed the seventh anniversary of the term conversion date.

Exhibit I  
Demand for Payment

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

To Whom It May Concern:

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

DATED: \_\_\_\_\_, 20\_\_

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

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

Date:

Attest: \_\_\_\_\_  
Name:  
Title:

**Exhibit II**  
**Statement**

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

*[Insert Bank Address]*

To Whom It May Concern:

Reference is hereby made to your Irrevocable and Unconditional, Standby Letter of Credit No. [\_\_\_\_\_] dated [\_\_\_\_\_] in the amount of \$ [\_\_\_\_\_] established by you in our favor for the account of \_\_\_\_\_, on behalf of 64KT 8ME LLC.

We hereby certify to you that \$\_\_\_\_\_ is payable to us [as provided in our agreement with 64KT 8ME LLC and that we are entitled to draw on this Irrevocable and Unconditional, Standby Letter of Credit No. [\_\_\_\_\_] pursuant to the terms of such agreement.] [because you have provided us a Notice of Non-Renewal.]

DATED: \_\_\_\_\_, 20\_\_

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

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

Name:

Title:

Date:

Attest: \_\_\_\_\_

Name:

Title:

Exhibit III  
Amendment

Re: Irrevocable and Unconditional, Standby Letter of Credit

No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_

Beneficiary:

Applicant:

Southern California Public Power  
Authority 1160 Nicole Court  
Glendora, CA 91740

To Whom It May Concern:

The above referenced Irrevocable and Unconditional, Standby Letter of Credit is hereby amended as follows: by [increasing][decreasing] the stated amount by \$ \_\_\_\_\_ to a new stated amount of \$ \_\_\_\_\_ [and][by extending the Expiration Date to \_\_\_\_\_ from \_\_\_\_\_.] All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by Southern California Public Power Authority, which acceptance may only be valid by a signature of an authorized representative.

Dated: \_\_\_\_\_

Yours faithfully,

\_\_\_\_\_[Issuing Bank]

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

ACCEPTED

Southern California Public Power Authority

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

APPENDIX M-2

TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC  
FORM OF GUARANTEE

This Guarantee dated as of [ ] is made by [ ] (the "**Guarantor**") in favor of SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a public entity and joint powers authority formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Section 6500, *et seq.*) (the "**Beneficiary**").

**ARTICLE ONE**

***Section 1.01 Guarantee.***

(a) For valuable consideration in connection with [identify Power Purchase Agreement, Option Agreement and other Ancillary Documents as appropriate, as each may hereafter be amended, supplemented or otherwise modified from time to time, collectively, the "**Guaranteed Contract**"] with (Counterparty/Seller name and description to the underlying Guaranteed Contract, the "**Counterparty**") subject to the terms and conditions set forth herein and effective from the date herein, the Guarantor irrevocably and unconditionally guarantees to the Beneficiary, its successors and permitted assigns, the prompt payment on demand, in lawful money of the United States, of any amount due and payable to the Beneficiary arising out of or under the Guaranteed Contract, when the same shall become due, whether at stated maturity, by acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) subject to any applicable grace period thereunder and the prompt and proper performance by the Counterparty of all of its other obligations to the Beneficiary pursuant to the Guaranteed Contract (collectively, the "**Guaranteed Obligations**"). This is a guarantee of payment and not merely a guarantee of collection, and the Guarantor is liable as a primary obligor for the amounts due hereunder. The Beneficiary shall make demands for payment hereunder by providing the Guarantor with written notice as provided below, and the Guarantor shall make payments within five (5) business days after receipt of any such notice. The Guarantor shall make each payment to the Beneficiary in U.S. Dollars in immediately available funds as directed by the Beneficiary. Notwithstanding any other provision of this Agreement, the Guarantor's aggregate liability under this Guarantee is limited to \_\_\_\_\_ U.S. Dollars (US\$ \_\_\_\_\_).

(b) The obligations of Guarantor hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full in cash and

performance of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees that: (a) Beneficiary may enforce this Guarantee upon the occurrence and during the continuance of a default or early termination event under the Guaranteed Contracts notwithstanding the existence of any dispute between Counterparty and Beneficiary with respect to the existence of such event; (b) the obligations of Guarantor hereunder are independent of the obligations of Counterparty under the Guaranteed Contracts and the obligations of any other guarantor of obligations of Counterparty and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Counterparty or any of such other guarantors and whether or not Counterparty is joined in any such action or actions; and (c) Guarantor's payment or performance of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations that has not been paid or performed. This Guarantee is a continuing guaranty and shall be binding upon Guarantor and its successors and assigns, and Guarantor irrevocably waives any right (including any such right arising under California Civil Code Section 2815) to revoke this Guarantee as to future transactions giving rise to any Guaranteed Obligations.

(c) Any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Counterparty (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantor and Beneficiary that the Guaranteed Obligations should be determined without regard to any rule of law or order that may relieve Counterparty of any portion of such Guaranteed Obligations.

(d) Upon the failure of Counterparty to pay or perform any of the Guaranteed Obligations when and as the same shall become due, Guarantor will upon demand pay, or cause to be paid, in cash, to Beneficiary an amount equal to the aggregate of the unpaid Guaranteed Obligations.

(e) This Guarantee shall terminate only upon the full satisfaction of the Guaranteed Obligations. If, notwithstanding the foregoing, Guarantor shall have any non-waivable right under applicable law or otherwise to terminate or revoke this Guarantee, Guarantor agrees that the termination or revocation shall not be effective until a written notice of the termination or revocation is received by Beneficiary and shall not affect the rights and powers of Beneficiary to enforce rights arising prior to receipt of the notice. Any rights arising out of advances or actions by Beneficiary after Guarantor's termination or revocation but prior to receipt of the requisite notice shall be the same as if the termination or revocation had not occurred.

#### ***Section 1.02 Guarantee Absolute.***

(a) To the extent required hereunder, the Guaranteed Obligations will be paid strictly in accordance with the terms of the Guaranteed Contract, regardless of any bankruptcy or other law affecting any of such terms or the rights of the Beneficiary with respect thereto. The

Guarantor's obligations under this Guarantee shall not be impaired by any increase, reduction, extension, rearrangement or subordination of the Guaranteed Obligations, any amendment, supplement, or other modification of the Guaranteed Contracts, any grant or impairment of any security or support for the Guaranteed Obligations, the failure to give notice of any default or event of default, however denominated, under the Guaranteed Contracts or the bringing of action to enforce the payment or performance of the Guaranteed Obligations or any other notice of any kind relating to the Guaranteed Obligations, or any other action which affects the Guaranteed Obligations.

(b) Guarantor further agrees that, to the extent that the Counterparty or the Guarantor makes a payment or payments to the Beneficiary which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid to the Counterparty or the Guarantor or their respective estate, trustee, receiver, or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then to the extent of such payment or repayment, this Guarantee and the advances or part thereof which have been paid, reduced, or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction, or satisfaction occurred.

## **ARTICLE TWO**

### ***Section 2.01. Severability.***

(a) In case any one or more of the provisions of this Guarantee shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties to this Guarantee that such illegality or invalidity shall not affect any other provision hereof, but this Guarantee shall be construed or enforced as if such illegal or invalid provision had not been contained herein unless such a court holds that such provisions are not separable from other provisions of this Guarantee.

(b) The obligations hereunder are joint and several, and independent of the obligations of Counterparty, and a separate action or actions may be brought and prosecuted against Guarantor, whether or not action is brought against Counterparty or whether or not Counterparty is joined in any such action or actions.

## **ARTICLE THREE**

### ***Section 3.01. Guarantor's Warranties.***

Guarantor makes the following representations and warranties to Beneficiary:

(a) (i) this Guarantee is executed at Beneficiary's request; (ii) Guarantor has not and will not without prior written consent of Beneficiary, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; and (iii) Guarantor has adequate means of obtaining from Counterparty on a continuing basis financial and other information pertaining to Counterparty's financial condition without relying on Beneficiary therefor;

(b) Guarantor agrees to keep adequately informed from such means of any facts, events or circumstances which Guarantor consider material or which might in any way affect Guarantor's risks hereunder. With respect to information or material acquired in the normal course of Beneficiary's relationship with Counterparty, Guarantor agrees that Beneficiary shall have no obligation to disclose such information or material to Guarantor;

(c) Guarantor is a [\_\_\_\_], duly organized, validly existing and in good standing under the laws of the State of [\_\_\_\_], and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Guarantee and effect the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Guarantee;

(d) the execution, delivery and performance by Guarantor of this Guarantee and has been duly authorized by all necessary action, and do not and will not require any consent or approval of Guarantor's managing member or equity holders or other Person other than that which has been obtained;

(e) the execution and delivery of this Guarantee and the fulfillment of and compliance with the provisions of this Guarantee do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other governmental authority, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Guarantor is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any lien or encumbrance upon any of the properties or assets of Guarantor; and

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

#### **ARTICLE FOUR**

##### ***Section 4.01. Waivers.***

(a) It shall not be necessary for the Beneficiary, in order to enforce this Guarantee, to exhaust the Beneficiary's remedies against the Counterparty, to enforce any security or support for the payment or performance of the Guaranteed Obligations, or to enforce any other means of obtaining payment or performance of the Guaranteed Obligations. The Guarantor waives any rights under applicable state law related to the foregoing. Until irrevocable payment in full and performance of the Guaranteed Obligations, the Guarantor will not exercise any right of subrogation (including any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509, or under applicable state law) or any right to participate in any claim or remedy of the Beneficiary against the Counterparty, but this standstill is not intended as a permanent waiver of the subrogation rights of the Guarantor. To



the extent permitted by law, Guarantor waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof, and agrees that any payment of any obligation or other act which shall toll any statute of limitations applicable to the obligation shall also operate to toll such statute of limitations applicable to Guarantor's liability hereunder. The liability of Guarantor hereunder shall be reinstated and revived and the rights of Beneficiary shall continue with respect to any amount paid by Counterparty on account of the obligations guaranteed hereby, which shall thereafter be required to be restored or returned by Beneficiary upon the bankruptcy, insolvency or reorganization of Counterparty or for any other reason, all as though such amount had not been paid. The Guarantor hereby waives notice of acceptance of this Guarantee and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment or performance, protest, notice of dishonor or non-payment or non-performance of any such obligation or liability, suit or the taking of other action by Beneficiary against, and any other notice to, the Counterparty, the Guarantor or others. Any other suretyship defenses are hereby waived by the Guarantor. This Guarantee and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full in cash and performance of the Guaranteed Obligations). The Beneficiary shall not be required to inquire into the capacity or powers of Guarantor or Counterparty or the officers, directors or any agents acting or purporting to act on behalf of any of them.

(b) In addition to the foregoing, Guarantor specifically waives:

(i) any right to require Beneficiary to (A) proceed against any person, including Counterparty; (B) proceed against or exhaust any collateral held from Counterparty, and other endorser or guarantor or any other person; (C) give notice of terms, time and place of any public or private sale of personal property or real property security held from Counterparty or comply with any other provisions of Section 9504 of the California Uniform Commercial Code or sections 2924 through 2924k of the California Civil Code, to the extent allowed by law; (D) pursue any other remedy in Beneficiary's power; or (E) make any presentments, demands for performance, or give any notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any obligations or evidences of indebtedness held by Beneficiary as security, in connection with any obligations or evidences of indebtedness which constitute in whole or in part the obligations guaranteed hereunder, or in connection with the creation of new or additional obligations;

(ii) in accordance with Section 2856 of the California Civil Code, any and all rights and defenses available to it by reason of Sections 2787 to 2855, inclusive, of the California Civil Code;

(iii) any defense arising by reason of (A) the incapacity, lack of authority or any disability or other defense of Counterparty, any other endorser or guarantor or any other person, including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Counterparty from any cause other than payment in full in cash and performance of the Guaranteed Obligations; (B) the cessation from any cause whatsoever, other than payment and

performance in full of the obligations of Counterparty, of the liability of Counterparty, any endorser or guarantor or any other person; (C) the application by Counterparty of the proceeds of any obligations for purposes other than the purpose represented by Counterparty to Beneficiary or intended or understood by Beneficiary or Guarantor; (D) any act or omission by Beneficiary which directly or indirectly results in or aids the discharge of Counterparty or any obligations by operation of law or otherwise; (E) any modification of the obligations, in any form whatsoever, including any modification made after revocation hereof to any obligations incurred prior to such revocation, and including the renewal, extension, acceleration or other change in time for payment of the obligations, or other change in the terms of the obligations or any part thereof, including increase or decrease of the rate of interest thereon; (F) any defense based upon (i) any principles or provisions of law, statutory or otherwise which provide that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or that are or might be in conflict with the terms of this Guarantee and any legal or equitable discharge of Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that Beneficiary protect, secure, perfect or insure any Lien or any property subject thereto; (G) any defense based upon Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior that amounts to bad faith; (H) any defense based upon notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Guarantee, notices of default or early termination under the Guaranteed Contracts or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto and notices of any extension of credit to Counterparty; and (I) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guarantee;

(iv) any right to enforce any remedy which Beneficiary now has or may hereafter have against Counterparty, any other endorser or guarantor or any other person, and waives any benefit of, or any right to participate in any security whatsoever now or hereafter held by Beneficiary, and waives any rights or benefits which Guarantor might have under California Code of Civil Procedure Sections 580a and 726 (limiting the amount of any deficiency judgment to the difference between the amount of any indebtedness owed and the greater of the fair value of the security or the amount for which the security was actually sold), 580b (barring deficiencies with respect to real property purchase money obligations), and 580d (barring recovery of a deficiency judgment after real property security is sold under a power of private sale) as from time to time amended and Guarantor shall have no right of subrogation;

(v) all rights and defenses arising out of an election of remedies by the Beneficiary, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the Counterparty by operation of Section 580d of the California Code of Civil Procedure or otherwise;

(vi) waives all rights and defenses that the Guarantor may have because the Counterparty's debt may be secured by real property, which would allow the Beneficiary to collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Counterparty and, if the Beneficiary forecloses on any real property collateral pledged by the Counterparty (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) the Beneficiary may collect from the Guarantor even if the Beneficiary, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Counterparty. The waiver contained in this Section 4.01(b)(vi) is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Counterparty's debt may be secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

***Section 4.02. Guarantor's Understandings With Respect To Waivers.***

(a) Guarantor warrants and agrees that Guarantor has had all necessary opportunity to secure any advice which Guarantor desires with respect to each of the waivers set forth above, that such waivers are made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law.

(b) Guarantor acknowledges that Guarantor would or might have a defense to enforcement of this Guarantee if, in the absence of an effective waiver or authorization by Guarantor, Beneficiary were to take any of the actions or exercise any of the remedies (i) that are otherwise authorized by Guarantor herein or (ii) that are described in Sections 4.01 and 4.02 and as to which Guarantor waives any defenses. Without limiting the foregoing, in the absence of an effective waiver, Beneficiary's foreclosure against real property security by power of sale under Section 580d of the California Code of Civil Procedure would destroy Guarantor's subrogation and reimbursement rights against Counterparty and would thus provide Guarantor with a defense to Beneficiary's enforcement of this Guarantee. It is Guarantor's intention in executing this Guarantee to waive all such defenses, including the defense described in the preceding sentence, in advance.

(c) Until the Guaranteed Obligations are satisfied in full, Guarantor shall withhold exercise of (a) any claim, right or remedy, direct or indirect, that Guarantor now has or may hereafter have against Counterparty or any of its assets in connection with this Guarantee or the performance by Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute (including under California Civil Code Section 2847, 2848 or 2849), under common law or otherwise and including (i) any right of subrogation, reimbursement or indemnification that Guarantor now has or may hereafter have against Counterparty, (ii) any right to enforce, or to participate in, any claim, right or remedy that Beneficiary now has or may hereafter have against Counterparty, and (iii) any benefit of, and any right to participate in, any collateral or security now or hereafter held by Beneficiary and (b) any right of contribution Guarantor now has or may hereafter have against any other guarantor of any of the Guaranteed Obligations. Guarantor further agrees that, to the extent the agreement to

withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification Guarantor may have against Counterparty or against any collateral or security, and any rights of contribution Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights Beneficiary may have against Counterparty, to all right, title and interest Beneficiary may have in any such collateral or security, and to any right Beneficiary may have against such other guarantor.

(d) Notwithstanding the foregoing, all waivers in this Guarantee shall be effective only to the extent permitted by law.

**Section 4.03. Beneficiary's Rights With Respect To Guarantor's Property.** In addition to all liens upon, and rights of setoff against the moneys, securities or other property of Guarantor given to Beneficiary by law, Beneficiary shall have a lien upon and a right of setoff against all moneys, securities or other property of Guarantor now or hereafter in possession of or on deposit with Beneficiary, whether held in a general or special account or deposit, or for safekeeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Guarantor. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise such right to setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by any instrument in writing executed by Beneficiary.

**Section 4.04. Subordination of Counterparty's Debts to Guarantor.** Any obligation of Counterparty now or hereafter held by Guarantor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such obligation of Counterparty to Guarantor collected or received by Guarantor after a default or early termination event has occurred and is continuing, and any amount paid to Guarantor on account of any subrogation, reimbursement, indemnification or contribution rights referred to in the preceding paragraph when all Guaranteed Obligations have not been paid in full, shall be held in trust for Beneficiary and shall forthwith be paid over to Beneficiary to be credited and applied against the Guaranteed Obligations. Such obligation of Counterparty to Guarantor is assigned to Beneficiary as security for this Guarantee and the obligation and, if Beneficiary requests, shall be collected and received by Guarantor, as trustee for Beneficiary and paid over to Beneficiary on account of the obligation of Counterparty to Beneficiary but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guarantee. Any such notes now or hereafter evidencing such obligation of Counterparty to Guarantor shall be marked with a legend that the same are subject to this Guarantee, and, if Beneficiary so requests, shall be delivered to Beneficiary. Guarantor will, and Beneficiary is hereby authorized, in the name of Guarantor from time to time to execute and file financing statements and continuation statements and execute such other documents and take such other action as Beneficiary deems necessary or appropriate to perfect, preserve and enforce its rights hereunder.

**Section 4.05 Waiver of Authentication of Validity of Certain Acts.** Where any one or more of Counterparties are corporations, partnerships, or limited liability companies it is not necessary for Beneficiary to inquire into the power of Counterparties or the officers, directors,

partners, managers, members or agents acting or purporting to act in their behalf, and any obligations made or created in reliance upon the professed exercise of such power shall be guaranteed hereunder.

**Section 4.06. Authorizations To Beneficiary.** Guarantor authorizes Beneficiary, without notice or demand and without affecting its liability hereunder, from time to time to (a) renew, extend, accelerate or otherwise change the time for payment or performance of, or otherwise change the terms of the obligations or any part thereof, including increase or decrease of the rate of interest thereon; (b) take and hold security for the payment or performance of this Guarantee or the obligations guaranteed, and exchange, enforce, waive and release any such security; (c) apply such security and direct the order or manner of sale thereof, including a non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as Beneficiary in its discretion may determine; and (d) release or substitute any one or more of the endorsers or guarantors of any obligations. Beneficiary may, upon notice, assign this Guarantee to any permitted successor of Beneficiary under the Guaranteed Contract.

## **ARTICLE FIVE**

### **5.01. Miscellaneous.**

(a) All notices and other communications between the Guarantor and the Beneficiary provided for in this Guarantee shall be in writing, including facsimile, and delivered or transmitted to the addresses set forth below, or to such other address as shall be designated by the Guarantor in written notice to the other party.

If to the Guarantor:

[Guarantor Name]

[Guarantor Address]

Attn: Chief Financial Officer

Telephone:

Facsimile:

If to the Beneficiary:

Southern California Public Power Authority

1160 Nicole Court

Glendora, CA 91740

Telephone: 626-793-9364

Facsimile: 626-793-9461

(b) This Guarantee was made and entered into in the County of Los Angeles, California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles. All litigation arising out of, or relating to this Guarantee, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Guarantor hereby irrevocably agrees to submit to the

exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

(c) The provisions of this Guarantee may be waived or amended only in writing signed by both the Guarantor and Beneficiary. This Guarantee shall bind and inure to the benefit of the Guarantor and the Beneficiary and their respective successors and permitted assigns, including the trustee, but neither party may assign its rights under this Guarantee without the prior written consent of the other party. The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without prior written consent of the Beneficiary, and any purported assignment or delegation absent such consent is void.

(d) The rights, powers and remedies given to Beneficiary by this Guarantee are cumulative and shall be in addition to and independent of all rights, powers and remedies given to Beneficiary by virtue of any statute or rule of law or in the Guaranteed Contracts or any agreement between Guarantor and Beneficiary or between Counterparty and Beneficiary. Any forbearance or failure to exercise, and any delay by Beneficiary in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy.

(e) Guarantor hereby agrees that in any dispute relating to this Guarantee, each party shall be responsible for its own attorneys' fees and costs. Each of Guarantor and Beneficiary was represented by its respective legal counsel during the negotiation and execution of this Guarantee.

Executed as of the date first above written.

[GUARANTOR]

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

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

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

APPENDIX N  
  
TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC  
  
COMMERCIAL OPERATIONS

In accordance with the terms of that certain Power Purchase Agreement dated as of \_\_\_\_\_, 201\_ (*"Agreement"*) by and between Southern California Public Power Authority (*"Buyer"*) and 64KT 8me LLC (*"Seller"*), in order to determine achievement of Commercial Operation of the Facility, Seller shall demonstrate to Buyer that the Facility is operating and able to produce and deliver Facility Energy to Buyer in accordance with the terms of the Agreement by delivery of a Certificate of Commercial Operation (the *"Certificate"*), signed by an authorized representative of Seller as to all of the items below, and which shall include a certificate in the form attached hereto of an Independent Engineer, licensed in the State of California, regarding the Facility's ability to deliver Facility Energy and confirming the items set forth therein. Any term used but not defined in the Certificate shall have the meaning set forth in the Agreement. The Certificate shall be submitted by Seller, along with reasonable documentation as may be requested by Buyer, and certify as to the following:

1. All solar panels comprising the Facility have been installed in accordance with the manufacturer's specifications (*"Solar Panel Mechanical Completion"*).
2. The electrical collection system related to the solar panels referenced in (1) above is complete, functional, and energized for the Facility.
3. Seller's collector substation is complete and capable of delivering an as-available product.
4. Copies of any documentation provided by the manufacturer of the solar panels referenced in (1) above that the solar panels have been manufactured in accordance with such manufacturer's specifications.
5. The Facility, as applicable, is operational and interconnected with the Point of Delivery and capable of delivering the Facility Energy.
6. Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement, and the Facility possesses all of the characteristics required by, and satisfies all of, the Requirements.
7. The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to be completed prior to full commercial operations. Testing shall include but not be limited to operating the Facility for a period of not less than twenty (20) consecutive days and delivering Facility Energy during such

period to the Point of Delivery up to the Contract Capacity in accordance with the Requirements. The Facility shall demonstrate it has delivered the full Contract Capacity and the Facility Energy to the Point of Delivery at a rate, volume, and time of day in a manner equivalent to a facility with similar specifications and under similar solar profiles during such period.

8. Seller has obtained all of the Permits required for the development, construction, operation and maintenance of the Facility, including those identified in Appendix K of the PPA, and all such Permits are final and effective.

9. Seller has obtained the Operating Insurance.

10. Seller shall have entered into, and delivered to Buyer, an agreement providing for the operation and maintenance of the Facility with a Qualified Operator, in form and substance reasonably satisfactory to Buyer, unless Seller provides the operation and maintenance of the Facility.

11. Buyer has received the Performance Security in a form reasonably acceptable to Buyer.

12. Seller has fully performed and discharged any liabilities, indebtedness, guarantees or other obligations in compliance with the definition of "Special Purpose Entity."

13. Buyer has received a bring-down of the Non-Consolidation Opinion.

14. Buyer has received a true and complete copy of each Shared Facilities Agreement.

Upon reasonable notice and during regular business hours, Buyer's representative(s) may inspect the Facility and observe the testing associated with achievement of Commercial Operation, provided that such representative(s) of Buyer shall at all times comply with Seller's written instructions regarding safety and security while on the Facility Site.



## INDEPENDENT ENGINEER CERTIFICATE

In accordance with the terms of that certain Power Purchase Agreement dated as of \_\_\_\_\_, 201\_ ("**Agreement**") by and between Southern California Public Power Authority ("**Buyer**") and 64KT 8me LLC ("**Seller**"), in order determine achievement of Commercial Operation of the Facility, I, \_\_\_\_\_, an Independent Engineer, licensed in the State of California, certify the following regarding the Facility's ability to deliver Facility Energy:

1. All solar panels comprising the Facility have been installed in accordance with the manufacturer's specifications ("**Solar Panel Mechanical Completion**").
2. The electrical collection system related to the solar panels referenced in (1) above is complete, functional, and energized for the Facility.
3. Seller's collector substation is complete and capable of delivering an as-available product.
4. Copies of any documentation provided by the manufacturer of the solar panels referenced in (1) above that the solar panels have been manufactured in accordance with such manufacturer's specifications have been delivered to Buyer.
5. The Facility, as applicable, is operational and interconnected with the Point of Delivery and capable of delivering the Facility Energy.
6. Construction of the Facility has been completed in accordance with Prudent Utility Practices.
7. The Facility has successfully completed all testing required by Prudent Utility Practices to be completed prior to full commercial operations, including operating the Facility for a period of not less than twenty (20) consecutive days and delivering Facility Energy during such period to the Point of Delivery up to the Contract Capacity. The Facility has demonstrated it has delivered the full Contract Capacity and the Facility Energy to the Point of Delivery at a rate, volume, and time of day in a manner equivalent to a facility with similar specifications and under similar solar profiles during such period.

Signed,

---

Name:  
Title:  
Date:

APPENDIX O

TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC

FORM OF CONSENT AND AGREEMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of \_\_\_\_\_, 20\_\_, by and among Southern California Public Power Authority ("Buyer"), [\_\_\_\_\_] (in its capacity as collateral agent for the Facility Lenders under the Financing Agreement, as defined below, "Lender") and 64KT 8me LLC, a Delaware limited liability company ("Seller"). Each of Buyer, Seller and Lender is referred to under this Agreement as a "Party" and together they are referred to as the "Parties"; provided, that in no event shall the term "Buyer" refer to any of the members of Buyer. Capitalized terms used but not defined herein shall have the meanings set forth in the PPA (as defined below).

RECITALS

A. [\_\_\_\_\_] ("Borrower"), an indirect owner of Seller, entered into a Financing Agreement with Lender, as administrative agent and collateral agent and certain other lenders party thereto, dated as of \_\_\_\_\_, 20\_\_ (the "Financing Agreement"), under which Seller will finance the construction of an up to 90 MW solar-powered electric generating facility (the "Facility" as further described in the PPA). Seller and Lender have also entered into a Guarantee and Security Agreement (the "Security Agreement") under which Seller collaterally assigned its interest under the PPA to Lender as collateral for the credit facilities under the Financing Agreement and a deed of trust or mortgage under which Seller has granted to Lender a lien on the Facility to be recorded in Kern County, California (the "Financing Deed of Trust"). Additionally, [\_\_\_\_\_] ("Pledgor") has entered into a Guarantee, Pledge and Security Agreement pursuant to which it has pledged to Lender all of the membership interests in Seller, to secure Borrower's obligations under the Financing Agreement (the "Pledge Agreement" and, together with the Security Agreement and Financing Deed of Trust, the "Lender Collateral Documents"). On the "Term Conversion Date" (which for purposes of this Consent shall mean the date upon which the construction period security is released, the construction loan is converted to a term loan, the Lender Collateral Documents are terminated, and the remaining collateral security in the Project is as described by Lender in Section 4.10 hereof), the only remaining collateral security of the Lender securing the obligations of the Borrower under the Financing Agreement will be the membership interests in and any assets of the Pledgor and the Borrower, and there will be no remaining collateral security of the Lender in the Seller or its assets that secures the obligations of the Borrower under the Financing Agreement. A true and correct copy of each of the Lender Collateral Documents has been furnished to Buyer.

B. Buyer and Seller entered into that certain Power Purchase Agreement, dated as of December 17, 2015 (as may be amended, supplemented, or modified from time to time, the "PPA"), pursuant to which Seller will develop, finance, construct, own, and operate the Facility, and will, except as otherwise provided in the PPA, sell the Energy to Buyer.

C. Pursuant to Section 13.4 of the PPA, Seller has requested Buyer's consent to the assignment, pursuant to the Security Agreement, by Seller to Lender of Seller's interest under the PPA. In addition, this Consent is entered into in compliance with Section 14.6(d) of the PPA.

## AGREEMENT

### 1. Assignment and Agreement.

1.1 Consent to Assignment. Buyer hereby consents to the collateral assignment to Lender pursuant to the Security Agreement of Seller's rights to and under the PPA, pursuant to the Financing Deed of Trust of Seller's interests in the Facility and pursuant to the Pledge Agreement of Pledgor's membership interests in Seller (together, the "Assigned Interests") as security for Borrower's obligations under the Financing Agreement. Subject to the terms and conditions of this Consent, Buyer agrees that in exercising its remedies, Lender may exercise Seller's rights under the PPA.

1.2 Notices: Right to Cure by Lender. Upon the occurrence of a Default (as defined under the PPA) by Seller under the PPA, Buyer shall give concurrent notice of such Default to Seller and Lender. Buyer shall not terminate or suspend its performance under the PPA until Lender has been given, (a) if such Default is a monetary Default, thirty (30) days after the later of (i) the expiration of all cure periods available to Seller under the PPA and (ii) receipt of such notice to cure a monetary Default or, (b) if such Default is a nonmonetary Default, sixty (60) days after the later of (i) the expiration of all cure periods available to Seller under the PPA and (ii) receipt of such notice (or up to thirty (30) additional days, so long as Lender reasonably demonstrates to Buyer that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such Default). Failure of Buyer to provide such notice to Lender shall not constitute a breach of the PPA or this Consent by Buyer and Lender agrees that Buyer shall have no liability to Lender for such failure whatsoever; provided that no claim of Default or termination of the PPA by Buyer shall be binding without such notice and the lapsing of the applicable periods set forth above. If Lender fails to cure a Default within the applicable period, Buyer shall have all its rights and remedies with respect to such Default as set forth in the PPA.

1.3 Subsequent Owner. Subject to the terms and conditions of this Consent, the Parties agree that the Lender shall, at least ten (10) days prior to any foreclosure or other transfer of the Facility or the Assigned Interests, notify Buyer of the pendency of such foreclosure or transfer and, in addition, Lender shall subsequently notify Buyer following the occurrence of such foreclosure or transfer. If Lender notifies Buyer in writing that it has foreclosed on the Facility or the Assigned Interests pursuant to the Lender Collateral Documents, or taken a "deed in lieu of foreclosure", Lender or its permitted successor or assigns, or any other purchaser of the Assigned Interests (each such permitted successor or assign or other purchaser of the Assigned Interests, a "Subsequent Owner"), shall be recognized as a party substituting for Seller under the

PPA so long as such Subsequent Owner meets the qualifications for a Qualified Transferee and the terms and conditions of the PPA as in effect on such date of assignment or foreclosure shall continue to apply to such Subsequent Owner. For purposes of the definition of Qualified Transferee contained in the PPA, any Person identified on Exhibit E hereof or an Affiliate of such Person shall be a Qualified Operator, so long as such Person is not in active litigation adverse to Buyer or LADWP.

1.4 Buyer Cure Rights under the Financing Agreement. Under the Financing Agreement, the Lenders shall agree not to exercise remedies under the Financing Agreement or any related collateral documents that could preclude Buyer from exercising its purchase option pursuant to Section 1.5 below until Buyer has been given: (a) if such default thereunder is a monetary default, thirty (30) days after the expiration of all cure periods available to Seller under the Financing Agreement, or (b) if such default thereunder is a nonmonetary default, sixty (60) days after the expiration of all cure periods available to Seller under the Financing Agreement, so long as Buyer reasonably demonstrates that it is diligently pursuing appropriate action to cure and is making sufficient progress toward curing such default; and the effect of any such cure by Buyer shall be as if Seller had cured the applicable default within the cure period afforded Seller under the Financing Agreement, including cessation of exercise of remedies by the Lenders. Upon any payment or cure by Buyer relating to such a default by Seller, the amounts expended by Buyer to provide such cure, including any defaulted payment and interest thereon at the Interest Rate, and all other payments made and expenses incurred by Buyer in providing such cure shall be (a) applied either (i) in reduction of the price for the Delivered Energy payable by Buyer as provided under Section 6.1 and Appendix A of the PPA, or (ii) in the event of the purchase of the Facility by Buyer under Section 1.5 hereof, the purchase price shall be reduced by such amounts expended to provide such cure, provided that the purchase price shall not be less than the Facility Debt (as defined below), or (b) if the application in clause (a) is insufficient to reimburse Buyer for such amounts that have been expended, then such amount shall be reimbursed by Seller (or Lender in respect of such amounts that have been expended following the foreclosure by Lenders on the Facility or the Assigned Interests and Lender's substitution for Seller under the PPA pursuant to Section 1.3 above) within thirty (30) days following such purchase or foreclosure to Buyer. For purposes of this Consent, the PPA and the Option Agreement, "Facility Debt" shall have the meaning set forth in the Option Agreement (the "Option Agreement") by and between Seller and Buyer dated concurrently with the PPA (in the form set forth as an appendix to the PPA), except that (i) the reference to the obligations of "Seller" thereunder shall be deemed to refer to the obligations of "Borrower," as the counterparty under the Financing Agreement and (ii) any debt of Borrower to the lenders under the Financing Agreement shall be deemed "Facility Debt". Upon the request of the Buyer, the Lender can send a written notice of the amount of Facility Debt that is needed to be received by the Lender pursuant to the Financing Agreement.

1.5 Buyer's Purchase in Lieu of Foreclosure. In the event of any default by Seller under the Financing Agreement that has not been cured as provided hereunder or thereunder, prior to taking any action, whether judicial or non-judicial, to foreclose upon and sell the Facility or the Assigned Interests (in either case, a "Foreclosure Sale") pursuant to the Lender Collateral Documents, or prior to taking a deed in lieu of foreclosure, Lender shall, concurrent with any statutory notice required to be delivered to Seller, give notice in writing to Buyer not less than ninety (90) days prior to the date of such Foreclosure Sale or taking of a deed in lieu of

foreclosure in the form of Exhibit A hereto containing the information specified therein (the "Foreclosure Notice").

(a) Upon receipt by Buyer of a Foreclosure Notice, Buyer shall have the right, at its option, to purchase the Facility from Seller in lieu of foreclosure as set forth in this Section 1.5. In the event that, within thirty (30) days following Buyer's receipt of such Foreclosure Notice, Buyer furnishes written notice to Lender that it will (concurrent with and subject to the closing of a bond financing by Buyer) exercise its option to purchase the Facility, which notice shall be in the form of, and containing the information specified in, Exhibit B hereto (the "Purchase Notice"), including setting forth the date of such purchase (which shall be within ninety (90) days following the date of Buyer's notice to Lender in the form of Exhibit B, which date may be reasonably extended by Buyer for up to an additional fifteen (15) days in order to close the bond financing), Buyer shall purchase the Facility from Seller as hereinafter provided. The purchase price of the Facility shall be paid by the Buyer to the account designated by the Lenders and shall be equal to the amount, measured as of the applicable measurement date, of the Facility Debt. In consideration of such payment, Lender shall, upon the closing therefor, release of record all of the liens and security interests under the Lender Collateral Documents.

(b) If Buyer believes that the purchase of the Facility will not take place within such ninety (90) day period, and, prior to the end of such ninety (90) day period provides notice to Lender in the form of Exhibit C, then the Foreclosure Sale (or, as applicable, the taking of a deed in lieu of foreclosure) shall not be held and Buyer shall, within ten (10) days after the end of such ninety (90) day period, purchase from the Lenders all of their right, title and interest in, to and under the Financing Agreement and the Lender Collateral Documents, free and clear of all Lender liens, claims and encumbrances. Upon such a purchase by Buyer, Lender agrees to cause the transfer, sale and assignment of all of the right, title and interest of the Lenders in, to and under the Financing Agreement, related promissory notes, and the Lender Collateral Documents to be made to Buyer (or, if and to the extent designated by Buyer, to a member of Buyer that is a purchaser from Buyer of Energy produced by the Facility (a "Member")) upon the payment by Buyer or such Member to Lender of the amount of the Facility Debt.

(c) If Buyer has not provided Lender a notice in the form of Exhibit C prior to the end of such ninety (90) day period after the Foreclosure Notice, then the Lenders may effect the Foreclosure Sale or take a deed in lieu of foreclosure at any time after the end of such ninety (90) day period.

1.6 Foreclosure Sale. In the event Buyer does not exercise its option or rights as provided under Section 1.5 above, and a Foreclosure Sale under the Lender Collateral Documents shall take place (a) Buyer or any Member shall have the right to bid at such Foreclosure Sale for the purchase of the Facility, and (b) failing a successful bid by Buyer or any such Member at such Foreclosure Sale, Lender may sell the Assigned Interests pursuant to such Foreclosure Sale, free of any rights of Buyer under this Section 1.6, and, in each such case, Seller waives, to the extent permitted by law, all rights of redemption, stay or appraisal.

1.7 Third Party Beneficiary. No action of Buyer taken pursuant to the exercise of its rights as provided in this Consent shall be deemed to be a waiver of any right accruing to Buyer

on account of the occurrence of any matter which constitutes a default or a breach of Seller's obligations under the Financing Agreement.

1.8 No Assignment. Buyer agrees that it shall not, without the prior written joint consent of Seller and Lender (such consent to not be unreasonably withheld, conditioned or delayed) sell, assign or transfer any of its rights under the PPA other than in accordance with Section 14.6 of the PPA. Lender shall be deemed to have consented to such sale, assignment or transfer should it fail to respond within forty-five (45) days after the date of the notice from Buyer.

1.9 Limitation of Liability.

(a) Seller agrees that it shall indemnify and hold Buyer harmless from any third-party claims, losses, liabilities, damages, costs or expenses (including, without limitation, any direct, indirect or consequential claims, losses, liabilities, damages, costs or expenses, including legal fees) in connection with or arising out of any of the transactions related to the Financing Agreement or any of the Lender Collateral Documents, or this Consent.

(b) In the event of any Foreclosure Sale, or any deed in lieu of foreclosure, in connection with any Lender Collateral Documents, Lender or Subsequent Owner, and their successors in interest and assigns, if performance of the PPA is reasonably possible, shall cause the Seller or Subsequent Owner to assume in writing and agree to be bound by the covenants and agreements of Seller in the PPA; provided, however, that until the Subsequent Owner executes and delivers to Buyer a written assumption of Seller's obligations under the PPA in form and substance reasonably acceptable to Buyer, such Person will not be entitled to any of the benefits of the PPA. In addition, Lender agrees that in no event shall Buyer be liable to Lender or any Subsequent Owner for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under the PPA. In the event a Subsequent Owner elects to perform Seller's obligations under the PPA, the recourse of Buyer in seeking the enforcement of such obligations shall be limited to any Development Security, or the Performance Security, as applicable, provided pursuant to the PPA and the value (taking into account indebtedness secured by the Facility, including indebtedness arising in connection with such Development Security or the Performance Security, as applicable) of the Subsequent Owner's interest in the Facility.

2. Payments under the PPA. Without limiting the rights of Buyer under the PPA, Buyer shall pay any amounts owed in the manner and when required under the PPA directly to the accounts specified below or otherwise designated by Lender to Buyer in writing. From and after such time as an entity qualifies as a Subsequent Owner, Buyer shall pay all such amounts owed directly to or at the written direction of such Subsequent Owner. Seller hereby directs Buyer, and Buyer agrees, to make all payments and amounts Buyer is obligated to pay to Seller under the PPA, which payments shall satisfy any such payment obligations of Buyer to Seller in full and complete satisfaction of Buyer's obligations to Seller under the PPA, to the following account:

Bank Name: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
ABA Number: \_\_\_\_\_

Account Name: [ ]

Lender and Seller agree that any change in payment notification shall become effective within thirty (30) days after receipt by Buyer of written notice thereof in accordance with this Consent. Buyer shall have no liability to Seller or Lender (or their successors and assigns) for making payments due or to become due under the PPA to Lender or for failure to direct such payments to Lender rather than Seller.

3. Acknowledgements; Representations and Warranties.

(a) Seller and Lender acknowledge that Buyer has not made and hereby makes no representation or warranty, expressed or implied, that Seller has any right, title or interest in the collateral secured by the Lender Collateral Documents (the "Collateral") and Lender acknowledges that it has not relied upon any such representations of Buyer. Lender acknowledges that it is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Collateral.

(b) Except as otherwise expressly provided herein, Lender acknowledges that Buyer shall not have any contractual obligations to Lender, and Lender acknowledges that it has not relied upon any representations of Buyer in connection with its lending arrangements with Seller.

(c) Seller and Lender acknowledge that Buyer shall have no liability to Seller or Lender resulting from or related to this Consent, or for consenting to any future assignments of the Collateral or any interest of Seller or Lender therein.

(d) Seller and Lender each agree that Buyer shall at all times have (and Buyer hereby expressly reserves) the right to set off or deduct from payments due to Seller under the PPA amounts owing to Buyer by Seller under the PPA.

(e) Lender represents and warrants that it is duly authorized to enter into and perform its obligations under this Consent.

(f) Seller represents and warrants to Buyer that the rights of Buyer to exercise its cure rights and other rights and remedies hereunder, including to purchase the Facility in accordance with the provisions of Section 1.5 of this Consent, do not and will not conflict with the Financing Agreement, and are permitted by the Financing Agreement, the Lender Collateral Documents, and any related agreements and documents securing Seller's performance under the Financing Agreement.

(g) Buyer agrees that any foreclosure by Lender on the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement shall not constitute a breach under the PPA if the Facility is operated and maintained by a Qualified Operator (as defined in the PPA) following any such foreclosure. Lender shall obtain Buyer's consent (such consent not to be unreasonably withheld) prior to any transfer by Lender of the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement to an entity other than a Qualified Transferee.

4. Miscellaneous.

4.1 Governing Law; Submission to Jurisdiction.

(a) This Consent shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

(b) All litigation arising out of, or relating to this Consent, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

4.2 Conflicts. This Consent does not modify or alter any of the terms of the PPA (except the address to which the notices referred to herein are to be delivered), and to the extent the terms and conditions herein conflict with those in the PPA, the term and conditions of the PPA shall control. Except as set forth herein, Buyer shall have no obligation or liability to Lender with respect to the PPA or any Ancillary Document. For purposes of this provision, Seller and Buyer agree that the extended cure periods provided in Section 1.2, the rights of a Subsequent Owner in Section 1.3, the restriction on assignment in Section 1.8, the payments pursuant to Article 2, and the agreement regarding change in control in Section 3(g) do not conflict with the PPA.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

4.4 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Buyer and Lender, and after the initial funding by any Tax Equity Investor, such Tax Equity Investor.

4.5 Successors and Assigns. This Consent shall bind and benefit Buyer and Lender, and their respective successors and permitted assigns.

4.6 Attorneys' Fees. Seller shall reimburse Buyer for all actual and documented costs and expenses incurred by Buyer in connection with the facilitation of Seller's collateral assignment or pledge of the PPA, or any other action taken in connection with the transactions contemplated in this Consent, or otherwise pursuant to any request made by Seller or any Lender.

4.7 Representation by Counsel. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Consent.

4.8 Estoppel Certificate. Buyer agrees to deliver to the Tax Equity Investors and the Lender a customary estoppel certificate substantially in the form of Exhibit D on the date of delivery of this Consent, in connection with the initial funding by the Tax Equity Investors and in connection with the achievement of Commercial Operation of the Facility following receipt of a written request therefor from Seller.



4.9 Notices. Any communications between the Parties or notices provided herein to be given shall be given to the following addresses:

If to Seller:  64KT 8ME LLC c/o [ ]	If to Buyer:  Southern California. Public Power Authority 1160 Nicole Court Glendora, CA 91740 Facsimile: (626) 793-9461 Telephone: (626) 793-9364 Attention: Executive Director
If to Lender:	

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by prepaid telegram or by facsimile. Any Party may change its address for notice hereunder by giving written notice of such change to the other Parties.

4.10 Termination of Collateral Documents and Consent. Seller and Lender agree that upon the termination of the Lender Collateral Documents on the Term Conversion Date (as defined in the Recitals), the only remaining collateral security of the Lender securing the obligations of the Borrower under the Financing Agreement will be the membership interests in and any assets of the Pledgor and the Borrower, and there will be no remaining collateral security of the Lender in the Seller or its assets that secures the obligations of the Borrower under the Financing Agreement. Seller agrees to deliver notice of the occurrence of the Term Conversion Date to Buyer (with a copy to Lender) promptly but in no event more than 10 days after such Term Conversion Date. The Parties agree that, as of such date, any rights, duties or obligations arising hereunder shall terminate and no longer be applicable; provided, that Sections 1.9(a), 3, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.9, 4.10, and 4.11 and the definition of "Facility Debt" in Section 1.4 shall survive the termination of this Consent.

4.11 Tax Equity Investor Accession. Each of Buyer, Lender, Seller and the Tax Equity Investors hereby agree as follows:

(a) Effective as of the earlier to occur of (1) the date that the obligations under the Financing Agreement are repaid in full; (2) the Term Conversion Date and (3) October 31, 2016; provided that clause 4.11(a)(i) below shall not be applicable until the earlier to occur of one of subclauses (1) or (2) of this clause 4.11(a):

i. The rights of the Lender under Section 1 hereof and the payment direction in Section 2 hereof will terminate.

ii. Buyer will not terminate the PPA or suspend performance of its services under the PPA on account of any Default (as defined under the PPA) of Seller thereunder, without written notice to the Tax Equity Investors and first providing to the Tax Equity Investors (i) ten (10) Business Days from the date notice of Default is delivered to the Tax Equity Investors to cure such Default if such Default is the failure to pay amounts to Buyer which are due and payable by Seller under the PPA, or (ii) forty-five (45) days from receipt of such notice, to cure such Default if the Default cannot be cured by the payment of money to Buyer.

(b) The address of the Tax Equity Investors for purposes of all notices and other communications is:

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

*and*

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

*With copies to:*

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

*and*

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

*and*

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

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Consent and Agreement to be duly executed and delivered as of the date first above written.

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By: \_\_\_\_\_  
FRED H. MASON  
President

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

\_\_\_\_\_

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

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

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

64KT 8ME LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: [\_\_\_\_\_] .  
Title: [\_\_\_\_\_]

*[Signature Page to PPA Consent]*

EXHIBIT A  
to Consent and Agreement

FORM OF FORECLOSURE NOTICE  
[Letterhead of Lender]

[Insert date]

Via Certified Mail, Return Receipt Requested

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Attn: Executive Director

Re: Springbok 3 Project

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent") dated as of \_\_\_\_\_, 20\_\_, among Southern California Public Power Authority ("Buyer"), \_\_\_\_\_, as collateral agent ("Lender") and 64KT 8ME LLC ("Seller"). This is a Foreclosure Notice, as defined in the Consent. Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

As of the date hereof, the following amounts are due and owing by Seller under the Financing Agreement:

Principal amount of loans:

Accrued Interest:

Reimbursable Amounts

Fees:

As of the date hereof, interest is accruing at the rate of \_\_\_\_% per annum *[Insert if applicable: and fees are accruing at the rate of \_\_\_\_% per annum]*. This interest rate will apply until *[insert date which is end of current interest period]*, from which time the interest rate may be higher or lower. A default rate of interest equal to 2% above the otherwise applicable rate *[does/does not]* currently apply *[If does not currently apply, add: but may be applied at any time]*. *[If applicable, state: The principal amount of loans shown above does not reflect the entire loan commitment under the Financing Agreement. Additional loans may be made, with or without the Seller's consent, and such additional loans will accrue interest as provided in the Financing Agreement.]*

An Event of Default, as defined in the Financing Agreement, has occurred and is continuing. The Lender intends to foreclose upon the Assigned Interests or take a deed in lieu of foreclosure on a date estimated to be *[insert day no less than ninety (90) days from the date of notice]*. Such date may be modified as permitted by law, but will in no event be prior to ninety (90) days after the date hereof.

Very truly yours,

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

EXHIBIT B  
to Consent and Agreement

FORM OF PURCHASE NOTICE

[Letterhead of SPPA]

[Insert date]

Via Certified Mail, Return Receipt Requested

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

[Address]

[City, State ZIP]

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

Re: Springbok 3 Project

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent"), dated as of \_\_\_\_\_, 20\_\_, among Southern California Public Power Authority ("Buyer"), \_\_\_\_\_, as collateral agent ("Lender") and 64KT 8ME LLC ("Seller"). This is a Purchase Notice, as defined in the Consent. Capitalized terms used and not defined herein have the respective meanings given in the Consent.

We have received your foreclosure Notice, dated [insert date of Foreclosure Notice]. By this Purchase Notice, we hereby notify Lender that we will exercise our option and purchase the Facility pursuant to our rights under Section 14.21 of the PPA no later than ninety (90) days from the date of the Foreclosure Notice, and upon consummation of such purchase, pay to Lender, for the account of the Lenders, the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By: \_\_\_\_\_  
FRED H. MASON  
President

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

O-16

EXHIBIT C  
to Consent and Agreement

FORM OF PURCHASE NOTICE

[Letterhead of SPPA]

[Insert date]

Via Certified Mail, Return Receipt Requested

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

[Address]

[City, State ZIP]

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

Re: Springbok 3 Project

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement ("Consent"), dated as of \_\_\_\_\_, 20\_\_, among Southern California Public Power Authority ("Buyer"), \_\_\_\_\_, as collateral agent ("Lender") and 64KT 8ME LLC ("Seller"). Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

We have received your Foreclosure Notice, dated *[insert date of Foreclosure Notice]*. By this notice, we hereby notify Lender that we believe that the purchase of the Facility pursuant to Section 1.5(c) of the Consent will not take place within the ninety (90) day period following our receipt of such Foreclosure Notice. We will, within ten (10) days after the end of such ninety (90) day period, purchase from the Lenders all of their right, title and interest in, to and under the Financing Agreement, related promissory notes, and Lender Collateral Documents, for a price equal to the Facility Debt.

Very truly yours,

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By: \_\_\_\_\_  
FRED H. MASON  
President

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
BILL D. CARNAHAN  
Assistant Secretary

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**EXHIBIT D**  
**to Consent and Agreement**

[FORM OF] PPA ESTOPPEL CERTIFICATE

[Date]<sup>3</sup>

Reference is made to that certain Power Purchase Agreement (the "Power Purchase Agreement") dated as of December 17, 2015 (the "PPA"), by and between the Southern California Public Power Authority, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Code Section 6500, *et seq.*) ("Buyer"; provided, that in no event shall the term "Buyer" refer to any of the members of Buyer, and the term "Buyer's knowledge" as used herein shall refer only to the knowledge of persons at SCPPA, and not to the knowledge of anyone at any of the members of Buyer) and 64KT 8ME LLC, a Delaware limited liability company ("Seller"). Terms used herein but not defined herein have the same meanings as in the PPA.

Buyer hereby confirms and agrees as of the date hereof as follows:

1. The copy of the PPA, as amended, attached as Exhibit A, constitutes a true and complete copy of the PPA.
2. The PPA is in full force and effect and has not been modified or amended in any way [since [\_\_\_\_\_, 201\_\_], and constitutes the only agreement between Buyer and Seller other than that certain Consent and Agreement dated as of [\_\_\_\_\_, 20\_\_] and that certain Option Agreement dated as of December 17, 2015.
3. Buyer has not transferred or assigned its interest in the PPA.
4. Buyer is not in default under the PPA nor has Buyer breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the PPA or that would give Seller the right to terminate the PPA. To Buyer's knowledge, Seller is not in default under the PPA nor, to Buyer's knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the PPA and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the PPA or that would allow Buyer to terminate the PPA.

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<sup>3</sup> To be delivered on the date of delivery of the Consent and, upon the initial funding and upon the final funding under the Tax Equity transaction commensurate with COD.



5. All representations made by Buyer in the PPA were true and correct as of the effective date of the PPA and continue to be true and correct.

6. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Force Majeure under the PPA has occurred and is continuing.

7. Seller has not claimed any amounts under the indemnification obligation of Buyer set forth in the PPA.

8. To Buyer's knowledge, Buyer has no existing counterclaims, offsets or defenses against Seller under the PPA. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the PPA.

9. All payments due, if any, under the PPA by Buyer have been paid in full through the period ending on the date hereof.

10. [The Commercial Operation Date of the Facility occurred on [\_\_\_\_], 201[6].

11. The Contract Capacity of the Project as of the Commercial Operation Date is [ ] MW.]<sup>4</sup>

IN WITNESS WHEREOF, Buyer has caused this Certificate to be duly executed by its officer thereunto duly authorized as of the date first set forth above.

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

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

<sup>4</sup> Bracketed language in 10 and 11 to be included in the Estoppel Certificate delivered at the final funding under the Tax Equity Transaction commensurate with COD.

**EXHIBIT E**  
**to Consent and Agreement**

**Qualified Operators**

- A.1. Swinerton Builders
  
- B.1. Signal Energy, LLC
- B.2. EDF Renewable Services, Inc.
- B.3. First Solar Electric (California) Inc.
- B.4. NRG Energy, Inc.
- B.5. True South Renewables, Inc.

provided, however, that no Person listed above shall be a Qualified Operator if at the relevant time such Person is in active litigation adverse to Buyer or LADWP; and provided further that each Person listed as B.1 through B.5 shall cease to automatically qualify as a Qualified Operator five years after the commercial operation of the Facility.

**APPENDIX P**  
**TO THE**  
**POWER PURCHASE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND**  
**64KT 8me LLC**  
**BUYER'S SYSTEM PROTECTION DESIGN**

Each solar facility shall be equipped with a distributed control system (“**DCS**”) that will be able to throttle, ramp, turn-on, turn-off, and telemeter the total MW output. The DCS will use the Distributed Network Protocol (“**DNP**”) 3.0 and International Electrotechnical Commission (“**IEC**”) 61850 communication protocols to interface with LADWP’s SCADA Remote Terminal Unit (“**RTU**”). All control, metering, and relay systems shall be provided with DNP 3.0 and IEC 61850.

Seller shall provide weather stations including data storage with automatic archiving of data files necessary to validate irradiance calculations at the Facility Site. Data storage capacity shall be sufficient to store 360 days of weather data.

**Inverter/DCS Performance Criteria**

A. **Distributed Control System** – The Facility Site shall have one master DCS at the 34.5 kV level controlling the inverters. The master DCS shall provide the capability of controlling the entire Facility’s output, and shall provide to the operators the ability to control the active power output of the Facility through a single setpoint. The DCS shall allow LADWP’s Energy Control Center (“**ECC**”) to issue commands (single setpoint) for the options listed below.

B. **Normal Startup** – The master DCS shall provide the capability of starting the entire Facility to partial or full output, and shall provide to the operators the ability to control Normal Startup of the entire Facility through a single command.

C. **Normal Shutdown** – The master DCS shall provide the capability of stopping the entire Facility from partial or full output, and shall provide to the operators the ability to control Normal Shutdown of the entire Facility through a single command.

D. **Emergency Stop** – The DCS shall be capable of operating in two Emergency Stop modes, as necessary (automatic Emergency Stop and directed Emergency Stop). In automatic Emergency Stop mode, the master DCS shall meet the shutdown requirements specified in Proposed NERC PRC-024, and shall be capable of shutting down in full compliance with UL1741, and with NERC PRC-024, in either mode as necessary for LADWP operations. In directed Emergency Stop mode, the master DCS shall provide the capability of stopping the entire Facility from partial or full output through a single command.

E. Black Start – The master DCS’s capability of starting the entire Facility from a Black Start condition, even when sufficient solar irradiance is available to the solar collectors, is NOT required. However, the Facility shall maintain communication and control power and capability with LADWP’s ECC whether solar irradiance is available or not.

F. Solar Curtailment – The master DCS shall provide the capability to curtail solar photovoltaic power generation to a specified percentage of the nominal power rating. Such curtailment shall be effected by the control of the solar photovoltaic inverters.

G. Voltage Ride Through – All systems supplied shall meet the Low Voltage Fault Ride Through (“LVRT”) requirements and any over or under voltage capabilities specified in Proposed NERC PRC-024, and shall be capable of operating in full compliance with UL1741, and with NERC PRC-024, in either mode as necessary for LADWP operations.

H. Fault Ride Through - All systems supplied under this Agreement shall meet the requirements specified in Proposed NERC PRC-024, and shall be capable of operating in full compliance with UL1741, and with NERC PRC-024, in either mode as necessary for LADWP operations.

I. Frequency Ride Through - All systems supplied shall meet the over and under frequency capabilities specified in Proposed NERC PRC-024, and shall be capable of operating in full compliance with UL1741, and with NERC PRC-024, in either mode as necessary for LADWP operations.

J. Reactive Power - The inverter shall have the capability to supply and absorb reactive power over the complete range. The DCS shall be able to control inverter reactive power dispatch through a single setpoint in each of the following three modes: Power Factor Control Mode, Voltage Control Mode, and Reactive Power Control Mode. In Power Factor Control Mode, the DCS shall provide the operators the ability to control the Facility’s reactive power dispatch within the power factor range of 0.95 lead/lag at the Point of Interconnection (as specified in the Generator Interconnection Agreement). In Reactive Power Control mode, the DCS shall provide the operators the ability to control the Facility’s reactive power dispatch at the Point of Interconnection independently of active power production subject to the reactive power constraints listed below. In Voltage Control Mode, the DCS shall provide the operators the ability to control the voltage at the Beacon 230kV switch rack within a specified range by automatically controlling reactive power dispatch independent of active power production, subject to the reactive power constraints listed below.

Site Reactive Power Constraints, Qmin and Qmax, in MVAR:``

Site Qmin Qmax

- 1 - 18 +18
- 2 - 16 +16
- 3 - 18 +18
- 4 - 16 +16
- 5 - 13 +13

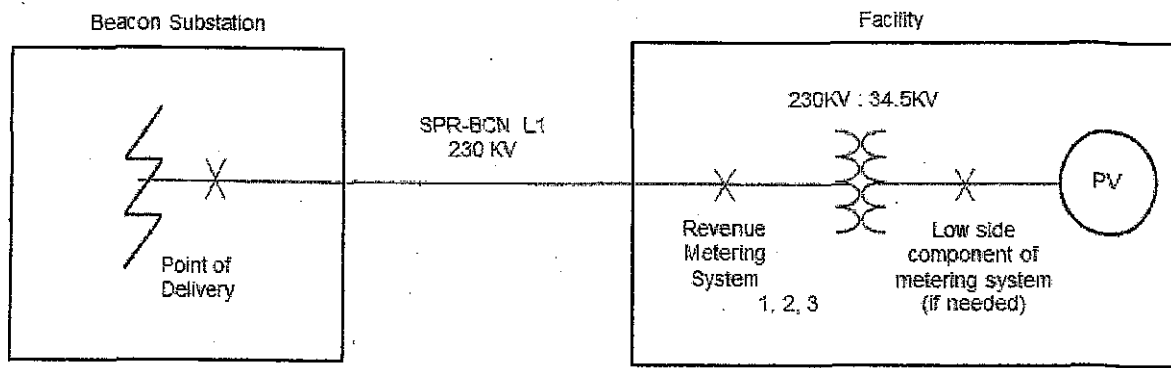
APPENDIX Q  
TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC  
BUYER'S BUSINESS POLICIES

See attached.

Appendix R

APPENDIX R  
TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8ME LLC

SINGLE LINE DIAGRAM



Notes:

- 1 - To be used for Renewable Energy Certificate telemetry. Each WREGIS project must have its own system.
- 2 - Revenue Metering System must also have telemetry data that is loss compensated to the Point of Delivery using the Transmission Line Loss Factor, to be used for billing.
- 3 - Revenue Metering System must also be able to accurately meter backed load when generation output goes to zero.

**SCHEDULE 12.2(h)**

**TO THE  
POWER PURCHASE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND  
64KT 8me LLC**

**SPECIFIED UPSTREAM EQUITY OWNERS AND  
ORGANIZATIONAL AND OWNERSHIP STRUCTURE OF SELLER  
AND UPSTREAM EQUITY OWNERS**

This Schedule 12.2(h) may be updated from time to time by agreement of Buyer and Seller to account for a Change in Control that has been consented to by Buyer in accordance with this Agreement.

**Section 1. Specified Upstream Equity Owner.**

8minutenergy Renewables, LLC

**Section 2. Organizational and Ownership Structure of Seller and Upstream Equity Owners.**

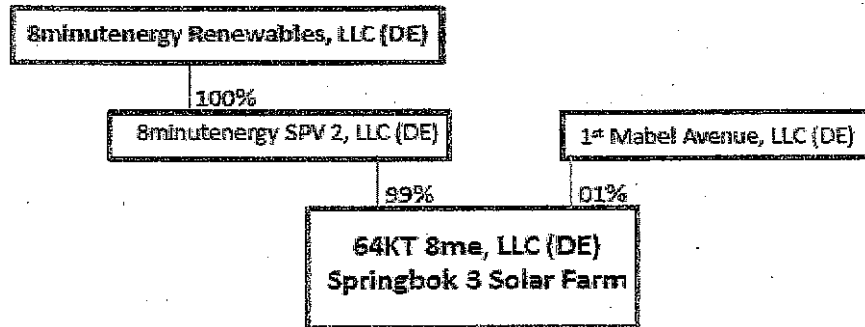
See attached.

**Section 3. Principals of each LLC:**

Martin Hermann, Thomas Buttgenbach

Organizational and Ownership Structure of Seller and Upstream Equity Owners

**64KT 8me LLC**  
**Springbok 3 Solar Farm**



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