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**KINGBIRD B SOLAR PROJECT**

**POWER SALES AGREEMENT**

**BETWEEN**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**AND**

**THE CITY OF RIVERSIDE, CALIFORNIA**

**Dated as of September 19, 2013**

**KINGBIRD B SOLAR PROJECT  
POWER SALES AGREEMENT**

1. **PARTIES.** This KINGBIRD B Solar Project Power Sales Agreement, is made and entered into as of this 19th day of September 2013, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as "SCPPA," created under the provisions of the Act, and the CITY OF RIVERSIDE, California, a California charter city and a municipal corporation organized and existing under the laws of the State of California, hereinafter designated as "Riverside," or, depending upon context, as "Participant." SCPPA and Riverside are each sometimes hereinafter referred to individually as "Party" and together as "Parties."
  
2. **RECITALS.** This Agreement is made with reference to the following facts among others:
  - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the "Act"), by its members, which are municipalities and an irrigation district that supply or will supply electricity in the State of California, for the purpose of jointly and cooperatively undertaking planning, financing, development, acquisition, construction, operation and maintenance of projects for the generation or transmission of electric energy in accordance with the Act.
  
  - 2.2 To facilitate the appropriate review and due diligence studies necessary to carry forth an effective program for the development of renewable resources SCPPA created the "Renewable Electric Energy Resource Project" to be carried forth between SCPPA and those SCPPA members desiring to participate in this renewable energy oriented project under SCPPA's Joint Powers Agreement. Thereafter on March 17, 2006, the Board of Directors by way of Resolution 2006-13 found and declared the proposed Renewable Electric Energy Resource Project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement and authorized the execution of a development agreement for the Renewable Electric Energy Resource Project among SCPPA and the SCPPA members participating in this Study Project. Thereafter, on January 19, 2012, the Board of Directors issued Resolution 2012-008 establishing a Phase II Renewable Development Project ("Phase II") and declaring the Phase II to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement.
  
  - 2.3 In pursuit of the goals of the Renewable Electric Energy Resource Project (including Phase II) SCPPA issued Requests for Proposals ("RFP") for potential renewable electric resources to address SCPPA member renewable energy needs, and as a result of responses to that RFP SCPPA and three of its members, the Cities of Azusa, Colton and Riverside (the "Project Participants"), have investigated the feasibility of a photovoltaic solar electric generating facility (the "Facility") to be designed, constructed, maintained and operated by Kingbird Solar B LLC, a Delaware limited liability company (the "Power Purchase Provider"), an affiliate of First Solar, LLC, a

Delaware limited liability company (the "Project"). The Facility will be located near the unincorporated town of Rosamond, Kern County, California, on a site leased or owned by the Power Purchase Provider.

2.4 SCPPA desires to enter into a Power Purchase Agreement with the Power Purchase Provider for the purchase of all Facility Output including, but not limited to, Energy, Capacity Rights and the associated Environmental Attributes from the Facility for the purpose of selling all said purchased Facility Output to Participant and the other Project Participants pursuant to this Agreement and Power Sales Agreements with such other Project Participants.

2.5 Participant has a need for an economical, reliable source of Energy, Capacity Rights and Environmental Attributes to meet the requirements of new environmental and energy procurement laws, as well as the demands of its current and/or future customers in an environmentally responsible manner and, as such, has determined that it is desirable to enter into this Agreement to purchase a Contract Share of the Energy and Environmental Attributes of the Facility from SCPPA.

3. **AGREEMENT.** For and in consideration of the promises and the mutual covenants and agreements hereinafter set forth, it is agreed by and between the Parties hereto as follows.

4. **DEFINITIONS.** The meaning of capitalized terms in this Agreement not otherwise defined in context shall be as defined in Section 1.1 of the Power Purchase Agreement, which is incorporated herein by this reference, or by the definitions set forth in the attached Appendix A

5. **TERM, PURCHASE AND SALE OF FACILITY OUTPUT.**

5.1 **Term.** This Agreement shall be effective upon execution and delivery by both Parties (the "Effective Date") and, unless earlier terminated pursuant to an express provision of this Agreement, shall be coterminous with the Power Purchase Agreement.

5.2 **Purchase and Sale of Contract Share.** In accordance with the terms and conditions hereof, commencing on the first date that Test Energy is available and continuing throughout the Term, SCPPA shall sell, schedule, and deliver to the Point of Delivery, and Participant shall purchase and accept from SCPPA at the Point of Delivery, all Facility Output and Replacement Energy associated with Participant's Contract Share.

6. **OBLIGATIONS OF SCPPA AND THE PROJECT PARTICIPANTS.**

**Establishment and Authorization of the Coordinating Committee.** The Coordinating Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the Project Participants and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) the administration, as applicable, of any operating agreement or any maintenance agreement, (v) otherwise making any

recommendations to the Board of Directors regarding the administration of the Project and any acquisitions related thereto, (vi) exercising any rights with respect to any default by the Power Purchase Provider under any agreements, deeds of trust, leases or other instruments and (vii) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration and operation thereof, and such further developments as may need to be addressed. The Coordinating Committee shall consist of one representative from each Project Participant ("Authorized Representative"). Each Project Participant shall be entitled to cast a vote equal to its Contract Share as set forth in Appendix B hereof. SCPPA shall be entitled to one non-voting representative. SCPPA and Participant shall, within 30 days after SCPPA has entered into the Power Sales Agreement between SCPPA and Participant, give notice to SCPPA and any other Project Participant, of its representative on the Coordinating Committee. Alternate representatives may be appointed by similar written notice to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee or by the Board of Directors, in the absence of the regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant or Project Participants, which she/he represents. The chairperson of the Coordinating Committee ("Chairperson") shall be a representative of the Project Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Coordinating Committee. The Chairperson or SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law. For the purpose of conducting meetings, a quorum shall exist so long as SCPPA's representative and the representative of at least a majority of the Project Participants shall be present. Except as may otherwise be provided in an agreement to which all of the Project Participants agree, all actions taken by the Coordinating Committee shall require an affirmative vote of Project Participants having Contract Shares aggregating at least eighty percent (80%) of the total Project Contract Shares cast thereon. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of a single Project Participant and such Project Participant determines, in good faith, that such proposed action will not adversely affect, economically or otherwise, such Project Participant, such Project Participant agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action. Participant acknowledges and agrees that SCPPA, through the Coordinating Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of Directors, SCPPA will not be required to obtain the consent or approval of Participant in connection with any such Project Agreement or supplement or amendment, provided

that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement.

- 6.1 Coordinating Committee Responsibilities. In addition to those responsibilities enumerated in Section 6.1 the Coordinating Committee shall have the following responsibilities:
- 6.1.1 Provide liaison between SCPPA and the Project Participants at the management or other levels with respect to the operation and ongoing administration of the Project, and maintain a liaison between the Project Participants and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.
  - 6.1.2 If any desired Project design, feasibility or planning studies or activities which are to be completed by SCPPA have not been completed by the Effective Date of this Agreement, oversee, as appropriate, the continuation and completion of such Project design, feasibility or planning studies or activities.
  - 6.1.3 Exercise general supervision over any subcommittee established pursuant to Section 6.3.5.
  - 6.1.4 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager pursuant to any applicable agreement.
  - 6.1.5 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 7 of this Agreement.
  - 6.1.6 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 7 of this Agreement.
  - 6.1.7 Make recommendations to the Project Manager, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the development, operation and ongoing administration of the Project.
  - 6.1.8 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the Facility or an ownership interest therein and the scheduling, handling, tagging, dispatching and crediting of Facility Output and the handling and crediting of Environmental Attributes associated with the Facility.

- 6.1.9 Review, and, if appropriate, modify, approve or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, solar energy related data, electric generation information, solar energy production data, diurnal, barometric and meteorological information, solar photovoltaic metallurgic chemical and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, firming, shaping, exchanging, balancing, movement, or other delivery information, climate and weather related matters, cloud conditions, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager, the counterparties to Project Agreements, experts, consultants or others.
- 6.1.10 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager or, if applicable, the counterparty to any Project Agreement, to be followed by the Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of Facility Output.
- 6.1.11 Review, modify and approve, if necessary, the schedule of planned activities formulated by the Project Manager or the counterparty with respect to the performance of any Project Agreement, including the policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In formulating and approving such schedules, consideration may be given, if possible, to each Project Participant's electric system conditions, which may prevail during such planned activities
- 6.1.12 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with the Power Purchase Agreement.
- 6.1.13 Review, modify, approve or otherwise act upon any proposed change to the milestone schedule or to any Milestone under the Power Purchase Agreement as the Coordinating Committee shall deem to be desirable, appropriate or otherwise in SCPPA's interest. The Coordinating Committee may impose such other terms, conditions or qualifications upon any such action as the Coordinating Committee shall deem appropriate.
- 6.1.14 Review, approve or otherwise act upon any proposed extension or modification of any date set forth in Appendix I of the Power Purchase Agreement or of any Milestone under the Power Purchase Agreement which, in the discretion of the Coordinating Committee, may be appropriate, desirable or otherwise in SCPPA's interest. The Coordinating Committee

may impose other conditions or qualifications upon the grant of any such extension as the Coordinating Committee shall deem appropriate.

- 6.1.15 Review and act upon any present, potential or possible future anticipated failure to deliver Guaranteed Energy Production under the Power Purchase Agreement in such manner as the Coordinating Committee shall deem appropriate.
- 6.1.16 Act upon such recommended changes, as the Coordinating Committee shall deem appropriate., including changes to Appendix B when necessary to reflect a reallocation of Contract Shares after termination of a Defaulting Project Participant's rights and obligations in the Project pursuant to section 9.4 of this Agreement or an assignment of a Participant's rights and obligations under section 16 of this Agreement. Any such change to Appendix B shall be considered an element of the administration of this Agreement and not an amendment requiring the consent of the Parties hereto.
- 6.1.17 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or by any counterparty to any Project Agreements giving due recognition to the needs of all Project Participants.
- 6.1.18 Review, and, if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or any counterparty with respect to any Project Agreement, and when requested by a Project Participant review, and, if appropriate, recommend, modify or approve those matters associated with any Point of Delivery or any other point or points designated for delivery of energy, delivery arrangements, transmission contracts, or other Project Agreements.
- 6.1.19 Review, and, if appropriate, recommend, modify or approve policies or programs formulated by the Project Manager, any counterparty under any Project Agreement or any other Person for the exchange of energy from the Facility.
- 6.1.20 Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by the Project Manager or any counterparty under any Project Agreement for determining or estimating the solar energy resources or the values, quantities, volumes or costs of renewable energy from the Facility.
- 6.1.21 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.1.22 Review, modify and approve SCPPA's insurance program with respect to the Project (as applicable) including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of any

uninsured claim that the Project Manager may settle without prior approval of the Coordinating Committee.

- 6.1.23 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of Facility Output to the respective Points of Delivery or from any of the Points of Delivery to other points or destinations, as applicable.
- 6.1.24 Review, examine modify and where appropriate, recommend or approve the implementation of methods for addressing curtailments or other interruptions contemplated in the Power Purchase Agreement.
- 6.1.25 Review, and to the extent permitted by this Agreement or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, form of final agreement, or any other matters.
- 6.1.26 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Ancillary Documents, other Project Agreements, or as may otherwise be appropriate or beneficial to the Project.

6.2 Management Decisions and the Role of Board of Directors. The rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Project Participants shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests in the Facility and the Project as provided in Section 6.1 herein. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

- 6.2.1 Future Developments. The Board of Directors shall provide liaison among the Project Participants at the management level with respect to the direction of the Project and future developments arising out of the Power Purchase Agreement, including any purchase or acquisition of the Facility or any portion thereof and shall carry out those measures necessary to address such developments, including any purchase or acquisition of the Facility or any portion thereof.
- 6.2.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA, the Project Participants and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility and SCPPA rights and interests in the Facility.
- 6.2.3 Scheduling Procedures. When recommended by the Coordinating Committee, or when otherwise appropriate, the Board of Directors shall act

upon and approve or modify the practices and procedures to be followed by the Project Participants for the scheduling, delivering, controlling and allocating Facility Output associated with the Project.

- 6.2.4 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.2.5 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
- 6.2.6 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 6.7 of this Agreement.
- 6.2.7 Revision of Appendix B. In coordination with the Coordinating Committee adopt a resolution approving the revisions of Appendix B, as applicable, of this Agreement as provided in and subject to the provisions of Sections 6.2.16, 9.4 and 16.
- 6.2.8 Supervening Authority of the Board. The Board of Directors is reposed with complete and plenary supervening power and authority to act upon any matter which is capable of being acted upon by the Coordinating Committee or which is specified as being within the authority of the Coordinating Committee pursuant to the provisions of this Agreement, including those matters enumerated in Section 6.1 and 6.2 of this Agreement.
- 6.2.9 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Coordinating Committee, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager to develop, operate, maintain and administer the Project, or cause the Project to be developed, operated, maintained and administered, through any development, operating, project management or agency agreement or, as applicable, through the Power Purchase Agreement.
- 6.4 Scheduling Coordinator. SCPPA, or upon SCPPA's designation, one of the Project Participants, as the Project Participants may approve, shall act as Scheduling Coordinator on behalf of all of the Project Participants with respect to the Energy, Capacity Rights, Test Energy and any other such products derived from Facility Output, from the Facility to the Point of Delivery on the CAISO grid as provided in the Power Purchase Agreement.

- 6.5 Contract Administration. SCPPA shall use best efforts, on behalf of the Participants, to maximize the value of, and all products, rights, and benefits pursuant to, the Power Purchase Agreement and Scheduling Coordinator Agreement.
- 6.6 Adoption of Annual Budget. At least sixty (60) days prior to the beginning of each Fiscal Year, SCPPA will prepare, or cause to be prepared, and submit to the Participants, a proposed Annual Budget for such Fiscal Year. Such Annual Budget shall reflect the most recent Contract Costs estimates and other information provided to SCPPA. SCPPA may include in the Annual Budget reasonable amounts in excess of the estimated Contract Costs to be collected as an operating reserve to ensure that SCPPA may timely pay all Contract Costs. The Project Participants may submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the proposed Annual Budget. The Board of Directors shall adopt the Annual Budget not less than ten (10) days or more than sixty (60) days prior to the beginning of such Fiscal Year and shall cause a copy of such adopted Annual Budget to be delivered to the Participants. During any Fiscal Year, upon 10 calendar days' notice to the Participants, the Board of Directors may adopt an amended Annual Budget for and applicable to the remainder of such Fiscal Year. The Annual Budget, and not actual Contract Costs, shall establish the basis for Billing Statements to the Project Participants pursuant to Section 7 of this Agreement.
- 6.7 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts associated with this Agreement, including but not limited to Energy, Test Energy, Contract Costs, billings and collections under this Agreement. Such records shall be maintained for a period of no less than four (4) years following each applicable Fiscal Year.
- 6.8 Adjustment of Billing. On or before 150 days after the end of each Fiscal Year, the Authority shall submit to the Project Participants a detailed statement of (i) the actual Contract Costs, including credits and adjustments thereto, if any, for all of the months of such previous Fiscal Year, and (ii) the maintenance of an operating reserve as permitted in Section 6.7 hereof. If, on the basis of the statement submitted pursuant to this Section 6.9, the Participant's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year exceeds the amounts of the applicable Billing Statements billed to Participant hereunder, then the difference will be billed to Participant and Participant shall promptly pay SCPPA for such adjustment billing. If, on the basis of the statement submitted pursuant to this Section 6.9, the Participant's Contract Share of actual Contract Costs (and amounts, if any, with respect to an operating reserve) for such Fiscal Year is less than the amounts of the applicable Billing Statements billed to Participant hereunder, then SCPPA shall credit Participant the difference on Participant's next Billing Statement.
- 6.9 Provide Information. SCPPA agrees to supply Participant, upon request, with information and documentation associated with Contract Costs. Participant agrees to supply SCPPA with scheduling and settlement information and documentation, if any, requisite and necessary to reconcile and allocate Contract Costs.

## 7. CHARGES AND BILLINGS.

- 7.1 Billing Statement. By the fifth (5<sup>th</sup>) calendar day of each Month during the Term, SCPPA shall prepare and deliver a Billing Statement to Participant for its Contract Share of projected Contract Costs, based on the Annual Budget. Participant shall pay SCPPA amounts due under said Billing Statement on or before the twenty-fifth (25<sup>th</sup>) day of said Month.
- 7.2 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each Project Participant's Billing Statement with respect to the Contract Costs and other costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.3 Disputed Billing Statement. In case any portion of any Billing Statement received by Participant from SCPPA shall be in bona fide dispute, Participant shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, will be credited to Participant by SCPPA after such determination. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Participant with regard to SCPPA's position relative thereto within thirty (30) days following receipt of written notification by Participant of such dispute.
- 7.4 Annual Reconciliation of Costs. As soon as practicable after the end of each Fiscal Year, SCPPA will submit to Project Participants a detailed statement of the actual aggregate Contract Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Fiscal Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Fiscal Year, based on the annual audit of accounts provided for in Section 6.4. If, on the basis of the statement submitted as provided in this Section 7.1, the actual aggregate Contract Costs and other amounts payable by the Project Participants for any Fiscal Year exceed the amount thereof which Project Participants have been billed, Project Participants shall pay SCPPA, within 20 days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.1, the actual aggregate Monthly Costs or other amounts payable by the Project Participants for any Fiscal Year are less than the amount therefor which Project Participants have been billed, SCPPA shall, unless otherwise directed by Participant or the other Project Participants with respect to moneys owed to each, credit such excess against Participant's and the other Project Participants' next monthly Billing Statement.
- 7.5 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project

- 7.6 Prepayment of Monthly Costs. Participant may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Participant with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Participant and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Participant to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing Statement shall not relieve or reduce Participant's other obligations under this Agreement.
- 7.7 Costs or Expenses Incurred for Sole Benefit of Participant. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Participant, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Participant, in which event only Participant (and no other Project Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by SCPPA for the sole benefit of Participant shall be deemed to be paid last from amounts paid by Participant for the payment of its Billing Statements or Default Invoices.
- 7.8 Credit or Other Payment Attributable to a Specific Project Participant. Should any Project Participant make or provide, through any type of payment mechanism, for a separate payment or prepayment for Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable Project Participant under such Project Participant's Power Sales Agreement. Such a credit may at the request of the applicable Project Participant be credited on the Project Participants subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the Project Participants project stabilization account or such a credit may be otherwise handled in such manner as the applicable Project Participant may reasonably request. .

**8. UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION.**

- 8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA incurs or becomes obligated to pay any portion of the costs of the Project, (ii) the effective date of any Project Agreement, (iii) the effective date of the Power Purchase Agreement (iv) the date upon which SCPPA first incurs or accrues costs associated with the Power Purchase Agreement and other Project Agreements, or

(v) the date of the first delivery of Facility Output to Participant and continuing through the Term of this Agreement, Participant shall pay SCPPA the amounts of Contract Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Participant in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Default Invoices received by Participant as a result of the operation of Section 9 hereof, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

- 8.2 Source of Payments. The Participant hereby represents, warrants and agrees that the obligations of Participant to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Participant payable solely from its electric power revenue fund, including any and all legally available electric system reserves. Participant will annually in each and every fiscal year of Participant during the Term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 Rate Covenant. Participant will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Participant to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
- 8.4 Authorizations. The Participant hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or Person, is required on the part of the Participant for the execution and delivery by the Participant of this Agreement, or the performance by the Participant of its obligations under this Agreement except for such as have been obtained.
- 8.5 Conflicts. Participant represents and warrants to SCPPA as of the Effective Date that, to Participant's knowledge, the execution and delivery of this Agreement by Participant, and Participant's performance thereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on Participant, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of Participant's power revenue fund.
- 8.6 Litigation. Participant represents and warrants to SCPPA as of the Effective Date that, to Participant's knowledge, except as disclosed, there are no actions, suits or proceedings pending against Participant (service of process on Participant having

been made) in any court that questions the validity of the authorization, execution or delivery by Participant of this Agreement, or the enforceability on Participant of this Agreement.

**9. NONPERFORMANCE AND PAYMENT DEFAULT.**

- 9.1 Nonperformance by Participant. Subject to the provisions in this Section 9 regarding a Payment Default, if a Participant shall fail to perform any covenant, agreement or obligation under its Power Sales Agreement, SCPPA may, in the event the performance of any such obligation under this Agreement remains unsatisfied after thirty (30) days' prior written notice thereof to such Participant and a demand to so perform, take any action permitted by law to enforce its rights under its Power Sales Agreement and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against such Participant with regard to its failure to so perform.
- 9.2 Notice of Payment Default. Promptly following a Payment Default by a Participant, SCPPA shall provide written notice to such Participant that as a result of a Payment Default it is a Defaulting Project Participant whose rights, including its Contract Shares, under its Power Sales Agreement are subject to discontinuance, termination and disposal within 30 days of the date of such notice. Notice of such Payment Default shall be provided promptly by SCPPA to all other Participants.
- 9.3 Retention of Rights During Payment Default Period. During a Payment Default Period with respect to a Defaulting Project Participant, its rights, including its Contract Shares, under its Power Sales Agreement shall not be discontinued, terminated or disposed of as provided for in Section 9.4 of its Power Sales Agreement as a result of a Payment Default. During such Payment Default Period, SCPPA shall send to the Defaulting Project Participant a separate Default Invoice. If the Defaulting Project Participant pays in full such default invoice within the Payment Default Period, the Defaulting Project Participant shall no longer be deemed a Defaulting Project Participant and its rights, including its Contract Shares, under its Power Sales Agreement shall not be subject to discontinuance, termination or disposal as provided for in Section 9.4 of its Power Sales Agreement. The Defaulting Project Participant shall make separate payments to SCPPA with respect to its Billing Statement and a Default Invoice.
- 9.4 Rights Under Power Sales Agreement Terminated. If a Defaulting Project Participant fails to pay its Default Invoice within the Payment Default Period, its rights, including its Contract Shares, under its Power Sales Agreement shall immediately and permanently be discontinued and terminated; provided, however, the Defaulting Project Participant's obligation to make payment of its Default Invoice shall not be eliminated or reduced and the Defaulting Project Participant's other obligations to make payments under its Power Sales Agreement shall not be eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of its rights and obligations, less SCPPA's related costs and expenses. SCPPA shall immediately notify each of the other Participants of such discontinuance and termination.

- 9.4.1 SCPPA shall, to the extent permitted under the Project Agreements, offer to convey, transfer and assign to all non-Defaulting Project Participants, on a temporary or permanent basis as determined by SCPPA, the Project rights and obligations of the Defaulting Project Participant, and SCPPA shall so convey, transfer and assign on such basis so determined by SCPPA to (i) all requesting non-Defaulting Project Participants the amount of Project rights and obligations requested, if the aggregate of such requests does not exceed the amount of the Project rights and obligations of the Defaulting Project Participant, or (ii) all requesting non-Defaulting Project Participants on a pro-rata basis (based upon the amount requested) if the aggregate of such requests exceeds the amount of the Project rights and obligations of the Defaulting Project Participant. Each such requesting non-Defaulting Project Participant shall assume all, but not less than all, Project rights and obligations so conveyed, transferred and assigned to it by SCPPA.
- 9.4.2 If all of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned to non-Defaulting Project Participants as provided in Section 9.4.1 of its Power Sales Agreement, SCPPA shall, to the extent permitted under the Project Agreements and to the extent SCPPA in its discretion determines it appropriate, offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the remaining (or all, if applicable) of Defaulting Project Participant's Project rights and obligations to other SCPPA members or to third parties, all in accordance with applicable law. Each such requesting SCPPA member shall assume all, but not less than all, Project rights and obligations so conveyed, transferred and assigned to it by SCPPA.
- 9.4.3 If, at any time or from time to time, any of the Project rights and obligations of a Defaulting Project Participant are not conveyed, transferred and assigned as provided in Sections 9.4.1 or 9.4.2 of its Power Sales Agreement, SCPPA shall use its best efforts, to the extent permitted by the Project Agreements and economically beneficial, to offer all non-Defaulting Project Participants, other SCPPA members and third parties, for long-term or short-term sale as determined by SCPPA, Facility Output associated with such Project rights and obligations or to remarket or resell such Facility Output, or cause the same to be remarketed or resold; provided further, however, that without eliminating Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement), including payment of SCPPA's costs and expenses related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the remarketing or sale of Facility Output associated with Defaulting Project Participant's Project rights. If at the time of any Coordinating Committee meeting, any of Defaulting Project Participant's Project rights and obligations are not conveyed, transferred and assigned as provided in Sections 9.4.1 or 9.4.2, the associated voting rights with respect to Defaulting Project Participant's Project rights and obligations shall be redistributed pro rata among the non-Defaulting

Project Participants, based upon each non-Defaulting Project Participant's Contract Share, so that the total voting rights remain at 100%.

Except as provided in this Section 9.4 or otherwise in this Agreement, SCPPA may not convey, transfer or assign any Project Participant's Rights and Obligations without the prior written consent of the Project Participant.

9.5 Use of Operating Reserve. With respect to a Payment Default by a Participant, funds in any operating reserve for the Project shall be used, to the extent necessary and to the extent available, to pay amounts due under the Power Purchase Agreement. To the extent deemed necessary by SCPPA, a pro-rated amount of the Default Invoice (excluding any amounts due to late payment) may be added to the next Billing Statement for each non-Defaulting Project Participant in order to replenish the operating reserve.

## 10. CHARACTER, CONTINUITY OF SERVICE.

10.1 Outages, Interruptions and Curtailment of Energy Deliveries. Under certain conditions set forth in the Power Purchase Agreement or in the case of emergencies or abnormal conditions with respect to the Facility or in order to take the Facility out of service for repairs, maintenance work, replacements, equipment installation or inspections, or in the event of a failure by a Project Participant to receive or accept Facility Output or Replacement Energy delivered to SCPPA at a Point of Delivery, the Power Purchase Provider or, if SCPPA shall acquire the Facility or an ownership interest therein, SCPPA, its agent or the Project Manager, as the case may be, may temporarily interrupt or curtail deliveries of Facility Output (or in the case of the Power Purchase Provider, the Replacement Energy) to Project Participants. In the event of the occurrence of any such interruption or curtailment, including any associated Facility outage, which shall cause a reduction in deliveries of Facility Output, any incurrence by SCPPA of additional costs, or a receipt by SCPPA of payments or credits under any Project Agreement, certain of the rights, entitlements and obligations of the affected Project Participants under their respective Power Sales Agreements shall be subject to adjustment as follows:

10.1.1 In the case of such an interruption, curtailment or outage affecting the deliveries of Facility Output at the Point of Delivery, (i) the resulting reduction in Facility Output at the Point of Delivery shall be shared by the Project Participants pro rata in accordance with their respective Contract Shares, and (ii) any resulting costs incurred by SCPPA or payments or credits received by SCPPA shall be allocated among the Project Participants in accordance with their respective Contract Shares.

10.1.2 No such interruption or curtailment of deliveries of Facility Output, including any interruption or curtailment due to a Facility outage, shall relieve any of the Project Participants of their obligations to make payments under their respective Power Sales Agreements, except to the extent SCPPA is so relieved pursuant to any applicable Project Agreements.

- 10.1.3 SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise the affected Project Participants of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.
- 10.1.4 After informing the affected Project Participants regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, SCPPA, its agent or the Project Manager, as applicable, will to the best of its ability schedule such interruption or curtailment at a time which will cause the least interference with the system operations of the Project Participants.
- 10.2 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide Facility Output or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of SCPPA, the Power Purchase Provider or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable SCPPA or the Power Purchase Provider, as applicable, to acquire, administer or operate the Project; provided, however, that Project Participants shall not thereby be relieved of their obligations to make payments under their respective Power Sales Agreements except to the extent SCPPA is so relieved pursuant to any applicable Project Agreements.

## **11. SEVERAL OBLIGATION; LIABILITY.**

- 11.1 Participants' Obligations Several. Participant and each of the other Project Participants shall be solely responsible and liable for performance under its respective Power Sales Agreement. The obligation of Participant to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants under the other Power Sales Agreements to which such Project Participants are parties.
- 11.2 No Liability of SCPPA, Directors, Officers, Etc. Participant agrees that neither SCPPA nor any of its directors, officers, employees and agents shall be liable to Participant for loss of profits or direct or consequential loss or damage suffered by Participant as a result of the performance or non-performance (whether negligent or otherwise) of SCPPA or any of its directors, officers, employees or agents under this Agreement. Participant releases SCPPA and its directors, officers, employees and agents from any claim or liability (whether negligent or otherwise) as a result of any actions or inactions of SCPPA under this Agreement. No such performance or non-performance by SCPPA shall relieve Participant from its obligations under this Agreement, including its obligation to make payments required under this Agreement, and such payments shall not be subject to any reduction, whether by offset, counterclaim or otherwise. The provisions of this Section 11.2 shall not be construed so as to relieve SCPPA from any obligation under this Agreement.

- 11.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 11.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, Participant may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of SCPPA and Participant shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by Participant in accordance with Sections 6.9 and 7.4 hereof.
- 11.4 Indemnification for Claims of Retail Customers. Participant shall assume all liability for any claim, action or judgment, whether or not caused by negligence, arising out of or in connection with electric service to any of its retail customers caused by the operation or failure of operation of the Facility or any portion thereof, and shall indemnify and hold harmless each of the other Project Participants and SCPPA from any such claim, action or judgment (including reasonable attorneys' fees and other costs of defense).
- 11.5 Determination or Enforcement of Rights. Notwithstanding the provisions of Sections 11.2, 11.3 and 11.4 hereof, Participant or SCPPA may determine, protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 11.6 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 11, the provisions of this Section 11 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.
- 11.7 SCPPA Directors, Officers, Employees, Agents Not Individually Liable; No General Liability of SCPPA. It is hereby recognized and agreed that no member of SCPPA's Board of Directors, officer, employee or agent of SCPPA or member of SCPPA in its capacity as a member of SCPPA shall be individually liable in respect of any undertakings by SCPPA under this Agreement. The undertakings by SCPPA under the Power Sales Agreements shall never constitute a debt or indebtedness of SCPPA within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.
12. **SEVERABILITY.** In case any one or more of the provisions of this Agreement 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 hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.

**13. CONDITIONS TO TERMINATION OR AMENDMENT.**

Rights Among Participants. None of the Power Sales Agreements may be terminated as to any one or more of the Project Participants or be amended as to any one or more of the Project Participants so as to provide terms and conditions materially different from those contained therein except upon written notice to and written consent or waiver by each of the other Project Participants and upon similar amendment being made to the Power Sales Agreement of any other Participant requesting such amendment after receipt by such Participant of notice of such amendment.

**14. GOVERNING LAW.** This Agreement shall be interpreted, governed by and construed under the laws of the State of California.

**15. ARBITRATION.** If a dispute arises between the Parties which the Authorized Representatives are unable to resolve, the Parties may submit the dispute to arbitration. The arbitration will be conducted in accordance with the mutual written agreement of the Parties.

**16. ASSIGNMENT.** Unless otherwise mutually agreed to by the Parties, a Participant may assign some or all of its rights and obligations under its Power Sales Agreement, including its Contract Share, only to other SCPPA members under the same terms and conditions of its Power Sales Agreement. In the event of such an assignment, Appendix B shall be revised by SCPPA to reflect the new Contract Share allocation and such revision to Appendix B shall not be considered an amendment to any Power Sales Agreement.

**17. NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority  
Attn: Bill D. Carnahan, Executive Director  
1160 Nicole Court  
Glendora, California 91740

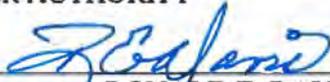
City of Riverside  
Riverside Public Utilities Dept.  
Attention: General Manager  
3750 University Ave. 5<sup>th</sup> Floor  
Riverside, California 92501

Either Party may give notice of a change of address or other information set forth above by giving notice as provided in this section.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalf by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC  
POWER AUTHORITY

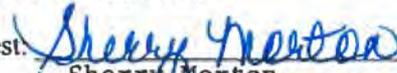
By:   
RONALD E. DAVIS  
President

Attest:   
BILL D. CARNAHAN  
Assistant Secretary

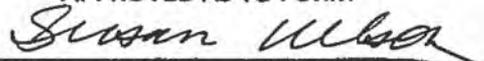
CITY OF RIVERSIDE, CALIFORNIA

By:   
Belinda J. Graham  
Title: Assistant City Manager

Dated: 9/19/2013

Attest:   
Sherry Morton  
Title: Assistant City Clerk

APPROVED AS TO FORM

  
DEPUTY CITY ATTORNEY

## APPENDIX A

### DEFINITIONS

1. **Annual Budget.** The budget adopted by SCPPA pursuant to Section 6.7, including any amendments thereto, which shall show a detailed estimate of the Contract Costs and all revenues, income, or other funds to be applied to such Contract Costs, if any, for and applicable to a Fiscal Year.
2. **Billing Statement:** The written statement prepared or caused to be prepared each Month by, or on behalf of SCPPA, which shall show for such Month the amount to be paid to SCPPA by a Participant in accordance with the provisions of Section 7.
3. **Board of Directors.** The Board of Directors of the Southern California Public Power Authority.
4. **Capacity.** The ability or potential to generate, produce or transfer electricity, expressed in kilowatts ("kW") or megawatts ("MW"), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
5. **Contract Costs:** All costs incurred by SCPPA in the administration, operation and maintenance of the Project, including any costs incurred or expenditures made pursuant to the Power Purchase Agreement and all other Project Agreements. Contract Costs shall consist of both direct charges and associated administrative and general expenses.
6. **Contract Share:** A percentage of all products, rights, benefits, obligations, and liabilities, without limitation, pursuant to the Power Purchase Agreement, including but not limited to Facility Output (or Replacement Energy, when applicable), Capacity Rights and Environmental Attributes. A schedule of Contract Shares for the Projects Participants is included as Appendix B, which may be adjusted in connection with a revision of Appendix B as provided in and subject to the provisions of Section 16.
7. **Cured Payment Default.** A Payment Default which has been cured in accordance with Section 9.3 of this Agreement. If at any time during the Payment Default Period the Defaulting Project Participant is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Payment Default Period shall expire.
8. **Default Invoice.** An invoice during the Payment Default Period and the Payment Default Period issued to a Defaulting Project Participant pursuant to Section 9 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Payment Default Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
9. **Defaulting Project Participant.** A Project Participant that causes a Payment Default which has not been remedied and where the Defaulting Project Participant has not affected a Cured Payment Default.

- 10. Facility Output.** All output, rights, and other tangible or intangible benefits, whatsoever, derived from the Facility and received by SCPPA, including without limitation, all Energy (including Facility Energy, Delivered Energy and Excess Energy as defined in the Power Purchase Agreement), Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement or derived from the Facility by SCPPA as owner following SCPPA's purchase of the Facility. The term Facility Output is synonymous with the term "Products" as defined in the Power Purchase Agreement.
- 11. Fiscal Year.** The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other period as determined by SCPPA.
- 12. Month:** A calendar month.
- 13. Payment Default:** A failure by a Participant to pay when due all of its Billing Statement for any Month.
- 14. Payment Default Period:** That period of time beginning on the initial date of a Payment Default and ending [30] days following a notice of default as provided in accordance with Section 9.2 hereof.
- 15. Person:** An individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, or other entity.
- 16. Power Purchase Agreement:** The agreement between SCPPA and the Power Purchase Provider for the purchase of the Energy from the Facility, including the associated Environmental Attributes, as amended from time to time. A copy of the Power Purchase Agreement is included as Appendix C.
- 17. Project Agreements.** The Power Purchase Agreement, this Power Sales Agreement and the Power Sales Agreements between SCPPA and the other Project Participants, any agency agreement between SCPPA and a Project Participant pursuant to which the Participant acts as the Project Manager, and a Scheduling Coordinator Agreement, should the Project Participants elect to enter into one.
- 18. Term:** The period of time during which the Agreement is in effect as defined in Section 5.1.
- 19. Test Energy:** Energy generated by the Facility and delivered to the Point of Interconnection prior to the Commercial Operation Date.
- 20. Uncontrollable Force:** Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.

**APPENDIX B**

**SCHEDULE OF CONTRACT SHARES**

<u>Participants</u>	<u>Contract Share</u>
City of Azusa	15.00%
City of Colton	15.00%
City of Riverside	<u>70.00%</u>
<b>TOTAL</b>	<b>100.00%</b>

**APPENDIX C**

**POWER PURCHASE AGREEMENT**

**EXECUTION VERSION**

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**KINGBIRD SOLAR B, LLC**

**AND**

**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

**DATED \_\_\_\_\_, 2013**

## TABLE OF CONTENTS

	<u>Page</u>
<b><u>ARTICLE I DEFINITIONS AND INTERPRETATION</u></b> .....	<b>1</b>
<u>Section 1.1</u> <u>Definitions</u> .....	1
<u>Section 1.2</u> <u>Interpretation</u> .....	18
<b><u>ARTICLE II EFFECTIVE DATE, TERM, AND EARLY TERMINATION</u></b> .....	<b>19</b>
<u>Section 2.1</u> <u>Effective Date</u> .....	19
<u>Section 2.2</u> <u>Agreement Term and Delivery Term</u> .....	20
<u>Section 2.3</u> <u>Survivability</u> .....	20
<u>Section 2.4</u> <u>Early Termination</u> .....	21
<b><u>ARTICLE III DEVELOPMENT OF THE FACILITY</u></b> .....	<b>21</b>
<u>Section 3.1</u> <u>CEQA Determinations</u> .....	21
<u>Section 3.2</u> <u>Project Design</u> .....	21
<u>Section 3.3</u> <u>Site Confirmation</u> .....	22
<u>Section 3.4</u> <u>Certification of Commercial Operation Date</u> .....	22
<u>Section 3.5</u> <u>Milestone Schedule</u> .....	22
<u>Section 3.6</u> <u>CEC Certification</u> .....	24
<u>Section 3.7</u> <u>Decommissioning and Other Costs</u> .....	24
<b><u>ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY</u></b> .....	<b>25</b>
<u>Section 4.1</u> <u>General Operational Requirements</u> .....	25
<u>Section 4.2</u> <u>Operation and Maintenance Plan</u> .....	25
<u>Section 4.3</u> <u>Environmental Credits</u> .....	25
<u>Section 4.4</u> <u>Scheduled Outage</u> .....	25
<b><u>ARTICLE V COMPLIANCE DURING CONSTRUCTION AND OPERATION</u></b> <b><u>PERIOD; GUARANTEES</u></b> .....	<b>26</b>
<u>Section 5.1</u> <u>Guarantees</u> .....	26
<u>Section 5.2</u> <u>Buyer's Right To Monitor In General</u> .....	27
<u>Section 5.3</u> <u>Effect of Review by Buyer</u> .....	27
<u>Section 5.4</u> <u>Reporting and Information</u> .....	28
<u>Section 5.5</u> <u>Startup and Testing</u> .....	28
<u>Section 5.6</u> <u>Contract Provisions</u> .....	28
<u>Section 5.7</u> <u>Quality Assurance Program</u> .....	28
<u>Section 5.8</u> <u>Ownership and Operation</u> .....	29
<u>Section 5.9</u> <u>Seller Performance Security</u> .....	29
<b><u>ARTICLE VI PURCHASE AND SALE OF PRODUCTS</u></b> .....	<b>31</b>
<u>Section 6.1</u> <u>Purchases by Buyer</u> .....	31
<u>Section 6.2</u> <u>Seller's Delivery Obligation</u> .....	32
<b><u>ARTICLE VII TRANSMISSION AND SCHEDULING; TITLE AND RISK OF</u></b> <b><u>LOSS</u></b> .....	<b>32</b>
<u>Section 7.1</u> <u>In General</u> .....	32
<u>Section 7.2</u> <u>Forecasting and Scheduling of Energy</u> .....	33

TABLE OF CONTENTS

(continued)

	<u>Page</u>
<u>Section 7.3</u>	<u>CAISO Facility Scheduling Costs</u> ..... 35
<u>Section 7.4</u>	<u>End of Term Deliveries</u> ..... 36
<u>Section 7.5</u>	<u>[NOT USED]</u> ..... 36
<u>Section 7.6</u>	<u>Curtailment</u> ..... 36
<u>Section 7.7</u>	<u>Title; Risk of Loss</u> ..... 37
<b><u>ARTICLE VIII ENVIRONMENTAL ATTRIBUTES; EPS AND RPS</u></b>	
<b><u>COMPLIANCE</u></b> ..... 38	
<u>Section 8.1</u>	<u>Transfer of Environmental Attributes</u> ..... 38
<u>Section 8.2</u>	<u>Reporting of Ownership of Environmental Attributes</u> ..... 38
<u>Section 8.3</u>	<u>Environmental Attributes</u> ..... 38
<u>Section 8.4</u>	<u>Use of Accounting System to Transfer Environmental</u> <u>Attributes</u> ..... 38
<u>Section 8.5</u>	<u>Further Assurances</u> ..... 39
<u>Section 8.6</u>	<u>RPS and EPS Compliance</u> ..... 39
<u>Section 8.7</u>	<u>Change in Law</u> ..... 40
<b><u>ARTICLE IX GUARANTEED ENERGY PRODUCTION AND MAKEUP OF</u></b>	
<b><u>SHORTFALL ENERGY</u></b> ..... 40	
<u>Section 9.1</u>	<u>Guaranteed Energy Production and Seller Makeup of Shortfall</u> ..... 40
<u>Section 9.2</u>	<u>Replacement Energy</u> ..... 40
<u>Section 9.3</u>	<u>Shortfall Liquidated Damages</u> ..... 41
<u>Section 9.4</u>	<u>Shortfall Energy Termination</u> ..... 41
<b><u>ARTICLE X CAPACITY RIGHTS</u></b> ..... 42	
<u>Section 10.1</u>	<u>Purchase and Sale of Capacity Rights</u> ..... 42
<u>Section 10.2</u>	<u>Representation Regarding Ownership of Capacity Rights</u> ..... 42
<u>Section 10.3</u>	<u>Further Assurances</u> ..... 42
<b><u>ARTICLE XI BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS;</u></b>	
<b><u>POLICIES</u></b> ..... 42	
<u>Section 11.1</u>	<u>Billing and Payment</u> ..... 42
<u>Section 11.2</u>	<u>Calculation of Energy Delivered; Invoices and Payment</u> ..... 42
<u>Section 11.3</u>	<u>Disputed Invoices</u> ..... 43
<u>Section 11.4</u>	<u>Right of Setoff</u> ..... 43
<u>Section 11.5</u>	<u>Records and Audits</u> ..... 44
<u>Section 11.6</u>	<u>Electric Metering Devices</u> ..... 44
<u>Section 11.7</u>	<u>Taxes</u> ..... 45
<u>Section 11.8</u>	<u>Taxpayer Identification Number (TIN)</u> ..... 46
<b><u>ARTICLE XII REPRESENTATIONS AND WARRANTIES; COVENANTS OF</u></b>	
<b><u>SELLER</u></b> ..... 46	
<u>Section 12.1</u>	<u>Representations and Warranties of Buyer</u> ..... 46
<u>Section 12.2</u>	<u>Representations and Warranties of Seller</u> ..... 47
<u>Section 12.3</u>	<u>Covenant of Seller Related to Seller’s Status as Special</u> <u>Purpose Entity</u> ..... 49

TABLE OF CONTENTS

(continued)

	<u>Page</u>
<u>Section 12.4</u> <u>Covenants of Seller Related to the Lease</u> .....	49
 <b><u>ARTICLE XIII DEFAULT; TERMINATION AND REMEDIES;</u></b>	
<b><u>PERFORMANCE DAMAGE</u>.....</b>	
<u>Section 13.1</u> <u>Default</u> .....	52
<u>Section 13.2</u> <u>Default Remedy</u> .....	53
<u>Section 13.3</u> <u>Termination for Default</u> .....	54
 <b><u>ARTICLE XIV MISCELLANEOUS</u>.....</b>	
<u>Section 14.1</u> <u>Authorized Representative</u> .....	55
<u>Section 14.2</u> <u>Notices</u> .....	56
<u>Section 14.3</u> <u>Dispute Resolution</u> .....	56
<u>Section 14.4</u> <u>Further Assurances</u> .....	57
<u>Section 14.5</u> <u>No Dedication of Facilities</u> .....	57
<u>Section 14.6</u> <u>Force Majeure</u> .....	57
<u>Section 14.7</u> <u>Assignment of Agreement</u> .....	59
<u>Section 14.8</u> <u>Ambiguity</u> .....	60
<u>Section 14.9</u> <u>Attorney Fees &amp; Costs</u> .....	60
<u>Section 14.10</u> <u>Voluntary Execution</u> .....	60
<u>Section 14.11</u> <u>Entire Agreement; Amendments</u> .....	61
<u>Section 14.12</u> <u>Governing Law</u> .....	61
<u>Section 14.13</u> <u>Venue</u> .....	61
<u>Section 14.14</u> <u>Execution in Counterparts</u> .....	61
<u>Section 14.15</u> <u>Effect of Section Headings</u> .....	61
<u>Section 14.16</u> <u>Waiver</u> .....	61
<u>Section 14.17</u> <u>Relationship of the Parties</u> .....	62
<u>Section 14.18</u> <u>Third Party Beneficiaries</u> .....	62
<u>Section 14.19</u> <u>Indemnification; Damage or Destruction; Insurance;</u> <u>Condemnation; Limit of Liability</u> .....	62
<u>Section 14.20</u> <u>Severability</u> .....	63
<u>Section 14.21</u> <u>Confidentiality</u> .....	63
<u>Section 14.22</u> <u>Mobile-Sierra</u> .....	65
<u>Section 14.23</u> <u>Right of First Offer</u> .....	65

**Appendices**

APPENDIX A - CONTRACT PRICE DETAILS

APPENDIX B - FACILITY, PERMITS, AND OPERATOR

APPENDIX C - BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING  
CONTACT INFORMATION

APPENDIX D - FORM OF ATTESTATION

APPENDIX E - FORM OF LETTER OF CREDIT

APPENDIX F - INSURANCE

APPENDIX G - FORM OF GUARANTEE

APPENDIX H - QUALITY ASSURANCE PROGRAM

APPENDIX I - MILESTONE SCHEDULE

APPENDIX J - [NOT USED]

APPENDIX K - ANNUAL CONTRACT QUANTITY

APPENDIX L – [NOT USED]

APPENDIX M - PERMITS

APPENDIX N – COMMERCIAL OPERATION PROCEDURE

## POWER PURCHASE AGREEMENT

### PARTIES

THIS POWER PURCHASE AGREEMENT (this "*Agreement*"), dated this \_\_\_\_ day of \_\_\_\_\_, 2013, is being entered into by and between 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 Act and the Joint Powers Agreement, "*Buyer*," and KINGBIRD SOLAR B, LLC, a limited liability company organized and existing under the laws of the State of Delaware, hereinafter designated as "*Seller*." 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, 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 it provides to its retail customers from eligible renewable energy resources; and

WHEREAS, in January 2013, Buyer issued a request for proposals to acquire renewable energy resources; and

WHEREAS, Seller's parent, First Solar, responded on July 24, 2013 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 foregoing Recitals, which are incorporated herein, and the mutual covenants and agreements herein set forth, the Parties agree as follows:

#### ARTICLE I DEFINITIONS AND INTERPRETATION

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

"AC" means alternating current.

"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 any such other 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.

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

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

“**Ancillary Documents**” means all agreements and other documents included in the Performance Security, and all other instruments, agreements, certificates and documents executed or delivered by or on behalf of Buyer pursuant to or in connection with any thereof or this Agreement.

“**Annual Contract Quantity**” means, for each Contract Year, the number of MWh set forth on Appendix K.

“**ASME**” means American Society of Mechanical Engineers.

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

“**Assurances**” has the meaning set forth in Section 5.1(a).

“**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, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case 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.

“**Bankruptcy Code**” has the meaning set forth in Section 12.3.

“**Brown Act**” has the meaning set forth in Section 14.21(d).

“**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 of this Agreement.

“**CAISO**” means the California Independent System Operator.

**“CAISO Costs”** has the meaning set forth in Section 7.3(a).

**“CAISO Cost Protocol”** has the meaning set forth in Section 7.3(b).

**“CAISO Tariff”** means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures and standards attached thereto, as the same may be amended, supplemented or replaced (in whole or in part) from time to time, and approved by FERC.

**“Cal-OSHA”** means California Occupational Safety & Health Administration.

**“CAMD”** means the Clean Air Markets Division of the EPA 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, Resource Adequacy Attributes, Local Capacity Requirement Attributes, associated attributes or reserves or any of the foregoing as may in the future be defined by the CAISO, or any other 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, and any successor agency thereto.

**“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, as amended from time to time, and any successor statute.

**“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, whether directly or through a joint powers agency 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., as amended from time to time, and any successor statute.

**“CEQA Determinations”** means that the lead agency conducting the review of the Facility as required under CEQA shall have certified the final environmental impact report, negative declaration, mitigated negative declaration or equivalent document, issued a final approval for the Facility, and filed a Notice of Determination in compliance with CEQA.

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

**“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.

**“Commercial Operation”** means Seller has demonstrated to the reasonable satisfaction of Buyer that all of the items set forth in Appendix N have been met and the certificate associated therewith has been accepted by Buyer.

**“Commercial Operation Date”** means the date on which Commercial Operation occurs, as determined pursuant to Section 3.4.

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

**“Confidential Information”** has the meaning set forth in Section 14.21(a).

**“Contract Capacity”** means twenty (20) 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 the Buyer is obligated to purchase under this Agreement.

**“Contract Price”** means, for any period of time, the applicable contract price for the Energy set forth in Appendix A.

**“Contract Year”** means (i) the twelve (12) month period beginning on January 1 of the calendar year immediately following the Commercial Operation Date, and (ii) each succeeding period of twelve (12) consecutive months following the initial Contract Year described in the preceding clause (i); *provided* that the Stub Year shall not be part of a Contract Year.

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

**“CPRA”** has the meaning set forth in Section 14.21(d).

**“Curtailment Period”** means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, or notice from Seller’s Transmission Provider, the CAISO or any reliability entity with jurisdiction over the Facility, including WECC, due to (a) a System Emergency, (b) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (c) an event of Force Majeure at or downstream from the Point of Delivery, or (d) over-generation or any other reason, as may from time to time be identified by the CAISO, Seller’s Transmission Provider or a reliability entity with jurisdiction over the Facility.

**“Daily Delay Damages”** has the meaning set forth in Section 3.5.

**“Deemed Generated Energy”** means the quantity of Facility Energy, expressed in MWh, that would have been produced by the Facility and delivered to the Point of Delivery during a particular month but for curtailment of the Facility, which shall be calculated using the procedures developed under Section 7.6(d).

**“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 Energy delivered by Seller, including Facility Energy delivered to the Point of Delivery and any Replacement Energy delivered in accordance with Section 9.2.

**“Delivery Term”** has the meaning set forth in Section 2.2(b).

**“Delivery Term Security”** has the meaning set forth in Section 5.9(b).

**“Dispute”** has the meaning set forth in Section 14.3.

**“Dispute Notice”** has the meaning set forth in Section 14.3.

**“Downgrade Event”** shall mean any event that results in a Person failing to meet the credit requirements of a Qualified Issuer or Qualified Guarantor, as applicable, or the commencement 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) with respect to such Person.

**“Early COD Notice”** means a notice from Seller that it shall achieve the Commercial Operation Date prior to the Guaranteed Commercial Operation Date, which notice shall be provided no less than six (6) months prior to the expected date of achievement of the Commercial Operation Date set forth in Appendix I.

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

**“EEI”** means Edison Electric Institute.

**“Effective Date”** has the meaning set forth in Section 2.1.

**“Electric Metering Devices”** means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

**“Energy”** means electrical energy measured as AC.

**“Environmental Attributes”** means Renewable Energy Credits, 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 Buyer, applicable law, or any voluntary or mandatory program of any Governmental Authority or other Person, and (B) that are attributable to (i) generation of Facility Energy during the Agreement Term or Replacement Energy delivered by Seller to Buyer during the Agreement Term, 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 that Act, 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 successor regulations thereto), 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 Attribute Reporting Rights**” means all rights to report ownership of the Environmental Attributes to any Person under Section 1605(b) of the Energy Policy Act of 1992, or any successor statute or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

“**EPA**” means the Environmental Protection Agency and any successor agency.

“**EPS Compliant**” when used with respect to the Facility or any other facility at any time, means that the facility satisfies both the PUC Performance Standard and the CEC Performance Standard (in each case, to the extent applicable) in effect at the time; *provided*, if it is impossible for the facility to satisfy the applicable requirements of both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the facility shall be deemed EPS Compliant if it satisfies both the applicable requirements of the CEC Performance Standard in effect at the time, and those portions of the applicable requirements of the PUC Performance Standard in effect at the time that it is possible for the facility to satisfy while at the same time satisfying the applicable requirements of the CEC Performance Standard in effect at the time.

“**EPS Law**” means Sections 8340 and 8341 of the California Public Utilities Code as amended from time to time or any successor statute.

**“Excess CAISO Costs”** has the meaning set forth in Section 7.3(b).

**“Excess Energy”** means, in any Contract Year, the portion of any Delivered Energy plus Deemed Generated Energy for which Buyer is required to pay Seller pursuant to Section 7.6(e) delivered in excess of one hundred twenty percent (120%) of the Annual Contract Quantity for such Contract Year, for which Seller shall be paid the Contract Price set forth in Section 3 of Appendix A. The delivery by Seller of the portion of Excess Energy consisting of Delivered Energy shall include delivery of any associated Environmental Attributes.

**“Facility”** means the up to 20 MW (AC) photovoltaic solar-powered electric generating facility, including all of the real property interests and related transmission and other facilities described in Appendix B.

**“Facility Energy”** means the Energy generated by the Facility, less station load and transmission losses, delivered to the Point of Delivery, as measured by CAISO-approved Electric Metering Devices.

**“Facility Lender”** means any lender or investor providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

**“FERC”** means the Federal Energy Regulatory Commission.

**“Force Majeure”** has the meaning set forth in Section 14.6(b).

**“Force Majeure Notice”** has the meaning set forth in Section 14.6(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.

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

**“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 the generator interconnection agreement to be entered into by Seller and the CAISO for the interconnection of the Facility into

the Transmission System.

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

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

**“GEP Shortfall Makeup Period”** has the meaning set forth in Section 9.1.

**“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 Guaranteed Energy Production, 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 GEP Shortfall, *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 \$25/MWh.

**“Guaranteed Commercial Operation Date”** means December 31, 2015, as the same may be extended pursuant to the terms of this Agreement, or an earlier date, *provided* that Seller has delivered to Buyer the Early COD Notice.

**“Guaranteed Energy Production”** means, for a Contract Year, eighty percent (80%) of the Annual Contract Quantity for such Contract Year, as measured at the Point of Delivery. For purposes of determining the Guaranteed Energy Production, the Annual Contract Quantity shall be reduced by the Seller Excused Energy Amount during such period.

**“IEEE”** means the Institute of Electrical and Electronics Engineers.

**“Initial Development Milestones”** has the meaning set forth in Section 2.1.

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

**“Interest Rate”** has the meaning set forth in Section 11.3.

**“ISA”** means Instrument Society of America.

**“Key Milestone(s)”** has the meaning set forth in Appendix I.

**“Lease”** means (i) the Lease Option Agreement between George M. Lane and Charlene

K. Lane, as Trustees of the George and Charlene Lane Family Trust (created by a Revocable Trust dated December 19, 2007) as “Optionor” and AV SOLAR RANCH 2, LLC, a Delaware limited liability company, as “Optionee,” dated January 7, 2010, (ii) the Memorandum of Lease Option Agreement by George M. Lane and Charlene K. Lane, as Trustees of the George and Charlene Lane Family Trust (created by a Revocable Trust dated December 19, 2007) as “Optionor” in favor of AV SOLAR RANCH 2, LLC, a Delaware limited liability company, as “Optionee”, (iii) the First Amendment to Lease Option Agreement by and between George M. Lane and Charlene K. Lane, as Trustees of the George and Charlene Lane Family Trust (created by a Revocable Trust dated December 19, 2007) and Kingbird Solar, LLC, dated December 11, 2012, and (iv) the Memorandum of First Amendment to the Lease Option Agreement by George M. Lane and Charlene K. Lane, as Trustees of the George and Charlene Lane Family Trust (created by a Revocable Trust dated December 19, 2007) in favor of Kingbird Solar, LLC, pursuant to which Seller shall obtain and maintain Site Control.

“**Lessor**” means George M. Lane and Charlene K. Lane, as Trustees of the George and Charlene Lane Family Trust (created by a Revocable Trust dated December 19, 2007, and its permitted successors and assigns.

“**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.

“**Local Capacity Requirement Attributes**” means the benefits or attributes now or existing in the future based on the procurement obligations of Buyer with respect to local resource capacity requirements as prescribed by the PUC, the CAISO or other regional entity, and that are associated with the electric generating capability of the Facility.

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

“**Major Maintenance Blockout**” has the meaning set forth in Section 4.4.

“**Market Price Index**” equals the simple average value of the CAISO day-ahead prices for SP15 for the hours between hours ending 0700 and 1800 during any Contract Year in which Seller has failed to cure a GEP Shortfall with Replacement Energy.

“**Milestone**” has the meaning set forth in Section 3.5.

“**Milestone Date**” means the deadline associated with each Milestone as set forth in Section 2.1 or Appendix I, as applicable.

“**MW**” means megawatt (AC).

“**MWh**” means megawatt-hour (AC).

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

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

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

**“OSHA”** means Occupational Safety & Health Administration.

**“Outside Commercial Operation Date”** means June 30, 2016, which date shall not be subject to extension of any kind.

**“Pacific Prevailing Time”** means the local time in Los Angeles, California.

**“Participating Members”** means the City of Azusa, the City of Colton, and the City of Riverside.

**“Party”** or **“Parties”** has the meaning set forth in the preamble of this Agreement.

**“Performance Security”** means the Project Development Security and the Delivery Term Security, together or individually, each of which is required to be provided by Seller to Buyer to secure Seller’s performance under this Agreement.

**“Permits”** means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that 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 of Facility 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 the CEQA Determinations and the Permits described in Appendix M.

**“Permitted Liens”** means (i) any Lien of a Facility Lender granted pursuant to Section 14.7(d), (ii) (a) any Liens disclosed in preliminary title report (Ref# 08-19706CA) dated August 14, 2013, prepared by Fidelity National Title Company, and delivered by Seller to Buyer on August 27, 2013, (b) subject to the reasonable approval of Buyer, any Liens disclosed in or any document or instrument described in any title policies, pro formas, preliminary title reports and/or surveys delivered by Seller, and (c) subject to the reasonable approval of Buyer, any other items made of record after the date hereof, (iii) any Lien approved by Buyer in a writing separate from this Agreement that expressly identifies the Lien as a Permitted Lien, (iv) Liens for Taxes not yet delinquent or for taxes being contested in good faith by appropriate proceedings, so long as either (a) 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 (b) 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 Taxes determined to be due will be promptly paid in full when such contest is determined, (v) 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 (a) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, or (b) 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, (vi) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations on the Site, or any other real property related to the Facility, so long as they have been identified by Seller to Buyer in writing and do not materially interfere with or impair the operation of the Facility, (vii) any mortgage, pledge, security interest, encumbrance, lien (statutory or other) or conditional sale agreement on or affecting the fee owner's interest in any real property related to the Facility which is either granted after the date the option was granted to Seller pursuant to the Lease was perfected by a recorded instrument (April 21, 2010), or which is otherwise subordinate to Seller's option pursuant to the Lease, or for which the beneficiary of any of the foregoing has agreed not to disturb Seller's interest arising under the Lease through a customary recognition, non-disturbance, and attornment agreement or other agreement of similar effect, (viii) all building codes, zoning ordinances, land use, special designations, environmental and other Permits and laws of any Governmental Authority heretofore, now or hereafter enacted, made or issued by any such Governmental Authority affecting the real property; (ix) any Liens created by, through, under or at the request of Buyer, and (x) the terms and conditions of the Lease and this Agreement.

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

**"Point of Delivery"** means the CAISO Pricing Node (as defined in the CAISO Tariff) established by the CAISO at the Whirlwind 220 kV Bus of Southern California Edison Company's Whirlwind Substation (Bus ID 29410\_AV SOLAR\_34.5\_GU1 or other Bus ID designated by the CAISO for the Facility's point of interconnection) designated as "AVSOLAR\_7\_N008" by the CAISO as of the Effective Date or such other Pricing Node (as defined in the CAISO Tariff) established by the CAISO for the Facility, or such other location proposed by Seller that is acceptable to Buyer in Buyer's sole discretion.

**"Pre-Certification Period"** means the period of time between the Commercial Operation Date and the date the Facility becomes CEC Certified.

**"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 at that date.

**"Products"** means any and all bundled Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the foregoing which are or can be produced by or are associated with the Facility or, pursuant to Section 9.2, another RPS Compliant eligible renewable resource providing Replacement Energy, whether now attainable or established in the future, including, without limitation, delivered energy, renewable attributes, renewable energy credits, Resource Adequacy Attributes, Local Capacity Requirement Attributes and all environmental attributes. Subject to Section 8.7, the Products shall meet the

standard of “portfolio content category 1” as defined by the RPS Law.

“**Professional Engineer**” means any Person upon which the Parties mutually agree.

“**Project Development Security**” has the meaning set forth in Section 5.9(a).

“**Proposed Sale Notice**” has the meaning set forth in Section 14.23.

“**Prudent Utility Practices**” means those practices, methods, and acts, that are commonly used by a significant portion of the electric generation industry in prudent engineering and operations to design and operate electric equipment (including solar powered facilities) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of the CAISO, FERC, NERC, or WECC, each as may be amended from time to time, and all applicable Requirements of Law. Prudent Utility Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the region and industry.

“**Public Utilities Code**” means the Public Utilities Code of the State of California, as may be amended from time to time.

“**PUC**” means the California Public Utilities Commission and any successor thereto.

“**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.

“**Qualified Guarantor**” means a guarantor with a rating of at least (a) BBB by Fitch’s; (b) BBB- by S&P; or (c) Baa3 by Moody’s Investors Services, Inc., unless agreed otherwise by the Parties.

“**Qualified Issuer**” means a Person that has a current long-term credit rating (corporate or long-term senior unsecured debt) of (1) “A2” or higher by Moody’s Investors Service, Inc.; or (2) “A” or higher by Standard & Poor’s.

“**Quality Assurance Program**” has the meaning set forth in Section 5.7.

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

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

“**Remedial Action Plan**” has the meaning set forth in Section 3.5.

“**Renewable Energy Credit**” 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”) for which the owner of the Renewable Energy Credit can prove that it has purchased renewable Energy.

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

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

“**Requirement of Law**” means federal, state, local, or, as applicable, tribal 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 and occupational safety and health requirements).

“**Resource Adequacy Attributes**” means the benefits or attributes, if any, now or existing in the future based on the procurement obligations of Buyer with respect to Resource Adequacy as prescribed by the PUC, the CAISO or any other regional entity or local authority that has jurisdiction over Buyer or a Participating Member, and that are associated with the electric generating capability of the Facility.

“**Right of First Offer**” has the meaning set forth in Section 14.23.

“**RPS Compliant**” means, when used with respect to the Facility or any other facility at any time, that all Energy generated by such facility 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), as amended from time to time and any successor statute.

“**RPS Law**” means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code §25740 through §25751, any related regulations or guidebooks promulgated by the CEC or, as applicable, the PUC, and as all of the foregoing may be promulgated, implemented, or amended from time to time, and any successor laws or regulations.

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

“**Schedule**” or “**Scheduling**” means the actions of Seller and Buyer, their Authorized Representatives, and their Transmission Providers (if applicable), of notifying, requesting and confirming to the CAISO the amounts of Delivered Energy expected to be delivered at the Point of Delivery on any given date during the Agreement Term, all in the manner contemplated by the CAISO Tariff.

“**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 4.4.

**“Scheduler”** means the Person acting as Scheduling Coordinator for each Party. The contact information for Buyer’s Scheduling Coordinator and Seller’s Scheduling Coordinator as of the Effective Date is set forth in item 4, Appendix C.

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

**“SCPPA”** has the meaning set forth in the recitals of this Agreement.

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

**“Seller Excused Energy Amount”** means, for each Contract Year, an amount expressed in MWh, equal to the aggregate amount of reduction in Facility Energy “deemed” to have been generated during such Contract Year as a result of Force Majeure events that prevent Seller from generating, Scheduling or delivering Facility Energy to the Point of Delivery, Buyer’s failure to Schedule such Facility Energy at the Point of Delivery, curtailment of the Facility by Buyer pursuant to Section 7.6(c), or Curtailment Periods. No less frequently than quarterly during each Contract Year, Seller shall calculate and provide notice to Buyer of the then-cumulative Seller Excused Energy Amount for such Contract Year, along with an explanation in reasonable detail of the calculation thereof based on historical Facility data, meteorological data, output projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to review and approval by Buyer, such approval not to be unreasonably withheld, delayed or conditioned.

**“Site”** means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B as owned or leased by Seller where the Facility is located or will be located, and including any easements, rights of way or contractual rights held or to be held by Seller for transmission lines or roadways servicing such Site or the Facility located (or to be located) thereon.

**“Site Control”** means that Seller shall: (i) own the Site; (ii) be the grantee of one or more easements with respect to the Site, which, in each case, permit Seller to perform its obligations under this Agreement and the Ancillary Documents; (iii) be the lessee under one or more leases with respect to the 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 Site so as to permit Seller to perform its obligations under this Agreement and the Ancillary Documents to which it is a party.

**“SPE Failure Notice”** has the meaning set forth in Section 12.3.

**“SPE Opinion”** has the meaning set forth in Section 12.3.

**“SPE Remedial Action Plan”** has the meaning set forth in Section 12.3.

**“Special Purpose Entity”** means a limited liability company which at all times on and after the date hereof:

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

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

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

(d) will not, after the Commercial Operation Date, have any assets other than those related to the Facility;

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

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

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

(h) has not made and will not make any gifts or fraudulent conveyances to any Person, and will not, after the Commercial Operation Date, make any loans or advances to any Person 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);

(i) 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 in the ordinary course of its business, and, after the Commercial Operation Date, on terms that 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;

(j) will not indemnify any Persons other than natural persons in their representative capacity acting on behalf of Seller under circumstances not prohibited by applicable law;

(k) other than guarantees or performance security related to the Facility, any of its assets, or the financing of the Facility, will not have any of its obligations guaranteed by any Affiliate and will not hold itself out as being responsible for the debts or obligations of any other Person;

(l) has complied and will comply with all of the terms and provisions contained in its organizational documents and has done or caused to be done and will do all things necessary to preserve its existence;

(m) will not, after the Commercial Operation Date, commingle its funds or assets with those of any Person and will not participate in any cash management system with any other Person;

(n) will, after the Commercial Operation Date, hold its assets and conduct all business in its own name;

(o) will, after the Commercial Operation Date, maintain its financial statements, accounting records and other entity documents separate from any other Person and will not permit its assets to be listed as assets on the financial statement of any other entity except as required by GAAP;

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

(q) 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 and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(r) has not acquired and will not acquire obligations or securities of its members or any Affiliate;

(s) will, after the Commercial Operation Date, fairly and reasonably identify any allocation of overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared space and services performed by any employee of an Affiliate;

(t) other than in connection with the Facility or the financing thereof, has not pledged and will not pledge its assets for the benefit of any other Person;

(u) has had, now has, and will have 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 a majority of its members: (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;

(v) after the Commercial Operation Date, intends to remain solvent, to continue to pay its debts and liabilities (including, as applicable, shared personnel, overhead expenses and salaries of employees) from its assets as the same shall become due, and 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

(w) will have no indebtedness, loans or advances other than (i) the loan made by a Facility Lender providing construction financing for the Facility and any loan in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities (including intercompany loans from Affiliates) incurred in the ordinary course of business relating to its development, construction, ownership, leasing and operation of the Facility and its routine administration, the amounts of which are normal and reasonable under the circumstances, and (iv) such other liabilities that are permitted pursuant to this Agreement.

**“Stub Year”** means the period between the Commercial Operation Date and the end of the calendar year, i.e., December 31, of the year during which the Commercial Operation Date is achieved.

**“Successor Entity”** has the meaning set forth in Section 13.1(i).

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

**“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 fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

**“Termination Notice”** has the meaning set forth in Section 13.3(a).

**“Termination Payment”** means a payment in an amount equal to the Non-Defaulting Party's (a) Losses, plus (b) Costs, minus (c) Gains; *provided, however*, that if such amount is a negative number, the Termination Payment shall be equal to zero.

**“Test Energy”** shall mean any Facility Energy that is delivered prior to the Facility being CEC Certified, or that is generated after being CEC Certified, but that cannot be bid or self-scheduled into the CAISO markets.

**“Transmission Providers”** means the Persons operating the Transmission Systems 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 14.6(b).

**“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 when used in this Agreement with initial-capitalized letters.

**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 hereto, 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, regardless of whether the reference to the agreement, document, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements or successors;
- (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, regardless of whether words such as “without limitation” are expressly included in the applicable provision;

(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 become effective as of the date that (1) Seller has delivered to Buyer the Project Development Security, and (2) both Parties have executed and delivered this Agreement and the Ancillary Documents (other than those Ancillary Documents which, per the terms of this Agreement, are not required to be executed until a later date) (collectively, the “*Effective Date*”). If requested, either Party shall jointly execute a certificate that confirms the occurrence of the Effective Date and ratifies the existence and effectiveness of this Agreement. In the event that each of the obligations of Seller in subsections (a) and (b) of this Section 2.1 (each, an “*Initial Development Milestone*” and together, the “*Initial Development Milestones*”) have not been met on or prior to the Milestone Dates associated with such Initial Development Milestones as set forth below, then Buyer shall be entitled to the remedies set forth in Section 3.5. Seller shall deliver to Buyer:

(a) on or prior to ten (10) days following the Effective Date:

(i) a copy of the amended CEC pre-certification application for the Facility in the name of Seller that has been filed with the CEC;

(ii) evidence reasonably satisfactory to Buyer that Seller shall have obtained Site Control;

(iii) evidence reasonably satisfactory to Buyer that Seller has made in full any and all financial security postings for CAISO studies and transmission network upgrades for energy and Full Capacity Deliverability Status, which Seller shall be obligated to maintain until the execution of the Generator Interconnection Agreement;

(iv) an executed original of a written legal opinion of outside counsel reasonably acceptable to Buyer concerning the enforceability and due authorization of this Agreement, the Ancillary Documents and related matters in form and substance reasonably satisfactory to Buyer dated as of the Effective Date and addressed to Buyer;

(v) a copy of Seller’s policy of title insurance in form reasonably acceptable to Buyer;

(vi) satisfactory evidence that Seller has obtained all Permits, other than Permits not yet required to be obtained but which are reasonably expected to be obtained in due course, and all such obtained Permits shall be final and non-appealable; and

(vii) true, correct and complete copies of all documents relating to the environmental condition of the Site in form, scope and substance reasonably satisfactory to Buyer, including any Phase I Environmental Site Assessment prepared relative to the Site.

(b) on or prior to two hundred forty (240) days following the Effective Date:

(i) a copy of the fully executed Lease;

(ii) a fully executed Generator Interconnection Agreement for Energy and Full Capacity Deliverability Status under the Generator Interconnection Procedures (as defined in the CAISO Tariff); and

(iii) a copy of the CEC pre-certification for the Facility in the name of Seller that has been duly approved by the CEC;

(iv) evidence reasonably satisfactory to Buyer that Seller has increased the amount of the Project Development Security in accordance with Section 5.9(a).

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

(a) **Agreement Term.** The term of this Agreement (the "*Agreement Term*") shall commence on the Effective Date and shall end on the last day of the Delivery Term or upon the expiration or earlier termination of this Agreement in accordance with the terms hereof.

(b) **Delivery Term.** Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall have a delivery term (the "*Delivery Term*") commencing on the Commercial Operation Date and consisting of the Stub Year plus twenty (20) consecutive Contract Years thereafter, *provided* that the Delivery Term may be extended by Buyer, in its sole discretion, for an additional five (5) Contract Years upon receipt by Seller of a notice from Buyer delivered no later than one year prior to the expiration of the original Delivery Term.

**Section 2.3 Survivability.** The provisions of this Article II, Article XII, Article XIII, and Article XIV shall survive for a period of one year following the termination of this Agreement (to the extent applicable). The provisions of Article XI shall (to the extent applicable) survive for a period of four (4) years following final payment made by the Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, Article VIII, and Article IX shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries related to the period prior to termination of this Agreement.

## **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 of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 13.3.

(c) **Early Termination for Failure to Achieve Commercial Operation Date.** Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if Seller fails to achieve the Commercial Operation Date on or before the Outside Commercial Operation Date.

(d) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 14.6.

(e) **Early Termination for Failure to Obtain CEC Certification.** Buyer may terminate this Agreement effective upon notice to Seller pursuant to Section 13.1(b) 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*").

(f) **Early Termination for Failure to Timely Achieve Milestones.** Buyer may terminate this Agreement in accordance with Section 3.5 and Section 13.1(j).

(g) **Early Termination for Exercise of First Right of Offer.** If Buyer accepts the Right of First Offer for any proposed sale of the Facility, this Agreement shall terminate effective upon the consummation of any sale of the Facility to Buyer pursuant to such Right of First Offer.

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 CEQA Determinations.** Seller, at its expense, has taken all steps necessary to obtain the CEQA Determinations and shall provide evidence reasonably satisfactory to Buyer thereof. Notwithstanding the foregoing, Buyer shall retain all rights, powers and responsibilities of a responsible agency under CEQA to participate in the CEQA review of the Facility.

**Section 3.2 Project Design.** Seller shall determine the proposed location, design, and configuration of the Facility as it deems appropriate, subject to the Requirements, including the

characteristics and other requirements for the Facility set forth in Appendix B, and also subject to any conditions imposed by any responsible agency as part of the CEQA review of the Facility.

**Section 3.3 Site Confirmation.** Seller represents and warrants that (a) Seller's agents and representatives have visited, inspected and become familiar with the Site 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, (b) 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), and (c) Seller has determined that the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section shall not relieve Seller from 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 additional expense to Buyer. The foregoing shall not restrict Seller's right to claim Force Majeure hereunder to the extent the requirements therefor are satisfied.

**Section 3.4 Certification of Commercial Operation Date.** Seller shall provide Buyer with notice when Seller believes that all conditions precedent to achieving Commercial Operation of the entire Facility as specified in the definition of "**Commercial Operation**" in Section 1.1 have been satisfied. 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 any defects or deficiencies 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 entire 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 delay liquidated damages otherwise payable under Section 3.5 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.

**Section 3.5 Milestone Schedule.** Attached as Appendix I is a schedule of the milestones for the development of the Facility through the Commercial Operation Date (each milestone, including each Initial Development Milestone, a "**Milestone**") and the Milestone Dates associated therewith. Seller shall achieve each Milestone by the Milestone Date specified therefor.

(a) Until the Commercial Operation Date, Seller shall provide Buyer with a report, which shall be provided on a quarterly basis until the date which is six (6) months prior to

the scheduled Commercial Operation Date and on a monthly basis thereafter, 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) If Seller fails to achieve any two (2) consecutive Milestones by the applicable Milestone Dates therefor, Seller shall immediately notify Buyer of such failure and, no more than ten (10) days following the failure to achieve the second consecutive 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 such missed Milestone Dates, 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 supplement the Remedial Action Plan as may be reasonably required, and Seller shall complete any and all further corrective action in accordance with such supplemented Remedial Action Plan. Any such supplemented Remedial Action Plan must also be acceptable to Buyer, such acceptance not to be unreasonably withheld, delayed or conditioned. Any deviations from the approved Remedial Action Plan, including any supplements thereto, shall be subject to the reasonable approval of Buyer, such approval not to be unreasonably withheld, delayed or conditioned. The preparation and delivery of, and compliance with, any Remedial Action Plan shall be Seller's sole liability and obligation, and Buyer's sole right and remedy, for Seller's failure to achieve any two (2) consecutive Milestones (other than a Key Milestone) by the Milestone Dates therefor; *provided, however* that the foregoing 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 Milestones, or (ii) recover any damages not directly attributable to such failure.

(c) Without prejudice to Buyer's rights to terminate this Agreement under Section 13.1(j), each Milestone Date (other than the Outside Commercial Operation Date) shall be extended, on a day-for-day basis without penalty up to a maximum of one hundred eighty (180) days (i) as a result of any event of Force Majeure under Section 14.6, (ii) as a result of any delay in completion of the interconnection facilities, transmission upgrades and new transmission facilities, if any, as described in the Generator Interconnection Agreement, after August 1, 2015, or (iii) as a result of any delays resulting directly from the acts or omissions of Buyer under this Agreement.

(d) In addition to the requirements under Section 3.5(b), if Seller fails to achieve any Key Milestone by the Milestone Date therefor, as such Milestone Date may be extended pursuant to Section 3.4 or Section 3.5(c), Seller shall, unless excused pursuant to Section 3.4, pay Buyer liquidated damages in an amount equal to the product of (i) the number of days 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), multiplied by (ii) the daily damage amount corresponding to such Key Milestone as set forth in Appendix I (the "**Daily Delay Damages**"), which shall be subject to a maximum amount equal to the daily damage amount in (ii) above multiplied by one hundred eighty (180) days, *provided* that Seller may continue to pay additional Daily Delay Damages to Buyer beyond such one hundred eighty (180)

day period, during which time Buyer shall not be permitted to terminate this Agreement as a consequence of Seller's failure to achieve the applicable Key Milestone if, prior to the end of the one hundred eighty (180) day period, Seller is performing in compliance with the provisions of Section 3.5(b). If Seller, notwithstanding having failed to timely achieve any Key Milestone, is able to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, then any amounts previously paid as Daily Delay Damages will be refunded to Seller. Buyer may draw from the Project Development Security the amount of any such Daily Delay Damages. In the event of a draw by Buyer on the Project Development Security, Seller shall replenish the Project Development Security in accordance with Section 5.9(d).

(e) The Parties agree that the damages that Buyer would incur due to Seller's failure to timely achieve a Key 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, and shall be Seller's sole liability and obligation, and Buyer's sole right and remedy (other than the ability to terminate this Agreement under Section 13.1(j) for failure to achieve the Commercial Operation Date by the Outside Commercial Operation Date) for Seller's failure to achieve any Key Milestone by the Milestone Date therefor. Notwithstanding the foregoing, 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 Key Milestone by the Milestone Date therefor, (ii) recover any damages not directly attributable to such delay, or (iii) terminate this Agreement pursuant to Section 13.1(j) for failure to achieve the Commercial Operation Date by the Outside Commercial Operation Date. Seller shall have no opportunity to cure its failure to achieve the Commercial Operation Date by the Outside Commercial Operation Date, either through the payment of Daily Delay Damages or the submission of a Remedial Action Plan, and, upon the occurrence of such failure, Buyer may exercise its right to terminate this Agreement pursuant to Section 13.1(j).

**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 Decommissioning and Other Costs.** Unless a closing of a sale of the Facility occurs pursuant to the exercise by Buyer of the Right of First Offer, Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

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

**Section 4.1 General Operational Requirements.** Seller shall, at all times:

(a) At its sole expense, operate and maintain the Facility in accordance with the Requirements, consistent with Prudent Utility Practices, and 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 twenty (20) years;

(b) Employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Authorized Representative, and ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

(c) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and the Transmission System; and

(d) Comply with operating and maintenance standards required by the Facility's equipment suppliers; and comply in all material respects with operating and maintenance standards recommended by the Facility's equipment suppliers.

**Section 4.2 Operation and Maintenance Plan.** Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

**Section 4.3 Environmental Credits.** Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with the Requirements of Law.

**Section 4.4 Scheduled Outage.**

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during certain consecutive or nonconsecutive weeks of the Stub Year and each Contract Year (not to exceed twelve (12) weeks per Contract Year) (the "*Major Maintenance Blockout*"), but in accordance with Prudent Utility Practices. 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 Authorized Representative with its non-binding written projection of all Scheduled Outages for the succeeding three (3) 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 Authorized Representative 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 Authorized Representative 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

## **ARTICLE V COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD; GUARANTEES**

### **Section 5.1 Guarantees.**

(a) Subject to Section 5.1(b) and the other provisions of this Agreement, Seller shall use all reasonable efforts to assure that (i) it will perform, or cause to be performed, all engineering, design, development, construction, operation, and maintenance of the Facility in a good and workmanlike manner and in accordance with the Requirements; and (ii) throughout the Agreement Term (1) the Facility, its engineering, design and construction, its components, and related work, will be free from material defects caused by errors or omissions in design, engineering and construction, and (2) the Facility and all parts thereof will be designed, constructed, tested, operated, and maintained in compliance with the Requirements, all applicable requirements, as determined by the applicable county, state, or federal regulatory authority with jurisdiction over the Facility, of the latest revision of the ASTM, ASME, AWS, EPA, EEI, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA, as applicable, Uniform Building Code, Uniform Plumbing Code, and the applicable local County Fire Department Standards of the applicable county, the Quality Assurance Program, and other codes and standards and operations and maintenance requirements applicable, as determined by the applicable county, state, or federal regulatory authority with jurisdiction over

the Facility, to the services, equipment, and work by Seller or its contractors performed under this Agreement (clauses (i) and (ii), the “Assurances”).

(b) If it is ever determined that any Assurance has not been, or ceases to be, fulfilled, then Seller shall take such actions to address the situation (consistent with Prudent Utility Practices) as Seller determines in its reasonable discretion, including, potentially, by the prompt repair or replacement of any component of the Facility that does not comply with the foregoing Assurances. For the avoidance of doubt, (i) Seller shall not be in breach or default of Section 5.1 as a result of any Assurance not being (or ceasing to be) fulfilled as long as Seller complies with the immediately preceding sentence, and (ii) if any Assurance ceases to be fulfilled as a result of any change in any Requirement (or other standard referenced in the Assurances) following the date hereof, then Seller shall only be required to comply with such change to the extent required by Prudent Utility Practices or the express requirements of this Agreement.

(c) To the extent required by Prudent Utility Practices, Seller shall at all times exercise commercially reasonable efforts to undertake all recommended or required updates or modifications to the Facility, and 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 Prudent Utility Practice.

(d) Seller shall not, throughout the Agreement Term, alter, amend, modify or change the configuration of the Facility or any other facilities owned by an Affiliate of Seller, in such a manner as to cause the Facility to lose its Full Capacity Deliverability Status.

(e) Seller shall obtain and maintain the Insurance required pursuant to Appendix F, and shall provide Buyer with reasonable evidence thereof, including certificates of insurance as may be required from time to time.

**Section 5.2 Buyer’s Right To Monitor In General.** Subject to compliance with Seller’s reasonable Site safety and access rules, upon reasonable prior written notice to Seller, Buyer shall have the right, and Seller shall permit Buyer and its representatives, advisors, engineers and consultants, to observe, inspect and monitor all operations and activities at the Site, including the performance of the contractors under the construction contracts pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing, and the achievement of Commercial Operation.

**Section 5.3 Effect of Review by Buyer.** Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review with Seller, nor shall any such review 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, but not limited to, any review of the design, construction, operation or maintenance of the Facility 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 of the Facility.

**Section 5.4 Reporting and Information.** Subject to Seller's right to reasonably redact confidential or proprietary information, Seller shall provide Buyer with such other information as may be reasonably requested by Buyer, and which is reasonably available to Seller, regarding the permitting, engineering, construction or operations of the Facility, and information regarding related subcontractors. Until the Commercial Operation Date, Seller shall provide to Buyer written reports describing permitting and development activities and anticipated progress and activities associated with the Facility in accordance with Section 3.5.

**Section 5.5 Startup and Testing.** Prior to the Commercial Operation Date, Buyer shall have the right to:

(a) review and monitor (at the Site) all initial performance tests during Facility start-up, and all other material tests required under the Facility construction contracts performed to achieve any Milestone, and Seller shall, or shall cause its contractors or subcontractors to, provide at least ten (10) Business Days' notice to Buyer before any such test begins;

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

(c) perform such detailed examinations and inspections 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 the Requirements, *provided* that Buyer may not unreasonably interfere with any activities of Seller or Seller's contractors or subcontractors, or Seller's ability to timely achieve a Milestone.

**Section 5.6 Contract Provisions.** Seller shall cause to be included in any construction contracts for the Facility provisions which shall provide:

(a) Buyer with rights of access to the Facility and the work performed under such contract at all reasonable times (but subject to reasonable safety precautions) and the right to inspect, make notes about, and review all documents, drawings, plans, specifications, permits, test results and information as Buyer may reasonably request, subject to redaction of confidential or proprietary information; and

(b) that the personnel of, and consultants to, the contractors and Seller shall be available to Buyer and its agents, representatives and consultants at reasonable times and with prior notice for purpose of discussing any aspect of the Facility or the development, engineering, construction, installation, testing or performance thereof.

**Section 5.7 Quality Assurance Program.** Seller shall develop or cause to be developed a written quality assurance policy ("*Quality Assurance Program*") in accordance with the requirements of Appendix H within sixty (60) days after the date Seller executes its primary contract for construction of the Facility in accordance with the Milestone Date therefor in

Appendix I, and it shall be deemed to be an Assurance under Section 5.1 that Seller shall cause all work performed on or in connection with the Facility to comply with said Quality Assurance Program.

**Section 5.8 Ownership and Operation.** The Facility shall be owned or controlled by Seller during the Agreement Term. Seller shall not sell or otherwise dispose of any material portion of the Facility or any material property or assets that are related to the operation, maintenance and use of the Facility other than in the ordinary course of Seller's business and in a manner that would not materially impair Seller's ability to perform its obligations hereunder. The Facility shall be operated throughout the Delivery Term by (a) an Affiliate of First Solar, Inc., (b) a Person that has at least three (3) years of experience operating at least two (2) photovoltaic generating facilities with a capacity similar to or greater than that of the Facility, or (c) or a Person reasonably approved by Buyer, such approval not to be unreasonably delayed, withheld or conditioned.

**Section 5.9 Seller Performance Security.**

(a) As a condition to the occurrence of the Effective Date, Seller shall deliver to Buyer one or more letters of credit issued by Qualified Issuers, surety bonds, cash, or guarantees from Qualified Guarantors, or a combination thereof, in the forms attached hereto as Appendices E or G, as applicable, in the aggregate amount of One Million Dollars (\$1,000,000), which amount shall increase to Two Million Dollars (\$2,000,000) upon the first to occur of (i) two hundred forty (240) days after the Effective Date, or (ii) the date upon which Seller provides its Early COD Notice, if any, which security shall guarantee Seller's obligations under this Agreement (collectively, the "*Project Development Security*"). From and after the Effective Date, Seller shall maintain such Project Development Security until Seller posts the Delivery Term Security pursuant to Section 5.9(b), or until Buyer is required to return the Project Development Security under Section 5.9(c) below.

(b) As a condition to the achievement of the Commercial Operation Date, Seller shall have furnished to Buyer one or more letters of credit issued by Qualified Issuers, surety bonds, cash, or guarantees from Qualified Guarantors, or a combination thereof, in the forms attached hereto as Appendices E or G, as applicable, (i) in an amount equal to Two Million Five Hundred Thousand Dollars (\$2,500,000), which shall guarantee Seller's obligations under this Agreement (the "*Delivery Term Security*"). Seller may elect to apply the Project Development Security toward the Delivery Term Security. From and after the Commercial Operation Date, Seller shall maintain such Delivery Term Security until the end of the Agreement Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.9(e) below.

(c) If, upon the Commercial Operation Date, no damages or other amounts are due and owing to Buyer under this Agreement, or if this Agreement terminates prior to the occurrence of the Commercial Operation Date while the Project Development Security is outstanding, and if Seller does not elect to apply the Project Development Security toward the Delivery Term Security, then Buyer shall return to Seller the Project Development Security, less any amounts drawn by Buyer in accordance with this Agreement. The Project Development Security (or any portions thereof) shall be returned to Seller within ten (10) Business Days after

(i) Seller's provision of the Delivery Term Security, or (ii) the effective date of such early termination, so long as damages are no longer due and owing to Buyer.

(d) Buyer may draw on the Performance Security (i) at any time following the accrual of Daily Delay Damages or GEP Shortfall Liquidated Damages hereunder in the amount of such Daily Delay Damages or GEP Shortfall Liquidated Damages, as applicable, or (ii) upon Seller's failure to make any payment due to Buyer hereunder in the amount of such unpaid payment; *provided*, that, in the case of a draw made under clause (ii), 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. Promptly, and in no event more than fifteen (15) days following any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn such that the Performance Security is restored to the amount set forth in Section 5.9(a) or Section 5.9(b), as applicable.

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

(f) Seller shall notify Buyer of the occurrence of a Downgrade Event within five (5) Business Days after obtaining knowledge of the occurrence of such event. If at any time there shall occur a Downgrade Event, then Buyer may require that Seller replace the Performance Security from the Person that has suffered the Downgrade Event within ten (10) Business Days after notice from Buyer to Seller requesting such replacement Performance Security.

(g) If any Performance Security is in the form of a letter of credit, then Seller shall provide, or cause to be provided, a replacement letter of credit or guarantee (from a Qualified Issuer or Qualified Guarantor, as applicable) or cash in the required amount set forth in this Section 5.9 within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies Seller of the occurrence of any one of the following events:

(i) the failure of the issuer of the letter of credit to renew such letter of credit thirty (30) Business Days prior to the expiration of such letter of credit;

(ii) the failure of the issuer of the letter of credit to immediately honor Buyer's properly documented request to draw on such letter of credit; or

(iii) the issuer of the letter of credit becomes Bankrupt.

(h) If any Performance Security is in the form of a guarantee, then Seller shall provide, or cause to be provided, a replacement letter of credit or guarantee (from a Qualified Issuer or Qualified Guarantor, as applicable) or cash in the required amount set forth in this Section 5.9 within ten (10) Business Days after the earlier of the date that Seller becomes aware, or Buyer notifies Seller, of the occurrence of any one of the following events:

(i) the failure of the guarantor to make a payment thereunder immediately following Buyer's properly documented claim made pursuant to the guarantee in accordance with its terms;

(ii) 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;

(iii) the guarantor becomes Bankrupt;

(iv) 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

(v) the guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, its guarantee.

(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 Performance Security and the rights of Buyer with respect to such Performance Security.

(j) Notwithstanding the other provisions of this Agreement, the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

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

### **Section 6.1 Purchases by Buyer.**

(a) Prior to the date that the Facility is CEC Certified, Seller shall sell and deliver, and Buyer shall receive and purchase the Products associated with Test Energy for the applicable Contract Price for Test Energy set forth in Section 1 of Appendix A.

(b) On and after the date that the Facility is CEC Certified, in the event Seller is required to sell, transfer, and deliver Facility Energy that cannot be bid or prescheduled into the CAISO, Buyer shall receive and purchase the Products for the applicable Contract Price for Test Energy set forth in Section 1 of Appendix A.

(c) On and after the date that the Facility is CEC Certified and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, the Products associated with Delivered Energy and Deemed Generated Energy for which Buyer is required to pay Seller pursuant to Section 7.6(e) (other than Excess Energy) for the Contract Price for Delivered Energy (other than Excess Energy) set forth in Section 2 of Appendix A.

(d) Once the Facility is CEC Certified, Seller may invoice and Buyer shall pay Seller for (i) each MWh of Delivered Energy delivered during the Pre-Certification Period for which Buyer receives WREGIS Certificates and (ii) each MWh of Deemed Generated Energy during the Pre-Certification Period for which Buyer is required to pay Seller pursuant to Section 7.6(e), at a rate equal to the difference between (A) the applicable Contract Price for Delivered Energy set forth in Section 2 of Appendix A and (B) the applicable Contract Price for Test Energy set forth in Section 1 of Appendix A.

(e) On and after the date that the Facility is CEC Certified and continuing for the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive the Products associated with Excess Energy for the applicable Contract Price for Excess Energy set forth in Section 3 of Appendix A.

(f) Resource Adequacy Attributes that are provided as a result of the Facility's Full Capacity Deliverability Status will be made available to Buyer as of the Commercial Operation Date, and any other future capacity attributes that the Facility is capable of producing, as may be defined by the CAISO or any other balancing authority, reliability entity or Governmental Authority, shall be provided as available at *de minimis* incremental cost to Seller and desired by Buyer throughout the Delivery Term; provided that if the Facility has not achieved Full Capacity Deliverability Status by the Commercial Operation Date, then for each month after the Commercial Operation Date until the Facility attains Full Capacity Deliverability Status, either (i) Seller shall provide to Buyer Resource Adequacy Attributes that are equivalent to those that would have been provided by the Facility for such month if the Facility had Full Capacity Deliverability Status for such month, or (ii) the otherwise applicable Contract Price for such month shall be reduced by \$10/MWh for such month.

**Section 6.2 Seller's Delivery Obligation.** Except as provided in Article IX, or in cases of Energy imbalances, 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. Unless excused by Buyer's failure to perform, Seller shall not sell any Energy or Environmental Attributes from the Facility to anyone other than Buyer.

## **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. Subject to Buyer's role as Seller's Scheduling Coordinator for the Facility, Seller shall be responsible to arrange for, and shall bear all risks associated with, delivery of all Facility Energy at the Point of Delivery, including that Seller shall arrange and pay for the interconnection of the Facility to the CAISO grid and any Transmission Services required to deliver Facility Energy to and at the Point of Delivery at the CAISO grid, including interconnection costs, charges related to control area services, inadvertent energy flows, transmission losses, the transmission of Facility Energy, and scheduling associated with the transmission of Energy from the on-site substation to the Point of Delivery.

(b) Buyer shall be obligated to pay for all Facility Energy and Replacement Energy delivered to the Point of Delivery, and Buyer shall be responsible to arrange for, and shall bear all risks associated with, acceptance and transmission of Facility Energy and Replacement Energy from the Point of Delivery, including that Buyer shall arrange and be responsible for Transmission Services from the Point of Delivery at the CAISO grid, 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.** The Authorized Representatives of Buyer and Seller may, following the Effective Date, mutually develop forecasting and Scheduling procedures in addition to those set forth in this Section 7.2, by written agreement of both Authorized Representatives, in order to comply with all applicable requirements, including those of the Transmission Provider, CAISO, NERC, WECC, and 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 such forecasting or Scheduling procedures.

(a) Seller hereby designates Buyer or Buyer's designee to act as Seller's Scheduling Coordinator for the Facility to effect the Scheduling of Facility Energy to and at the Point of Delivery and Buyer (for itself or its designee) hereby accepts the position of Scheduling Coordinator for the Facility. In such capacity, Buyer shall be responsible for and pay all fees, charges and other costs necessary to Schedule the receipt of Facility Energy from the Point of Delivery. Subject to Section 7.6, Buyer shall, based on the then-most-current forecast of energy, Schedule all Energy from the Facility in a reasonable and prudent manner in accordance with the CAISO Tariff, Buyer's Scheduling and forecasting procedures as provided in or developed under this Section 7.2, and any other applicable requirements.

(b) Seller shall submit non-binding forecasts, and any updates to such forecasts, to Buyer or Buyer's Authorized Representative based on the most current forecast of Delivered Energy. All Scheduling shall be performed in accordance with the applicable CAISO, NERC and WECC operating policies, criteria, and any other applicable guidelines, and shall be subject to approval by Buyer. Seller, at its own cost, shall also install metering, telemetry and control equipment so as to be able to provide Delivered Energy to the Point of Delivery and respond to CAISO, Transmission Provider or reliability coordinator's dispatch orders.

(i) At least one-hundred twenty (120) days before the scheduled Commercial Operation Date and at the beginning of each Contract Year, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each month's average-day deliveries of Delivered Energy, by hour, for the following eighteen (18) months.

(ii) During the Delivery Term, no later than sixty (60) days before the beginning of each month thereafter, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each day's average deliveries of Delivered Energy, by hour, for the following month.

(iii) During the Delivery Term, no later than ten (10) Business Days before the beginning of each month thereafter, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each day's average deliveries of Delivered Energy, by hour, for the following month.

(iv) During the Delivery Term, on the first Business Day of each calendar week, Seller or Seller's designee shall provide, or cause to be provided, to Buyer a non-binding forecast of each day's average deliveries of Delivered Energy, by hour, for the following fourteen (14) days.

(v) During the Delivery Term, by 5:30 a.m. Pacific Prevailing Time on the Business Day immediately preceding each day of delivery of Delivered Energy, Seller or Seller's designee shall provide Buyer or Buyer's Authorized Representative with a copy of a non-binding hourly forecast of deliveries of Delivered Energy for each hour of the immediately succeeding day. A forecast provided a day prior to any non-Business Day shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer or Buyer's Authorized Representative with a copy of any updates to such forecast indicating a change in forecasted Delivered Energy from the then-current forecast.

(vi) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day (as defined by WECC) for each hour of the Delivery Day (as defined by WECC) in MW or MWh units (as applicable), in the format reasonably designated by the Buyer or Buyer's Authorized Representatives, Seller shall provide or cause to be provided to Buyer and Buyer's Authorized Representatives a non-binding preschedule forecast of Delivered Energy via email. The pre-scheduled amounts of Delivered Energy shall be the good faith estimate of Seller or Seller's designee of the anticipated delivery of Delivered Energy at the time. A forecast provided a day prior to any non-Business Day(s) shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide Buyer and Buyer's Authorized Representatives with a copy of any and all updates to such forecast indicating a change in forecasted Delivered Energy from the then-current forecast. Except for Forced Outages, Seller shall use commercially reasonable efforts to operate the Facility with the objective that, for each hour scheduled, the actual Facility Energy shall be delivered in accordance with the preschedule plan submitted to Buyer and Buyer's Authorized Representatives for use by Buyer and Buyer's Authorized Representatives to Schedule the Facility Energy for delivery at or from the Point of Delivery, and, subject to Section 7.3, Seller shall be responsible for any CAISO imbalance charges for imbalances between the Facility's Energy scheduled/forecasted and Delivered Energy at the Point of Delivery, except where such charges result from Buyer's or its designee's failure properly to carry out its responsibilities hereunder as Facility Scheduling Coordinator.

(vii) In order to allow Buyer to make Schedule changes in conformity with the CAISO Scheduling deadline, Seller shall notify Buyer or Buyer's Authorized Representative via email, telephone, or other mutually acceptable method, of any hourly changes due to a change in Facility availability or an outage no later than one-hundred

five (105) minutes prior to the start of such Scheduling hour, or such other limit as specified in the CAISO Tariff. Seller shall notify Buyer or Buyer's Authorized Representative of other unanticipated changes in availability by email or telephone as promptly as reasonably possible so that an outage report can be completed with the CAISO. Any notice delivered under this Section 7.2(b)(vii) shall include the reason for the outage and an estimated duration of the outage. Once the outage has ended, Seller shall notify Buyer that the outage has ended, the cause of the outage, and the actions taken to resolve the outage in order for the CAISO forced outage report to be updated accordingly.

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

(i) Read-only access to meteorological and related solar measurements, megawatt capacity and any other facility availability information;

(ii) Read-only access to Energy output information collected by the supervisory control and data acquisition ("*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 Facility Energy output information and meteorological measurements to Buyer in four (4)-second intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back-up for each flat file submittal; and

(iii) Read-only access to all Electric Metering Devices.

(d) Seller is authorized to prepare and provide Buyer's Authorized Representative, Buyer's real time operators, and Buyer's Scheduler with continuously updated non-binding hourly forecasts of deliveries of Delivered Energy for each hour of the succeeding twenty four (24)-hour period, in either electronic format, via an internet website accessible to Buyer, Buyer's Authorized Representative, Buyer's real time operators, and Buyer's Scheduler, or via email in the form of an excel spreadsheet (or any combination thereof), transmitted on an hourly basis. Seller shall reasonably cooperate with Buyer to attempt to optimize the estimates for such time period two (2) hours prior to such forecasts. Seller shall reasonably cooperate with Buyer to enable such forecasts to be prepared in accordance with mutually agreed upon communications protocols as they are implemented or upgraded from time to time.

### **Section 7.3 CAISO Facility Scheduling Costs.**

(a) For purposes of this Section 7.3, "*CAISO Costs*" means (i) all costs, expenses, fees, charges and other amounts (including, but not limited to, imbalance charges and costs) assessed by the CAISO to Seller, or to Buyer in its role as Seller's Scheduling Coordinator for the Facility, to the extent arising out of, or in connection with, the Scheduling and delivery of Facility Energy to the Point of Delivery, including any fees related to Resource Adequacy Attributes or fees related to Standard Capacity Product (as defined in the CAISO Tariff) requirements or charges, and (ii) all costs, expenses and other amounts (if any) which may, following the Effective Date, be charged by the CAISO or any Transmission Provider to the

Facility, Seller or Buyer (in its role as Seller's Scheduling Coordinator for the Facility) in connection with the integration of the Facility (by virtue of its being an intermittent solar resource) into the CAISO grid. For the avoidance of doubt, CAISO Costs do not include any CAISO or other costs or charges associated with Buyer's receipt of the Delivered Energy at the Point of Delivery or the Scheduling or transmission of Delivered Energy from and away from the Point of Delivery, all of which shall be the sole responsibility of Buyer.

(b) Following the Effective Date the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "*CAISO Cost Protocol*") to set forth appropriate administrative details to carry out the Parties' agreement as follows: (a) the Parties shall coordinate to maintain detailed records all CAISO Costs; (b) for the Stub Year and each Contract Year, Seller shall be responsible for and shall pay directly (or promptly reimburse Buyer) for the first \$125,000 of all CAISO Costs allocable to such year, *provided* that Seller's payment and/or reimbursement obligation under this clause (b) shall not exceed five hundred thousand dollars (\$500,000) in the aggregate over the Agreement Term; and (c) subject to the provisions of Section 7.4, for the Stub Year and each Contract Year, Buyer shall be responsible for and shall pay directly (or reimburse Seller) for the all CAISO Costs allocable to such year in excess of \$125,000 and in excess of five hundred thousand dollars (\$500,000) in the aggregate over the Agreement Term (any such excess amounts, in the aggregate on a cumulative basis for all calendar years, is herein referred to as the "*Excess CAISO Costs*"), *provided* that Buyer shall not be responsible for (and Seller shall pay for) any Excess CAISO Costs to the extent arising as a result of any material deviation by Seller from the CAISO Cost Protocol.

**Section 7.4 End of Term Deliveries.** If, at the end of the Agreement Term, there are Excess CAISO Costs, Seller shall deliver to Buyer the amount of Product that has a value equal to the value associated with two hundred (200%) of the total amount of Excess CAISO Costs, based on the applicable Contract Price for Delivered Energy set forth in Appendix A, and Buyer shall pay Seller for such Products at a price that is equal to fifty percent (50%) of the otherwise applicable Contract Price for such Products, based on the applicable Contract Price for Delivered Energy set forth in Appendix A. The Agreement Term shall be automatically extended until Seller's obligation to provide such additional Products is complete or until a date mutually agreed upon by the Parties.

**Section 7.5 [NOT USED].**

**Section 7.6 Curtailment.**

(a) Seller shall reduce deliveries of Facility Energy to the Point of Delivery during Curtailment Periods as directed by the CAISO or any Transmission Provider. If required by the CAISO, a Transmission Provider, or any balancing authority or reliability entity, Seller shall provide the capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megavar output in real-time by means of setpoints received from the SCADA system of Seller. Seller shall be responsible for any costs or charges incurred by Buyer resulting from Seller's failure to comply with this Section 7.6(a).

(b) Buyer shall not be obligated to pay Seller for the amount of reduced Facility Energy during a Curtailment Period unless, and only to the extent that, such curtailment

results from a failure by Buyer to perform its obligations hereunder as the Facility Scheduling Coordinator or from the manner in which Buyer Schedules the Facility Energy (including if Buyer submits any economic bids to the CAISO in the Scheduling of the Facility Energy), in which cases Buyer shall pay Seller for all Deemed Generated Energy during such period at the applicable Contract Price.

(c) Buyer shall have the right to curtail deliveries of Facility Energy at any time and for the duration specified by Buyer, *provided* that the aggregate duration of all curtailments caused or directed by Buyer in a given Contract Year shall not exceed five hundred (500) hours. Buyer shall provide notice to Seller of Buyer's request for curtailment under this Section 7.6(c) and Seller shall comply with such request in accordance with Prudent Utility Practices. In its curtailment notice to Seller, Buyer shall specify the duration of the curtailment period, which shall be for a minimum of thirty (30) minutes, and the time when Buyer wants Seller to resume delivery of Facility Energy to Buyer. To the extent Buyer requests any change in the duration of the requested curtailment period, Seller shall effectuate any such request in accordance with the timeframes required by the CAISO. Seller shall respond to Buyer's curtailment notices (including the end of such curtailment periods or a change in the duration of such curtailment periods) in accordance with Prudent Utility Practices. Buyer shall pay Seller for any Facility Energy curtailed pursuant to this Section 7.6(c) in accordance with the procedures set forth in Section 7.6(d) and Section 7.6(e).

(d) The Parties shall develop procedures to calculate the estimated amount of Deemed Generated Energy under this Section 7.6 based on historical Facility data, meteorological data, output projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to review and approval by Buyer, such approval not to be unreasonably withheld, delayed or conditioned.

(e) Buyer shall pay Seller an amount equal to (i) the applicable Contract Price multiplied by (ii) the amount of Deemed Generated Energy pursuant to Section 7.6(b) or Section 7.6(c), and such Deemed Generated Energy shall be included in the Seller Excused Energy Amount. Buyer shall not be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Delivery for any reason (including Force Majeure), except (i) as otherwise stated in this Section 7.6, or (ii) to the extent caused by Buyer's breach of this Agreement.

(f) Seller shall be responsible for any CAISO Costs incurred by Buyer, as Scheduling Coordinator for the Facility, resulting from Seller's failure to comply with this Section 7.6, and any such CAISO Costs shall not count towards the cap set forth in Section 7.3(b).

**Section 7.7 Title; Risk of Loss.** As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Delivered Energy 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 Delivered Energy at and from the Point of Delivery. Seller shall deliver all Delivered Energy, Capacity Rights, and Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Title to

and risk of loss as to all Delivered Energy, Capacity Rights, 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.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Delivered 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, 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. Seller agrees to transfer and make such Environmental Attributes available to Buyer as promptly as reasonably possible and to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller shall not 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 within the applicable Contract Price for Delivered Energy as set forth in Articles VI and IX and Appendix A.

**Section 8.2 Reporting of Ownership of Environmental Attributes.** Throughout 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 reasonably necessary under applicable law 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 (i) 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, or (ii) retire said WREGIS Certificates into Seller's WREGIS Retirement sub-account on behalf of Seller's requirements (if any); *provided, however*, that Buyer shall initially select to use either option (i) or (ii) thirty (30) days prior to Seller's delivery of any Facility Energy to the Point of Delivery, and, *provided further*, if option (i) is selected, Buyer may change to option (ii) at the beginning of any calendar year during the Agreement Term upon thirty (30) days' advance written notice. If option (ii) is selected, then Buyer shall provide Seller the number and vintage

of MWh of WREGIS Certificates to be retired by providing written notice to Seller not later than thirty (30) days prior to the desired retirement date. 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, and any fees of Seller for the retirement of WREGIS Certificates on behalf of Buyer. Forward Certificate Transfers shall occur monthly based on the certificate creation time-line established by the WREGIS Operating Rules. 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 for the Renewable Energy Certificates produced by the Facility, or Replacement Energy, measured in whole MWh, or by such other method as Buyer shall 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.** Regardless of whether Seller and Buyer use WREGIS or any successor system, Seller shall 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 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 (or any of Buyer's Members designated by Buyer) and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term 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 shall 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 the Facility will be and shall remain RPS Compliant and EPS Compliant throughout the Agreement Term. Subject to Section 8.7, Seller shall assume any risks, costs or expenses associated with, arising from, or resulting from, its obligation to keep the Facility both RPS Compliant and 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*").

**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, *provided* that in no event will Seller be obligated to spend more than Five Hundred Thousand Dollars (\$500,000) in any Contract Year, or Two Million Dollars (\$2,000,000) in the aggregate over the Agreement Term in order to satisfy Seller's warranty and obligations under Section 8.6. For the avoidance of doubt, such amounts shall be used by Seller solely for the purpose of modifying the Facility or for costs incurred by Seller to allow the Facility to comply with such Change in Law; provided, however, that such costs or expenses shall not include amounts incurred for lobbying activities. If a Change in Law occurs such that (a) the RPS Laws or EPS Laws are no longer effective, (b) Seller reasonably demonstrates that it would be required to incur, or has incurred, costs in excess of the limits set forth in this Section 8.7 in order to satisfy Seller's warranty and obligations under Section 8.6, or (c) it is impossible for either Party to comply with a Change in Law, Buyer shall nonetheless remain obligated to purchase the Products at the applicable Contract Price.

## ARTICLE IX GUARANTEED ENERGY PRODUCTION AND MAKEUP OF SHORTFALL ENERGY

**Section 9.1 Guaranteed Energy Production and Seller Makeup of Shortfall.** If Seller fails to deliver an amount of Delivered Energy equal to or greater than the Guaranteed Energy Production in any Contract Year (a "*GEP Shortfall*"), then Seller shall cure the GEP Shortfall during the Contract Year immediately following the occurrence of the GEP Shortfall (the "*GEP Shortfall Makeup Period*"). During the GEP Shortfall Makeup Period, only Delivered Energy that exceeds the Guaranteed Energy Production for the Contract Year in which the GEP Shortfall Makeup Period occurs will apply towards curing the GEP Shortfall. Seller may also cure the GEP Shortfall by procuring Replacement Energy in accordance with Section 9.2. In the event Seller is unable to cure the GEP Shortfall with Delivered Energy or Replacement Energy in accordance with Section 9.2, Seller shall pay Buyer GEP Shortfall Liquidated Damages in accordance with Section 9.3.

**Section 9.2 Replacement Energy.** To the extent a portion of the GEP Shortfall remains after the end of the applicable GEP Shortfall Makeup Period, Seller may, within ninety (90) days following the end of such GEP Shortfall Makeup Period, deliver Replacement Energy from a resource reasonably acceptable to Buyer at the Contract Price applicable to Delivered Energy. The Replacement Energy shall be delivered to Buyer at the Point of Delivery (or another point of delivery reasonably acceptable to Buyer) on a delivery schedule consistent with the Facility's historic percentage of on-peak and off-peak Delivered Energy or as otherwise agreed by Seller and Buyer. As employed 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, (b) qualifies under California Public Utilities Code Section 399.16(b)(1), and (c) includes Environmental Attributes that 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 a GEP Shortfall with Replacement Energy, deliveries of such Replacement Energy shall be limited to an amount that shall not, at any time, exceed a total of 30 MW per hour, including any hourly generation from the Facility. Seller shall (i) arrange for and pay the cost of all Transmission Services required to deliver Replacement Energy to the Point of Delivery (or another point of delivery reasonably acceptable to Buyer), and (ii) Schedule such Replacement Energy to the Point of Delivery, in each case, in accordance with all requirements of CAISO, NERC, WECC, and any other balancing authority and all other applicable requirements.

### **Section 9.3 Shortfall Liquidated Damages.**

(a) If at the end of the ninety (90) day period described in Section 9.2, there remains any GEP Shortfall that has not been cured with Facility Energy or Replacement Energy in accordance with Section 9.2, Seller shall pay Buyer, as liquidated damages, an amount equal to the positive difference between (i) the time weighted average of the sum of (1) the Market Price Index, plus (2) the Green Value, and (ii) the Contract Price (collectively, the “**GEP Shortfall Liquidated Damages**”); *provided* that in no event will Seller pay more than fifty dollars per MWh (\$50/MWh) or One Million Dollars (\$1,000,000) in the aggregate for GEP Shortfall Liquidated Damages during any Contract Year. In addition to GEP Shortfall Liquidated Damages, Seller shall reimburse Buyer for any actual CAISO Non-Availability Charges (as defined in the CAISO Tariff) incurred by Buyer, as Scheduling Coordinator for the Facility, as a result of the GEP Shortfall, and such costs shall not count toward the limitation on CAISO Costs set forth in Section 7.3.

(b) The Parties acknowledge and agree that the damages that Buyer would incur due to a GEP Shortfall 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 GEP Shortfall Liquidated Damages is a fair and reasonable remedy for such damages. The provision of GEP Shortfall Liquidated Damages shall be in lieu of actual damages for the occurrence of any GEP Shortfall hereunder that is not cured with Facility Energy and/or Replacement Energy, and notwithstanding any other provision of this Agreement, the GEP Shortfall Liquidated Damages shall be Buyer’s sole remedy, and Seller’s sole liability, for Seller’s failure to meet the Guaranteed Energy Production. Notwithstanding the foregoing, the GEP 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 Energy Production, or (ii) recover any damages not directly attributable to such failure.

**Section 9.4 Shortfall Energy Termination.** If Seller fails during each of any two consecutive Contract Years to deliver an amount of Delivered Energy equal to or greater than fifty percent (50%) of the Guaranteed Energy Production for the applicable Contract Year, then Buyer, in its sole discretion, may within thirty (30) days after the end of the second such Contract Year, elect to either (a) collect the GEP Shortfall Liquidated Damages due pursuant to Section 9.3 and terminate this Agreement, *provided* that such termination will be without further liability to either Party; or (b) allow Seller to cure such failure by providing Buyer with Replacement Energy or payment of GEP Shortfall Liquidated Damages as described in Section 9.2 and Section 9.3. If Buyer fails to make an election within the thirty (30) day period described in the prior sentence, then Buyer shall be deemed to have elected option (b) in the prior

sentence and waived its right to terminate this Agreement for Seller's failure to provide the Guaranteed Energy Production for the applicable Contract Years.

## **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 by Buyer and Seller to purchase and sell Delivered Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights. The consideration for the transfer of Capacity Rights is contained within the Contract Price for Delivered Energy. Without limiting any of Buyer's obligations hereunder, 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 shall not 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 documents and instruments and take such other administrative action as required by the CAISO and 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; POLICIES**

**Section 11.1 Billing and Payment.** Billing and payment for all Delivered Energy (including all Test Energy) and Deemed Generated Energy for which Buyer is required to pay Seller pursuant to Section 7.6(e) shall be as set forth in this Article XI.

### **Section 11.2 Calculation of Energy Delivered; Invoices and Payment.**

(a) **Delivered Quantity.** For each month during the Agreement Term, commencing with the first month in which Energy is delivered by Seller to and received by Buyer under this Agreement, Seller shall calculate the amount of Energy so delivered and received during such month and Deemed Generated Energy for which Buyer is required to pay Seller pursuant to Section 7.6(e) as determined (i) in the case of Facility Energy, from recordings produced by the Electric Metering Devices maintained pursuant to Section II.6, at or near midnight on the last day of the month in question, (ii) in the case of Replacement Energy, the amount in MWh actually supplied by Seller pursuant to Section 9.2, as measured by metering equipment approved by Buyer in its sole discretion, and (iii) in the case of Deemed Generated Energy, according to the procedures developed pursuant to Section 7.6(d).

(b) **Invoice.** Not later than the tenth (10th) day of each month, commencing with the month next following the month in which Energy is first delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing the amount of Delivered Energy and Deemed Generated Energy for which Buyer is required to pay Seller pursuant to Section 7.6(e) during the preceding month (with a separate allocation for any Replacement Energy and any Deemed Generated Energy) and Seller's computation of the amount due Seller in respect thereof. Monthly invoices shall be sent to the address set forth in Appendix C or such other address as Buyer may provide to Seller.

(i) Monthly invoices shall contain a statement certifying that the information in such invoice is accurate.

(ii) Seller shall deliver to Buyer attestations of Environmental Attributes pursuant to Section 8.5 concurrently with the monthly invoices.

(iii) Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the billing period, except for invoices provided pursuant to Section 11.6, which must be received no more than six (6) months after the meter discrepancy is corrected. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number and the name, address and identifying information of Seller.

(c) **Payment.** Not later than the tenth (10th) day after receipt by Buyer of Seller's monthly invoice (or the next succeeding Business Day, if such tenth (10th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such monthly invoice, subject to Section 11.3.

**Section 11.3 Disputed Invoices.** In the event any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the Dispute, setting forth the details of such Dispute in reasonable specificity. 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, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 11.3, "**Interest Rate**" shall mean 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.

**Section 11.4 Right of Setoff.** In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, either Party shall have the right at any time or from time to time upon notice to the other Party to set off against any amount owed by it under this Agreement or otherwise payable by the other Party to it under this Agreement or otherwise, including any costs payable by the other Party hereunder (but specifically excluding

any amounts due because of breach of this Agreement or arising as liquidated damages hereunder), if and to the extent paid in the first instance by the Party seeking set-off.

**Section 11.5 Records and Audits.** Seller shall maintain or shall cause to be maintained all records pertaining to the provision of Energy and other Products pursuant to this Agreement (including all billings, metering, and Environmental Attributes), and in particular all records to properly reflect all amounts billed to Buyer pursuant to this Agreement. Buyer and the Authorized Auditors may discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings), all at such times and as often as may be reasonably requested. All such records shall be retained, and shall be subject to examination and audit by the Authorized Auditors (redacted as may be appropriate with respect to confidential or proprietary information), for a period of not less than four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. Seller shall make said records (redacted as may be appropriate with respect to confidential or proprietary information) or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at the Seller's offices located at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records (redacted as may be appropriate with respect to confidential or proprietary information). To the extent any records entitled to be audited by Buyer are maintained by Seller in electronic format, then, at the request of Buyer, Seller shall provide the same in electronic format. Seller shall cause any Facility operators to comply with the provisions of this Section 11.5, as applicable. 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 ten (10) days of notice to Seller of the identified overpayment. Notwithstanding the foregoing, if the audit reveals that Buyer's overpayment to Seller is more than the greater of \$100,000 or 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 ten (10) days of notice to the Seller of such costs and expenses.

**Section 11.6 Electric Metering Devices.**

(a) Facility Energy shall be measured using a CAISO-approved revenue-quality Electric Metering Device that complies with the CAISO Tariff and relevant protocols and is dedicated exclusively to the Facility. Seller shall arrange and bear all costs associated with the installation of the Electric Metering Devices needed for the registration, recording and transmission of information regarding the Facility Energy. Seller hereby agrees to provide a mutually agreed set of meter data to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 11.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any revised invoices no later than thirty (30) days from the date on which the CAISO provides Seller with binding adjustments to the meter data.

(b) Seller or its designee, at no expense to Buyer, shall inspect and test all 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 to witness and verify, such inspections and tests. Upon the reasonable request of Buyer, Seller or its designee shall perform additional inspections or tests of any Electric Metering Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. 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.

(c) 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 one percent (1.0%), an adjustment shall be made to correct all measurements made 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 Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. 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 applicable Electric Metering Devices. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 11.6 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 ten (10) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

**Section 11.7 Taxes.** Throughout the Delivery Term, Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement, including ad valorem taxes and all Taxes imposed or assessed with respect to the Facility, the Facility site, any other assets of Seller, and all Taxes related to Seller's net income. Seller shall pay all Taxes assessed on the Delivered Energy, Environmental Attributes and other Products (or the sale or use thereof) arising up to and at the Point of Delivery, and Buyer shall pay all Taxes assessed on the Delivered Energy, Environmental Attributes and other Products (or the sale or use thereof) arising from the Point of Delivery. In the event Seller is required by any Requirement of Law to remit or pay Taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under this Agreement; *provided* that 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 applicable Laws. If either Party is exempt at any time from any Taxes, such Party shall bear the risk that such exemption shall be lost or the benefit of such exemption is reduced.

**Section 11.8 Taxpayer Identification Number (TIN).** Seller shall at all times during the Agreement Term have a TIN and provide appropriate evidence thereof to Buyer. No payment will be made under this Agreement without a valid TIN.

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

**Section 12.1 Representations and Warranties of Buyer.** Buyer makes the following representations and warranties to Seller as of the Effective Date:

(a) Buyer is a validly existing California charter city 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 Buyer 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 Buyer is a party have been duly authorized by all necessary action, and do not and will not require any consent or approval of Buyer's regulatory/governing bodies, other than that which has been obtained.

(c) This Agreement and each of the Ancillary Documents to which the 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.

(d) The execution and delivery of this Agreement and each Ancillary Document to which Buyer is a party, the consummation of the transactions contemplated hereby and thereby and the performance of and compliance with the provisions of this Agreement and Ancillary Documents, 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 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 or result in or require the creation or imposition of any Lien upon any of the properties or assets of Buyer, except, in each case described in this clause (d), which would not, in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(e) There is no pending (service of process against Buyer having been made), or to the knowledge of Buyer, action or proceeding overtly threatened in writing against Buyer before any Governmental Authority that questions the legality, validity or enforceability of this Agreement or any of the Ancillary Documents.

**Section 12.2 Representations and Warranties of Seller.** Seller makes the following representations and warranties to Buyer as of the Effective Date:

(a) Seller is a corporation or limited liability company duly formed or organized, validly existing and in good standing under the laws of its respective state of incorporation or organization, is qualified to do business in the State of California, and has the legal power and authority to own and lease its properties, to carry on its business as now being conducted and to enter into this Agreement and each Ancillary Document to which it may be 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 Ancillary Documents.

(b) Seller has taken all corporate or limited liability company actions required to authorize the execution, delivery and performance of this Agreement and any Ancillary Document to which Seller is a Party, and Seller has delivered to Buyer: (i) copies of all resolutions and other documents evidencing such corporate or limited liability company actions, certified by an authorized representative of Seller as being true, correct, and complete, and (ii) an incumbency certificate signed by the secretary of Seller certifying as to the names and signatures of the authorized representatives of Seller.

(c) The execution, delivery and performance by Seller of this Agreement and all Ancillary Documents have been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained, excluding any of the same in the nature of construction or similar Permits that are expected to be obtained in the ordinary course following the Effective Date.

(d) The execution and delivery of this Agreement and all Ancillary Documents, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and the Ancillary Documents, 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 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), and Seller has obtained or reasonably expects to timely obtain all Permits required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, the Ancillary Documents and all applicable Requirements of Law.

(e) Each of this Agreement and the Ancillary Documents 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.

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

(g) Seller is not 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, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement or any Ancillary Document to which it is a party.

(h) Seller has not entered into this Agreement or any Ancillary Document with the actual intent to hinder, delay or defraud any creditor. Seller has received reasonably equivalent value in exchange for its respective obligations under this Agreement and the Ancillary Documents. No petition in bankruptcy has been filed against Seller, and neither Seller nor any of its constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(i) Seller is, and shall remain throughout the Agreement Term, a Special Purpose Entity.

(j) Seller does not have any reason to believe that any of the Permits required to construct, maintain or operate the Facility in accordance with the Requirements will not be timely obtained in the ordinary course of business.

(k) All Tax returns and reports Seller 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 Seller and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller has no actual knowledge of any proposed or additional Taxes that would, if implemented or imposed, have a material adverse effect on Seller or the Facility.

(l) Seller owns or possesses, or will own 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.

(m) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any Facility Energy, Environmental Attributes, or Capacity Rights except as provided herein.

(n) The Facility has been pre-Certified by the CEC, which pre-Certification remains in full force and effect.

(o) Seller has obtained, and delivered to Buyer all certificates and other documents required to establish that the Insurance policies required by Appendix F as of the Effective Date are in full force and effect as of the Effective Date;

(p) At all times following ten (10) days after the Effective Date and throughout the Agreement Term, Seller shall have Site Control.

(q) Seller has obtained the CEQA Determinations and is, and shall remain at all times during the Agreement Term, in compliance with any mitigation plans, monitoring programs or other requirements associated therewith. As of the Effective Date, the applicable period for any legal challenges to the action by either the lead agency or any responsible agency under CEQA has expired without any such challenge having been filed, or in the event of any such challenge, the challenge has been determined adversely to the challenger by final judgment or settlement.

**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. If at any time Seller fails to comply with any two of the covenants set forth in items (a) through (u) in the definition of "Special Purpose Entity" simultaneously, Seller shall provide Buyer written notice of such failure (an "*SPE Failure Notice*") within five (5) Business Days of Seller's knowledge (for purposes of this provision, defined as the actual knowledge of the officers of Seller) of such failure. Seller shall provide Buyer with a written action plan specifying in reasonable detail Seller's analysis of the causes of such failure, the actions that Seller plans to take to correct such failure and the time needed to complete such corrective actions (such plan, an "*SPE Remedial Action Plan*") no later than thirty (30) days following delivery of an SPE Failure Notice. Seller may supplement the SPE Remedial Action Plan as may be reasonably required and Seller shall complete any and all further corrective action in accordance with such supplemented SPE Remedial Action Plan. Any deviations from the submitted SPE Remedial Action Plan must be reasonably acceptable to Buyer, such acceptance not to be unreasonably withheld, delayed or conditioned. The Parties agree that the time limit for delivering an SPE Remedial Action Plan shall not run for so long as the Parties are in good faith negotiating the contents of the SPE Remedial Action Plan. Buyer may require Seller to deliver a reasoned legal opinion (such opinion, a "*SPE Opinion*") from a reputable law firm within thirty (30) days following Buyer's written request if Buyer reasonably believes that there is a probable risk that in a properly presented and argued case under title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "*Bankruptcy Code*") in which any Affiliate of Seller is the debtor, that a creditor or trustee of such Affiliate of Seller would have valid legal grounds to have a U.S. bankruptcy court or other court exercising bankruptcy jurisdiction over such a case under the Bankruptcy Code disregard the separate existence of Seller so as to cause the substantive consolidation of the assets and liabilities of Seller with those of such Affiliate. Seller's failure to prepare, deliver and act in accordance with an SPE Remedial Action Plan or, if applicable, to deliver an SPE Opinion, shall be a performance default pursuant to Section 13.1(b) hereof.

**Section 12.4 Covenants of Seller Related to the Lease.**

(a) Seller shall not do, or refrain from doing, anything that would cause the imposition of any Liens or encumbrances, other than Permitted Liens, on the real property subject to the Lease. In the event a Lien or encumbrances other than a Permitted Lien is imposed on Seller's option or leasehold interest in the real property subject to a Lease, Seller shall give Buyer immediate notice thereof and shall take immediate action to release such Lien or encumbrance or otherwise cause such Lien to become a Permitted Lien.

(b) Seller shall at all times 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 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, is grounds for the Lessor to terminate the Lease. Seller shall give Buyer prompt notice of any material dispute between Seller and Lessor.

(c) Seller shall give Buyer prompt notice of (i) any assignment of the Lease, (ii) any default under the Lease of which Seller has knowledge, or of the receipt by Seller of any notice from the Lessor thereof, or (iii) the commencement or written threat of any legal action or proceeding or arbitration pertaining to the Lease. Buyer, at its option, may take any reasonable 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 in accordance with Buyer's rights thereunder, subject only to the rights of the Facility Lender. Seller shall deliver to Buyer, promptly upon 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 legal action, proceeding or arbitration.

(d) As long as this Agreement is in effect, there shall be no merger of the Lease or of the leasehold estate created thereby with the fee estate in the property subject to the Lease and Seller will not acquire any interest in such fee estate without the prior written consent of Buyer.

(e) Seller shall not without Buyer's consent (which shall not be unreasonably withheld, conditioned or delayed), (i) modify, subordinate or amend the Lease in any material adverse respect, either orally or in writing (provided, however, Buyer and Seller now contemplate that the real property subject to the Lease will be the site for two separate 20 MW solar generation projects each having a separate 20 MW power purchase agreement (including this Agreement), and Buyer agrees that Seller may amend/restructure the Lease as necessary and appropriate to allow for two separate leases or subleases each covering one-half of the real property currently subject to the Lease in order to accommodate the siting of the two separate 20 MW projects that the Parties currently contemplate will be located on such real property), (ii) terminate, cancel, sever or surrender, or permit or suffer termination, cancellation, severance or surrender of, the Lease, and (iii) shall not waive, excuse, condone or in any way release or discharge the Lessor of or from the material obligations, covenants, conditions and agreements by the Lessor to be kept, performed, observed or complied with thereunder.

(f) 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, subject only to the rights of the Facility Lender, Seller hereby presently, absolutely, irrevocably and unconditionally grants and assigns to Buyer the sole and exclusive right to consent to or refrain from consenting to 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, subject only to the rights of the Facility Lender, Seller agrees that any such election, if made by

Seller without the prior written consent of Buyer's Authorized Representative, 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, subject only to the rights of the Facility Lender, 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. Subject only to the rights of the Facility Lender, at the request of Buyer, Seller will take no action in contravention of the rights granted to Buyer pursuant to this Section 12.4.

(g) 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's Authorized Representative elects to have Seller remain in possession under any legal right Seller may have to occupy the property pursuant to the Lease, then, subject only to the rights of the Facility Lender, 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.

(h) 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 same), subject only to the rights of the Facility Lender, 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 accordance with Buyer's rights thereunder. Subject only to the rights of the Facility Lender, in the event that Buyer's Authorized Representative 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.

(i) Upon any payment by Buyer to cure any default of Seller under the Lease which is not cured by the Facility Lender, thereby preventing 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's Authorized Representative 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 Seller.

**ARTICLE XIII  
DEFAULT; TERMINATION AND REMEDIES;  
PERFORMANCE DAMAGE**

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

(a) *Buyer Payment or Performance Default.* Failure by Buyer to make any payment when and as due under this Agreement or any of the Ancillary Documents that is not cured within ten (10) Business Days after receipt of notice thereof from Seller, or to timely perform any of its other material duties or obligations under this Agreement or any of the Ancillary Documents that is not cured within thirty (30) days after receipt of notice thereof from Seller.

(b) *Seller Payment or Performance Default.* Failure by Seller to make any payment when and as due under this Agreement or any of the Ancillary Documents when and as due which is not cured within ten (10) days after receipt of notice thereof from Buyer, or to perform any of its other material duties or obligations under this Agreement or any of the Ancillary Documents (other than a breach or remedy for which a separate remedy is expressly set forth in this Agreement), when and as due which is not cured within thirty (30) days after receipt of notice thereof from Buyer.

(c) *Buyer Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by Buyer in Section 12.1 of this Agreement or in any Ancillary Document that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof from Seller.

(d) *Seller Breach of Representation and Warranty.* Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by Seller in Section 12.2 of this Agreement or in any Ancillary Document that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof from Buyer.

(e) *Buyer Bankruptcy.* Bankruptcy of Buyer.

(f) *Seller Bankruptcy.* Bankruptcy of Seller.

(g) *Performance Security Failure.* The failure of Seller to maintain the Performance Security in compliance with Section 5.9, if such failure is not cured within five (5) Business Days after receipt of notice thereof from Buyer.

(h) *Insurance Default.* The failure of Seller to maintain and provide acceptable evidence of Insurance, if such failure is not cured within five (5) Business Days after receipt of notice thereof from Buyer.

(i) *Fundamental Change.* Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the

time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person (the "*Successor Entity*") fails to assume all the obligations of Seller under this Agreement and the Ancillary Documents to which it or its predecessor was a party by operation of law or pursuant to an agreement satisfactory to Buyer; or such Successor Entity has a long-term unsubordinated debt rating that is lower than the rating of Seller immediately prior to such consolidation, amalgamation, merger or transfer.

(j) *Failure to Timely Achieve Key Milestones.* The failure of Seller to make payment to Buyer of Daily Delay Damages in accordance with Section 3.5 for the failure to achieve any Key Milestone (as the same may be extended pursuant to the terms of Section 3.4 or Section 3.5. For the avoidance of doubt, so long as Seller (i) pays Buyer Daily Delay Damages in accordance with Section 3.5(d), and (ii) continues to comply with the Remedial Action Plan associated with such failure, Buyer shall not have the right to terminate this Agreement for Seller's failure to achieve any Milestones other than the Outside Commercial Operation Date.

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

(a) If Buyer is in Default for nonpayment, Seller may (in its sole discretion) continue to provide Delivered Energy pursuant to this Agreement; *provided* that nothing in this Section 13.2(a) shall be deemed to waive or otherwise affect Seller's rights and remedies set forth in this Section 13.2(a). 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 set forth in Section 14.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and the 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 pursuant to Section 13.3. 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 other 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 the 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 Performance Security against any amounts then payable by Seller to Buyer under this Agreement, and (ii) termination of this Agreement pursuant to Section 13.3. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

### Section 13.3 Termination for Default.

(a) If Default occurs, the Party that is not the Defaulting Party (the “*Non-Defaulting Party*”) may, for so long as the Default is continuing and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice (“*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.

(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. The Gains, Losses and Costs relating to the Facility Energy and Environmental Attributes that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid therefor under this Agreement to the equivalent quantities and relevant market prices, which shall be determined by calculating the average amount quoted by no fewer than three (3) bona fide third party offers. If such quotes are in the form of bid ask prices, the price to be used shall be the mid-point between the bid ask prices. Such quotes shall be for like amounts of the same Products for the same Point of Delivery and for the Remaining Term, if any, or such other commercially reasonable manner as may be required. 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, end-users of the relevant product, other market information, 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) Facility Energy in an amount equal the Assumed Daily Deliveries, and (ii) the Environmental Attributes associated therewith. The “*Assumed Daily Deliveries*” is an amount equal to the greater of: (x) the quotient of the Annual Contract Quantity divided by 365; and (y) if the date of the Agreement termination is after the last day of the second Contract Year, the average daily Facility Energy during the period from the Commercial Operation Date until the date of the Agreement termination (which average amount of daily Facility Energy shall be increased to account for Facility Energy that was not delivered but for which Buyer was obligated to pay Seller pursuant to Section 7.6(b)), and if the date of the Agreement termination is on or prior to last day of the second Contract Year, the projected average daily Facility Energy for the remaining life of the Agreement as determined by a qualified independent engineer mutually agreed by the Parties.

(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.

(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. 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 in terminating any arrangement pursuant to which it has hedged its obligations or 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 (a)(ii) above). The Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Parties agree that (i) the actual damages that the non-Defaulting Party would incur would be difficult or impossible to predict with certainty, (b) the Termination Payment described herein is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described herein is the exclusive remedy of the non-Defaulting Party for damages in connection with the termination of the Agreement.

#### **ARTICLE XIV MISCELLANEOUS**

**Section 14.1 Authorized Representative.** Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained

herein (each an “*Authorized Representative*”), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and 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.

**Section 14.2 Notices.** With the exception of billing invoices pursuant to Section 11.2(b) hereof, all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person, facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix C, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt in the case of registered or certified mail. 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. A Party may change any address for notice hereunder by notice of such change to the other Party. Notwithstanding the foregoing, in no event can service of process be made by any means other than delivery in person.

#### **Section 14.3 Dispute Resolution.**

(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*”). An attempt to resolve the Dispute shall first be made by a meeting between senior management of both Parties that shall occur and be completed within thirty (30) days of the date of the Dispute Notice. The Parties may, by mutual agreement, extend the time for such meeting to occur or be completed. The meeting shall be held in the County of Los Angeles, California, unless otherwise agreed between the Parties, and be attended in person by senior officers of each Party having a title of senior vice president (or its equivalent) or higher and duly authorized to settle the Dispute. If the Dispute is not resolved by senior management of the Parties, it shall be finally settled by mediation or arbitration in a proceeding before a single arbitrator of JAMS who is selected by the Parties in accordance with the rules of JAMS and which shall be held in the County of Los Angeles, California, unless otherwise agreed by the Parties.

(b) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 14.3 or Section 11.3, as applicable, by the expiration of periods of time set forth in such Sections, then either Party may pursue any legal remedy available to it in accordance with the provisions of this Agreement.

(c) As stated in Section 14.12, 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 14.21 the Parties to this Agreement must 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 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 14.6 Force Majeure.**

(a) A Party shall not be considered to be in default in the performance of any of its obligations 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. If Seller is unable to deliver, or Buyer is unable to receive, Facility Energy at the Point of Delivery due to a Force Majeure, Buyer shall have no obligation to pay Seller for the Facility Energy not delivered or received by reason thereof. It is understood by the Parties that the foregoing provisions shall not excuse any obligations of Seller with respect to the curing of any GEP Shortfall following the Contract Year in which such GEP Shortfall arose, whether or not such cure is hindered by 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 an event or circumstance that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) 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 subcontractor or Affiliate is responsible), and (iv) by the

exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided or overcome; *provided*, nothing herein 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. Force Majeure shall include but not be limited to any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence 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 change in any requirement to meet an RPS Law or any change (whether voluntary or mandatory) in any RPS Law that may affect the value of the Energy purchased hereunder; (2) the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement, except to the extent caused by a separate Force Majeure event; (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 Facility Energy at a price in excess of those provided in this Agreement; (6) failure of third parties to provide goods or services essential to a Party's performance, except to the extent caused by a separate Force Majeure event; (7) Facility or equipment failure of any kind, except to the extent caused by a separate Force Majeure event; or (8) any changes in the financial condition of the Buyer, the 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 (i) a Force Majeure event occurs that 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 (ii) the Facility is rendered 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 repair or replace the Facility following a confirmation by the independent engineer pursuant to clause (ii) 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 pursuant to clause (i) hereof, 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 Section 14.6(c) 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 GEP Shortfall or other outstanding payments due in the ordinary course that occurred prior to the termination. Buyer shall return to Seller the Performance

Security 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 14.7 Assignment of Agreement.**

(a) Except as set forth in this Section 14.7, neither Party shall assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(b) Seller shall not sell or transfer the Facility to any Person other than a Person to whom Seller assigns this Agreement without the prior written consent of Buyer and otherwise subject to compliance with the Right of First Offer set forth in Section 14.23. Any purported sale, transfer, assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(c) Buyer may assign this Agreement without the consent of Seller to (i) a Participating Member, or (ii) any other non-participating member of Buyer or a third party, so long as in the case of clause (ii), (A) such member or third party is rated (I) "A3" or higher by Moody's and "A-" or higher by S&P, if such member or third party is rated by both Moody's and S&P, or (II) "A3" or higher by Moody's or "A-" or higher by S&P if such member or third party is rated by either S&P or Moody's, and (B) such member or third party is a publicly-owned electric utility with retail customers located in the state of California; *provided*, that in connection with any such assignment any such assignee shall execute a written assumption agreement in favor of Seller (in form and substance reasonably satisfactory to Seller) pursuant to which any such assignee shall assume all the obligations of Buyer under this Agreement and agree to be bound by all the terms and conditions of this Agreement; *provided further* that Seller shall reasonably cooperate with such assignee to accommodate the technical requirements of such assignee (including as they relate to transmission and scheduling) to the extent that such accommodation does not require Seller to incur any increased cost or risk relative to the applicable terms and conditions of this Agreement. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

(d) Except as provided in this Section 14.7, this Agreement shall not grant any rights enforceable by any Person not a party to this Agreement. The Parties acknowledge that Seller expects to be required to collaterally assign this Agreement to Facility Lenders in connection with obtaining financing for the development, construction, purchase, installation or operation of the Facility. To facilitate Seller's obtaining such financing, Buyer shall reasonably cooperate with Seller and Facility Lenders to provide a consent to the collateral assignment of this Agreement (in form and substance satisfactory to Buyer) as may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the development, construction and operation of the Facility; *provided, however*, that the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement. Seller shall provide Buyer with reasonable prior notice (not less than forty five (45) days) of any such assignment to any Facility

Lender. 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 or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 14.7.

(e) 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, and other than liability Buyer may have for a specific default or breach by Buyer under any agreement executed between Buyer and any Facility Lender. 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, Facility Lender or other transferee, and their successors in interest and assigns, shall be bound by the covenants and agreements of Seller in this Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of all of Seller's rights and 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.

(f) The consent to collateral assignment or other document executed between Buyer and any Facility Lender shall provide, among other things, as follows: (i) if a Facility Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or a sale of the Facility occurs through the actions of a Facility Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Facility Lender must itself assume or cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement as a condition of the sale or transfer; (ii) if this Agreement is rejected in any Seller bankruptcy or otherwise terminated in connection therewith and if a Facility Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Buyer and the Facility Lender (or the party taking possession of the Facility) shall promptly re-enter into this Agreement or enter into a new agreement having substantially the same terms as this Agreement for a time period equal to any remaining Agreement Term of the Agreement and (iii) mutually agreed provisions that define acceptable transferees and operators of the Facility.

**Section 14.8 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 14.9 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 to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

**Section 14.10 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 14.11 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 14.12 Governing Law.** This Agreement was made and entered into in the County of Los Angeles 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.

**Section 14.13 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 14.14 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.

**Section 14.15 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 14.16 Waiver.** The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. 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 the other 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, except as expressly stated herein.

**Section 14.17 Relationship of the Parties.** This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto 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, except that Buyer shall act as Seller's Facility Scheduling Coordinator in the manner set forth herein.

**Section 14.18 Third Party Beneficiaries.** 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.

**Section 14.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.**

(a) **Indemnification.** Seller undertakes and agrees to indemnify and hold harmless Buyer, its City Council, and all of the councilmembers, officers and employees of each, and, at the option of Buyer, defend Buyer, and any and all of its City Council, councilmembers, officers, agents, employees, advisors, assigns and successors in interest 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, 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 City Council, councilmembers, officers, agents, or employees.

(b) **Damage or Destruction.** Subject to Section 14.6(c) and the rights of the Facility Lender, 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 the Buyer. Subject to Section 14.6(c) and the rights of the Facility Lender, proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction.

(c) **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 shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Subject to the rights of the Facility Lender, without Buyer's prior written consent (not to be unreasonably withheld, delayed or conditioned), Seller (i) shall not agree to any

compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. To the extent reasonably practical, and approved by any Facility Lenders, 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.

(d) **Limitation of Liability.** Except to the extent included in the liquidated damages, indemnification obligations related to third party claims or 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.

**Section 14.20 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 14.21 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 and representatives, to keep confidential, except as required by law, 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, documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party or, if orally disclosed, anything clearly identified as "Confidential" at the time a Party shares such information with the other Party ("**Confidential Information**"). The provisions of this Section 14.21 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 if such information (i) is disclosed with the prior written consent of the originating Party, (ii) 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, (iii) 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 (iv) 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 14.21, 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 officials 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; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, 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, order, 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, Seller acknowledges that Buyer, as a California public agency, 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 shall 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 of the Confidential Information of Seller pursuant to the CPRA or Brown Act. 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 and enforceable under all applicable Law the Performance Security contemplated by this Agreement and the Ancillary Documents, and the rights of Buyer with respect to such Performance Security.

(e) 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 shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by the CPRA, shall 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, but are not limited to, all actual costs incurred by Buyer, and specifically including 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 liability of any nature.

**Section 14.22 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 14.23 Right of First Offer.** Buyer has a "*Right of First Offer*" for any proposed sale of the Facility by Seller, all in accordance with the provisions of this Section 14.23. Prior to Seller consummating a sale of the Facility, Seller shall provide notice to Buyer of Seller's proposed sale (a "*Proposed Sale Notice*"). Upon receipt of such notice, Buyer shall have forty-five (45) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Facility from Seller. If Buyer does not provide such a notice, then, subject to the requirements of Section 14.7, Seller may sell the Facility to any third party, *provided* that if a sale is not consummated within eighteen (18) months following the date of the Proposed Sale Notice, then Seller must provide Buyer with another Proposed Sale Notice hereunder (and go through the process set forth herein) before consummating any such sale. If Buyer provides a notice in response to Seller's Proposed Sale Notice indicating that Buyer is interested in purchasing the Facility, then the Parties shall undertake, for a period up to thirty (30) days from the date of Buyer's response to Seller, to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Facility to Buyer. If the Parties are unable to reach a mutual agreement, then, subject to the requirements of Section 14.7, Seller may sell the Facility to any third party, *provided* that if a sale is not consummated within eighteen (18) months following the date of the expiration of such thirty (30) day period, Seller must provide another Proposed Sale Notice hereunder (and go through the process set forth herein) before consummating any future sale of the Facility, and *provided further* that any such sale shall not be for an aggregate purchase price less than the aggregate purchase price last offered by Seller to Buyer in writing during the thirty (30) day negotiation period. The Right of First Offer shall not apply to any sale-leaseback or similar Facility financing by Seller, to any transfer of the Facility to Facility Lender by deed in lieu of foreclosure, or to any sale by any Facility Lender in connection with the exercise of Facility Lender remedies under financing security documents.

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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: \_\_\_\_\_

Attest: \_\_\_\_\_

KINGBIRD SOLAR B, LLC

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

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

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

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: \_\_\_\_\_

Attest: \_\_\_\_\_

KINGBIRD SOLAR B, LLC

Date: 9-4-13

By: *Brian King*

Its: VICE PRESIDENT

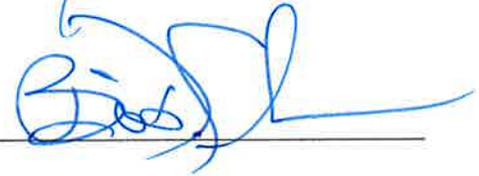
Attest: *Mark Zeller*

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: 10-22-13

By: 

Attest: 

KINGBIRD SOLAR B, LLC

Date: 9-4-13

By: 

Its: VICE PRESIDENT

Attest: 

**APPENDIX A**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF \_\_\_\_\_, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND KINGBIRD SOLAR B, LLC**

**CONTRACT PRICE**

1. **Test Energy.** The Contract Price for Test Energy shall be an amount equal to seventy percent (70%) of the Contract Price for Delivered Energy.
2. **Delivered Energy.** The Contract Price for Delivered Energy shall be \$68.75 per MWh.
3. **Excess Energy.** The Contract Price for Excess Energy shall be an amount equal to seventy-five percent (75%) of the Contract Price for Delivered Energy.
4. **Acknowledgments.** The Parties acknowledge and agree that (a) Seller is selling to Buyer, and Buyer is purchasing from Seller, all of the Products produced by the Facility, (b) the Products include, but are not limited to, all Facility Energy (and any Replacement Energy required to meet the Guaranteed Energy Production), all associated Environmental Attributes, and any Capacity Rights (including all Resource Adequacy Attributes and all Local Capacity Requirement Attributes) that may at any time during the Agreement Term exist and be associated with such Facility Energy or Replacement Energy, (c) although monthly payments hereunder from Buyer to Seller determined under Agreement **Article XI** are based on the quantity of Delivered Energy delivered to the Point of Delivery and the Contract Price (as adjusted under this **Appendix A**), such payments are full compensation for such Delivered Energy and all other Products associated therewith, and (d) the actual amounts payable each month from Buyer to Seller under Agreement **Article XI** are subject to certain adjustments expressly provided for in the Agreement, including **Section 6.1(d)**, **Section 7.4**, **Section 7.6(b)**, and **Section 7.6(e)**.

**APPENDIX B  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF \_\_\_\_\_, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND KINGBIRD SOLAR B, LLC**

**FACILITY, PERMITS, AND OPERATOR**

1. Name of Facility: Kingbird Solar B Project
2. Location: Near Rosamond, CA  
  
A portion of the South half of Section 35, Township 9 North, Range 15 West, San Bernardino Meridian, in the County of Kern, State of California  
  
A portion of Assessor Parcel Number: 261-196-07
3. Owner: Kingbird Solar B, LLC
4. Operator: First Solar Electric (California), Inc.
5. Equipment:
  - (a) Type of Facility: Solar Photovoltaic
  - (b) Capacity: 20 MW (AC)
  - (c) Capacity Factor: 34% \*Total nominal net capacity under expected average Site conditions: 20 MW (AC)
6. Guaranteed Commercial Operation Date: December 31, 2015
7. Shared Facilities: Shared Gen-Tie Line Facilities located on the Easement Area, the Shared Gen-Tie Support Structures located on the South Corridor Easement Area and the Shared Telecommunications Lines located on the Easement Area, all subject to the Shared Facilities Common Ownership Agreement between AV Solar Ranch 1, LLC and Kingbird Solar, LLC.

\* The actual Capacity Factor may vary depending on weather and other meteorological conditions, final Facility design, and other factors. Nonetheless, the Annual Contract Quantities in Appendix K and the Guaranteed Energy Production amounts are fixed for all purposes under the Agreement.

**APPENDIX C  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF \_\_\_\_\_, 2013**

**BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND KINGBIRD SOLAR B, LLC**

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

1. **Authorized Representative.** The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

1.1 Buyer's Authorized Representative:

Bill D. Carnahan  
Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
E-mail: bcarnahan@scppa.org

1.2 Seller's Authorized Representative

Attn: General Counsel  
Kingbird Solar B, LLC  
135 Main Street, 6th Floor  
San Francisco, CA 94105  
Telephone: (415) 935-2570  
Facsimile: (415) 894-6282

2. **Billings and Payments.** Billings and payments pursuant to Article XI 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  
Attention: Accounts Payable  
E-mail: voates@scppa.org

2.2 If Payment to Buyer:

Southern California Public Power Authority

1160 Nicole Court  
Glendora, CA 91740  
Attention: Accounts Receivable  
E-mail: voates@scppa.org

2.3 If Billing to Seller:

Kingbird Solar B, LLC  
Attn: First Solar Development, Accounts Receivable  
Telephone: (602) 414-9305  
Facsimile: (602) 414-9405

2.4 If Payment to Seller:

Kingbird Solar B, LLC  
Attn: First Solar Development, Accounts Receivable  
Telephone: (602) 414-9305  
Facsimile: (602) 414-9405

3. **General Notices.** Unless otherwise specified by Buyer all notices (other than Facility forecasting and scheduling notices) required under the Agreement shall be sent by facsimile transmission, reliable overnight courier, and registered or certified mail, postage prepaid, to the address specified below.

If to Buyer:

Southern California Public Power Authority  
1160 Nicole Court  
Glendora, CA 91740  
Attention: Steve Homer, Director of Project Administration  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
E-mail: shomer@scppa.org

If to Seller:

Attn: General Counsel  
Kingbird Solar B, LLC  
135 Main Street, 6th Floor  
San Francisco, CA 94105  
Telephone: (415) 935-2570  
Facsimile: (415) 894-6282

4. **Notices for Facility Forecasting and Scheduling.** Unless otherwise specified by Buyer all notices related to forecasting and scheduling of the Facility shall be sent to the following address:

**If to Buyer:**

Southern California Public Power Authority  
c/o Executive Director  
1160 Nicole Court  
Glendora, CA 91740  
Attention: Kelly Nguyen, Director of Energy Systems  
Telephone: 626-793-9364  
Facsimile: 626-793-9461  
E-mail: knguyen@scppa.org

**Real Time Desk**

Telephone: [ ]

E-mail: [ ]

**Day Ahead Desk**

Telephone: [ ]

E-mail: [ ]

**If to Seller:**

Kingbird Solar B, LLC  
Attn: Control Room  
Telephone: (419) 662-7062  
Facsimile: (419) 662-8525

**APPENDIX D  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF \_\_\_\_\_, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND KINGBIRD SOLAR B, LLC**

**FORM OF ATTESTATION**

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

Pursuant to that certain Power Purchase Agreement ("Agreement") dated as of \_\_\_\_\_, between \_\_\_\_\_ ("Seller") and Southern California Public Power Authority ("Buyer"), Seller hereby sells, transfers and delivers to Buyer the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below. Capitalized terms used and not defined herein have the meaning in the Agreement, unless the context requires otherwise.

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>MWhs 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 Point of Delivery the Facility Energy in the amount indicated above; and
- iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Facility Energy, and the same have been sold to Buyer.

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 Facility Energy delivered to the Point of Delivery.

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

**APPENDIX E**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF \_\_\_\_\_, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND KINGBIRD SOLAR B, LLC**  
  
**FORM OF LETTER OF CREDIT**  
  
**IRREVOCABLE DOCUMENTARY**  
**LETTER OF CREDIT NO. \_\_\_\_\_**

Applicant:

Beneficiary:

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
1160 Nicole Court  
Glendora, CA 91740  
Telephone: 626-793-9364  
Facsimile: 626-793-9461

Amount:

Expiry Date:

Expiration Place:

Ladies and Gentlemen:

We hereby issue our Irrevocable Letter of Credit in favor of the beneficiary by order and for the account of the applicant 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*],<sup>1</sup> of: (i) your written demand for payment containing the text of Exhibit I and (ii) your signed statement containing the text of Exhibit II; or
- (b) upon both your telephone or fax advice of demand to the attention of \_\_\_\_\_ at telephone and/or fax number \_\_\_\_\_ and presentation to us by fax of: (i) your written demand for payment containing the text of Exhibit I and (ii) your statement containing the text of Exhibit II.<sup>2</sup>

<sup>1</sup> Note to Issuer: The Letter of Credit must be payable in U.S. dollars within the continental U.S.

<sup>2</sup> Note to Issuer: If the office specified for presentation is outside of Los Angeles, California, alternative (b) must appear in the Letter of Credit when issued. If the office is in Los Angeles, California, alternative (b) may be included only if the bank establishes and maintains with Southern California Public Power Authority the necessary electronic arrangements.

ANY FAX PRESENTATION MUST BE RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING, NOT CONTINGENT UPON PRESENTATION OF THE ORIGINAL DOCUMENTS WITH RESPECT THERETO.

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us in conformity with the foregoing, we will, within one (1) business day after such presentation, but without any other delay whatsoever, irrevocably and without reserve or condition pay to your order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds. We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business due to the reasons specified in article 36 of UCP, this Letter of Credit will be duly honored if the specified statements are presented by you within three (3) full banking days after such office is reopened for business.

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 without limitation 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 an effective written order issued otherwise than at our instance by a court of competent jurisdiction, which order 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(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s) and this credit.

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 for decrease shall become effective only upon acceptance by your signature on a hard copy amendment.

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 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 Southern California Public Power Authority (“SCPPA”) 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 such a successor, such drawing must be accompanied by proof of successorship and the following signed certification:

“The undersigned does hereby certify that \_\_\_\_\_ [drawer] \_\_\_\_\_ is the successor by operation of law to SCPPA, a beneficiary named in [name of Bank] Letter of Credit no. \_\_\_\_\_.

[name and title]

Except so far as otherwise expressly stated herein, this documentary credit is subject to the “Uniform Customs and Practices for Documentary Credits,” International Chamber of Commerce, in effect on the date of issuance of this credit (“UCP”).

Yours faithfully,  
(name of issuing bank)

By \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT I**

**Demand for Payment**

Re: Irrevocable 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 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 \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT II**

**Statement**

Re: Irrevocable Letter of Credit  
No. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_\_\_\_

To Whom It May Concern:

Reference is made to your Irrevocable Letter of Credit no. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_ in the amount of \$\_\_\_\_\_ established by you in our favor for the account of \_\_\_\_\_.

We hereby certify to you that \$\_\_\_\_\_ is payable to us as provided in our agreement with the Applicant.

DATED: \_\_\_\_\_, 20\_\_.

SOUTHERN CALIFORNIA PUBLIC POWER  
AUTHORITY

By \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT III**

**Amendment**

Re: Irrevocable 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 Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (*strike two*) the stated amount by \$ \_\_\_\_\_ to a new stated amount of \$ \_\_\_\_\_ or by extending the expiration date to \_\_\_\_\_ from \_\_\_\_\_. All other terms and conditions of the Letter of Credit remain unchanged.

[To be included only if the amendment is for decrease]

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,

(name of issuing bank)

By \_\_\_\_\_

Title \_\_\_\_\_

ACCEPTED (To be required only in the event of a decrease)

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

**APPENDIX F**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF \_\_\_\_\_, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND KINGBIRD SOLAR B, LLC**

**INSURANCE**

**I. GENERAL REQUIREMENTS**

Prior to the start of work, but not later than two hundred forty (240) days after the Effective Date (or such later date as may be expressly stated in paragraphs II(E), (F) and (G) below), Seller shall furnish Buyer evidence of coverage from insurers reasonably acceptable to Buyer and in a form reasonably acceptable to the risk management section of the project manager for Buyer or to Buyer's Authorized Representative for this purpose. 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, except to the extent not covered by the terms and conditions of Seller's Insurance policies. 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.

The policy cannot be canceled or reduced in coverage or amount that adversely affects Buyer without Seller first giving thirty (30) days prior notice thereof (ten (10) days for non-payment of premium) by registered mail to Claims Coordinator, the City of Pasadena, 100 N. Garfield Avenue, Room N306, Pasadena, CA 91109.

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 provide a default notice to Seller under Agreement Section 13.1(h).

Seller shall be responsible for all subcontractors' compliance with the applicable insurance requirements.

## **II. SPECIFIC COVERAGES REQUIRED**

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

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned, non-owned, and hired vehicles for performance of the work as required to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than \$1,000,000.00 combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its City Council, councilmembers, and their officers, and employees while acting within the scope of their employment, as additional insureds with Seller, and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement. The form of evidence of insurance shall be a Buyer Additional Insured Endorsement or an endorsement to the policy reasonably acceptable to Buyer's risk management agent; *provided* that blanket additional insured endorsements shall be deemed to meet the requirements of this provision.

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

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than \$10,000,000.00 combined single limit per occurrence. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be on Buyer's Additional Insured Endorsement form or contained within the policy wording (*provided* that blanket additional insured endorsements shall be deemed acceptable) or on an endorsement to the policy reasonably acceptable to the Buyer's risk management agent, and shall provide for the following:

1. Include Buyer and its officers, and employees as additional insureds with the Named Insured for the activities and operations under this Agreement.
2. Separation of Insureds. 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."

### **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. Such policy shall include, as appropriate, scheduled underlying 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 \$1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. 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**

Prior to commencing site construction activities, Builder's Risk insurance, which 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 whether on site or in transit from any location worldwide, but only to the extent of their interest in the Facility. Outside of the United States, this transit insurance requirement may be satisfied by the purchase of a global marine specific policy, if applicable. The amount of such insurance shall be not less than the insurable value of the work at completion. The Builders' Risk policy shall insure against all risks of direct physical loss or damage to property from any cause including testing, ensuing loss, and commissioning. The policy shall be in full force and effect until the effective date of the Property All Risk Insurance referenced below.

**F. Property All Risk Insurance**

Seller shall procure and maintain 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 expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials, or faulty design. This policy shall be obtained and shall take full force and effect upon the expiration of the Builder's Risk Policy.

**APPENDIX G**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF \_\_\_\_\_, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND KINGBIRD SOLAR B, LLC**

**FORM OF GUARANTEE**

This Guarantee dated as of [\_\_\_\_\_] is made by [\_\_\_\_\_] (the "**Guarantor**") in favor of SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a municipal corporation created under the laws of the State of California (the "**Beneficiary**").

**ARTICLE ONE**

***Section 1.01 Guarantee.***

(a) For valuable consideration in connection with [identify PPA and 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 of 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 Guarantor 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 without limitation, 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 H  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF \_\_\_\_\_, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND KINGBIRD SOLAR B, LLC  
QUALITY ASSURANCE PROGRAM**

**[TO BE PROVIDED BY SELLER]**

**APPENDIX I  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF \_\_\_\_\_, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND KINGBIRD SOLAR B, LLC**

**MILESTONE SCHEDULE**

Key Milestones are indicated with a \*

No.	Guaranteed Date	Milestone Description	Daily Liquidated Damages for Delay (\$)	Security deposit at milestone achievement
1.	Prior to Effective Date	File CEC Pre-Certification Application	--	--
2.	9/30/2013	PPA Effective Date	--	--
3.	PPA Effective Date	Deliver Project Development Security	\$0	\$1,000,000
4.	10 days following Effective Date	Each Initial Development Milestone (as set forth in Section 2.1(a) of this Agreement)*	\$4,000	\$1,000,000
5.	240 days following Effective Date	Each Initial Development Milestone (as set forth in Section 2.1(b) of this Agreement)*	\$4,000	\$1,000,000
6.	Earlier of 240 days following Effective Date or Early COD Notice	Increase Project Development Security*	\$10,000	\$2,000,000
7.	DONE	Submit Interconnection Application	N/A - Remedial Action Plan	\$2,000,000
8.	DONE	File CUP Application	N/A - Remedial Action Plan	\$2,000,000
9.	DONE	Receive complete System Impact Study of Phase I Interconnection	N/A - Remedial Action Plan	\$2,000,000

No.	Guaranteed Date	Milestone Description	Daily Liquidated Damages for Delay (\$)	Security deposit at milestone achievement
10.	DONE	Receive complete Interconnection Facility Study of Phase II Interconnection Study	N/A - Remedial Action Plan	\$2,000,000
11.	12/31/2013	Execute Interconnection Agreement and file with FERC or other jurisdictional entity as appropriate	N/A - Complete Remedial Action Plan	\$2,000,000
12.	9/30/2014	Obtain CUP	N/A - Complete Remedial Action Plan	\$2,000,000
13.	1/10/2015	Exercise option under Lease	N/A - Complete Remedial Action Plan	\$2,000,000
14.	3/1/2015	Execute EPC Contract	N/A - Complete Remedial Action Plan	\$2,000,000
15.	6/1/2015	Begin construction of Facility*	\$5,555	\$2,000,000
16.	3/31/2015	Execute financing documents	N/A - Complete Remedial Action Plan	\$2,000,000
17.	9/15/2015	Achieve initial synchronization	N/A - Complete Remedial Action Plan	\$2,000,000
18.	12/31/2015	Achievement of Commercial Operation Date by the Guaranteed Commercial Operation Date*	\$8,333	\$2,500,000
19.	6/30/2016	Achievement of Commercial Operation Date by the Outside Commercial Operation Date*	None - termination right by Buyer	\$2,500,000

**APPENDIX J  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF \_\_\_\_\_, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND KINGBIRD SOLAR B, LLC  
FORM OF OPTION AGREEMENT**

[NOT USED]

**APPENDIX K  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF \_\_\_\_\_, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND KINGBIRD SOLAR B, LLC  
ANNUAL CONTRACT QUANTITY**

<b>Contract Year</b>	<b>Annual Contract Quantity, MWH</b>
1	59,500
2	59,203
3	58,905
4	58,608
5	58,310
6	58,013
7	57,715
8	57,418
9	57,120
10	56,823
11	56,525
12	56,228
13	55,930
14	55,633
15	55,335
16	55,038
17	54,740
18	54,443
19	54,145
20	53,848

**APPENDIX L**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF \_\_\_\_\_, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND KINGBIRD SOLAR B, LLC**  
  
**SCHEDULING PROCEDURES**

[NOT USED]

**APPENDIX M  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF \_\_\_\_\_, 2013  
BETWEEN  
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY  
AND KINGBIRD SOLAR B, LLC**

**PERMITS**

<b>Permit Type</b>	<b>Grantor</b>
EIR Certification	Board of Supervisors
Conditional Use Permit (CUP) Specific Plan Amendment (SPA) Zoning Change Classification (ZCC)	Board of Supervisors
Amend Zoning Map	Planning & Development
Building Permit	Building & Safety Division
Grading Permit	Grading Department
Road Encroachment Permit	County Roads Dept.

**APPENDIX N**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF \_\_\_\_\_, 2013**  
**BETWEEN**  
**SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**  
**AND KINGBIRD SOLAR B, LLC**

**COMMERCIAL OPERATIONS PROCEDURE**

In accordance with the terms of that certain Power Purchase Agreement dated \_\_\_\_\_, 2013 (“Agreement”) by and between Southern California Public Power Authority (“Buyer”) and Kingbird Solar B, LLC (“Seller”), in order determine achievement of the Commercial Operation Date, 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:

- A. Delivery of a Certificate of Commercial Operations, in the form attached hereto (the “Certificate”), from a Professional Engineer, licensed in the State of California, regarding the Facility’s ability to deliver Facility Energy, including the items below. 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 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) A statement signed by the manufacturer of the solar panels referenced in (1) above that solar panel commissioning is complete (which shall occur when the electrical and control systems have been energized and tested in accordance with the manufacturer’s specifications and the solar panels are released for electrical generation of power (“Solar Panel Commissioning Completion”) has been received.
  - 5) The Facility is operational and interconnected with the Point of Delivery and capable of delivering the Facility Energy.
- B. Delivery of evidence demonstrating, to the reasonable satisfaction of Buyer, that all of the following have occurred:

- 1) 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, and satisfies all of the Requirements set forth for the Facility in the Agreement.
- 2) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law (including any applicable CAISO rules or protocols) 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 ten (10) consecutive days and delivering Facility Energy during such period to the Point of Delivery up to the Contract Capacity in accordance with the requirements of this Agreement.** 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 (e.g., AV Solar Ranch, adjusted for degradation).
- 3) Seller has obtained all of the Permits required for the operation and maintenance of the Facility identified in Appendix M (including the CEQA Determinations), and all such Permits are final and non-appealable.
- 4) Seller has obtained the Insurance.
- 5) Seller shall have entered into an agreement providing for the operation and maintenance of the Facility with an Affiliate of First Solar, Inc. or an operator that is satisfactory to Buyer.
- 6) Buyer has received the Delivery Term Security in a form reasonably acceptable to Buyer.

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 instructions regarding safety and security while on the Facility Site. Seller shall provide Buyer's representative(s) with a written copy and/or video training regarding Seller's on-site safety and security policies.

**FORM OF CERTIFICATION**

The undersigned, Kingbird Solar B, LLC (“Seller”), and [ \_\_\_\_\_ ] (“Professional Engineer”) do hereby deliver this Certificate of Commercial Operations (complete except for countersignature) to the Southern California Public Power Authority (“Buyer”). Any capitalized terms used but not defined herein shall have the meaning set forth in the Power Purchase Agreement dated \_\_\_\_\_, 2013 between Seller and Buyer (the “Agreement”). In accordance with its obligation to certify to Buyer’s satisfaction that the Facility is operating and able to produce and deliver Facility Energy to Buyer in accordance with the terms of the Agreement, Seller and the Professional Engineer hereby certify and represent to Buyer that the following statements are true as of the date set forth below:

- a. The Facility has achieved the following:
  - 1. Solar Panel Mechanical Completion, as defined in Appendix N of the Agreement; and
  - 2. Solar Panel Commissioning Completion, if available, as defined in Appendix N of the Agreement.
  
- b. The Facility is complete as follows:
  - 1. The electrical collection system related to the solar panels that have achieved Solar Panel Mechanical Completion is complete, functional, and energized; and
  - 2. The collector substation is complete and capable of operations.
  
- c. The Facility is operational and interconnected with the Point of Delivery, and is capable of delivering Facility Energy.

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

SELLER: KINGBIRD SOLAR B, LLC

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

PROFESSIONAL ENGINEER

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

RECEIVED AND ACCEPTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BUYER: SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

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

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

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