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**FEED-IN TARIFF**

**POWER PURCHASE AGREEMENT**

between

**REDWOOD COAST ENERGY AUTHORITY**

and

**[FIT PROJECT OWNER]**

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*The Redwood Coast Energy Authority*, a California Joint Powers Authority (“Buyer” or “RCEA”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”), a   
   
*[Seller’s form of business entity and state of organization]*, hereby enter into this Power Purchase Agreement (“Agreement”) made and effective as of the Execution Date. Seller and Buyer are sometimes referred to in this Agreement jointly as “Parties” or individually as “Party.” In consideration of the mutual promises and obligations stated in this Agreement and its appendices, the Parties agree as follows:

# DOCUMENTS INCLUDED

This Agreement includes the following appendices, which are specifically incorporated herein and made a part of this Agreement:

Appendix A Definitions

Appendix B Commercial Operation Date Confirmation Letter

Appendix C Forecasting Requirements

Appendix D Description of the Facility

Appendix E Seller’s Milestone Schedule

Appendix F Notices List

This Agreement specifically incorporates herein by reference as if appended hereto the following documents (collectively referred to herein as the “Referenced Documents”):

Feed-in Tariff dated [*insert date of applicable Tariff*]

Feed-in Tariff Application, submitted by Seller, dated *[insert date of application]*

Feed-in Tariff Generation Forecast dated *[insert date of applicable document]*

To the extent any provisions of the Referenced Documents conflict with any other provisions of the Agreement, the other provisions of the Agreement shall control.

# SELLER’S FACILITY AND COMMERCIAL OPERATION DATE

This Agreement governs Buyer’s purchase of the Product from the electrical generating facility (hereinafter referred to as the “Facility” or “Project”) as described in this Section.

* 1. Facility Location. The Facility is physically located at:

* 1. Facility Name. The Facility is named \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
     1. The Facility’s renewable resource is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. [e.g., biogas, hydro, etc.]
  2. Interconnection Point. The Facility is connected to the Pacific Gas & Electric Company (“PG&E”) electric system at [include description of physical interconnection point], i.e. Interconnection Point, at a service voltage of \_\_\_\_\_ kV.
  3. Delivery Point. The Delivery Point for Energy is the Interconnection Point.
  4. Facility Description. A description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the Facility and loads with the Transmission/Distribution Owner’s electric distribution system, is attached and incorporated herein as Appendix D.
  5. Commercial Operation.
     1. The Facility’s expected Commercial Operation Date is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,
     2. Seller shall achieve Commercial Operation no later than the expected Commercial Operation Date specified in Section 2.6.1, which date shall be no later than eighteen (18) months from the Execution Date of this Agreement. The expected Commercial Operation Date specified in Section 2.6.1 may be extended for only the following reasons:
        1. If Seller has taken all commercially reasonable actions (including but not limited to Seller’s timely filing of all required applications and documents, payment of all applicable fees, and completion of all electric system upgrades needed, if any) to have the Project physically interconnected to the Transmission/Distribution Owner’s distribution system, but fails to secure any necessary commitments from the Transmission/Distribution Owner for such interconnection and upgrades due to delays beyond Seller’s reasonable control, then the expected Commercial Operation Date specified in Section 2.6.1 shall be extended for the number of days necessary to physically interconnect the Facility; provided, however, that such delay may not extend the expected Commercial Operation Date specified in Section 2.6.1 for a period of more than six (6) months; or
        2. If Seller has taken all commercially reasonable actions (including but not limited to Seller’s timely filing of all required applications and documents and payment of all applicable fees, if any) to obtain permits necessary to construct and operate the facility but fails to secure any such permits due to delays beyond Seller’s reasonable control, then the expected Commercial Operation Date specified in Section 2.6.1 shall be extended for the number of days necessary to secure such permits; provided, however, that such delay may not extend the expected Commercial Operation Date specified in Section 2.6.1 for a period of more than six (6) months; or
        3. In the event of Force Majeure, the expected Commercial Operation Date specified in Section 2.6.1 shall be extended on a day-to-day basis for a cumulative period of not more than six (6) months; provided that Seller complies with Section 11.
        4. Extensions under Section 2.6.2.1, 2.6.2.2, and 2.6.2.3, to the extent they may occur concurrently, shall run concurrently.
     3. Seller shall provide Notice to Buyer of the Commercial Operation Date of the Facility no later than thirty (30) days before such date.
     4. Notwithstanding anything in this Agreement, if Seller is unable to achieve Commercial Operation by the expected Commercial Operation Date specified in Section 2.6.1, which may be extended pursuant to Section 2.6.2, then Seller shall either (i) terminate the Agreement, in which case Buyer may retain the full Reservation Deposit, or (ii) pay to Buyer daily delay damages in the amount of twenty cents ($0.20) for each kilowatt of Contract Capacity for each day beyond the expected Commercial Operation Date specified in Section 2.6.1, as may be extended pursuant to Section 2.6.2, that Seller requires to achieve Commercial Operation.
     5. Commercial Operation shall occur only when all of the following conditions have been satisfied:
        1. the Facility’s status as an Eligible Renewable Energy Resource is demonstrated by Seller’s receipt of pre-certification from the CEC;
        2. the Parties have executed and exchanged the “Commercial Operation Date Confirmation Letter” attached as Appendix B;
        3. Seller has obtained and is in compliance with the Interconnection Agreement for the Facility, and Seller has satisfied all applicable CAISO Tariff requirements and metering requirements in Sections 6.1 and 6.2;
        4. Seller has furnished to Buyer all insurance documents required under Section 10;
        5. Seller has provided thirty (30) days’ Notice prior to the Commercial Operation Date as required under Section 2.6.3;
        6. Seller has obtained all permits necessary to operate the Facility and is in compliance with all Laws applicable to the operation of the Facility;
        7. Seller has successfully installed and tested the Facility at its full Contract Capacity, and the Facility is capable of reliably generating at its full Contract Capacity; and
        8. Seller has satisfied the Collateral Requirement set forth in Section 3.9.

# CONTRACT CAPACITY AND QUANTITY; TERM; CONTRACT PRICE; BILLING; COLLATERAL REQUIREMENT

* 1. Contract Capacity. The Contract Capacity is \_\_\_\_\_\_\_\_ kW, alternating current (AC). The Contract Capacity shall not exceed 1,000 kW AC.
  2. Contract Quantity. The “Contract Quantity” during each Contract Year is the amount set forth in the applicable Contract Year in the “Delivery Term Contract Quantity Schedule,” set forth below, which amount is net of Station Use. Seller shall have the option to update the Delivery Term Contract Quantity Schedule one (1) time prior to Commercial Operation Date.

| **Delivery Term Contract Quantity Schedule** | |
| --- | --- |
| **Contract Year** | **Contract Quantity (kWh/Yr)** |
| 1 |  |
| 2 |  |
| 3 |  |
| 4 |  |
| 5 |  |
| 6 |  |
| 7 |  |
| 8 |  |
| 9 |  |
| 10 |  |
| 11 |  |
| 12 |  |
| 13 |  |
| 14 |  |
| 15 |  |
| 16 |  |
| 17 |  |
| 18 |  |
| 19 |  |
| 20 |  |

* 1. Transaction. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, all Product produced by or associated with the Facility that is delivered to the Delivery Point. In no event shall Seller have the right to procure the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement. Buyer shall have no obligation to receive or purchase the Product from Seller prior to the Commercial Operation Date or after the end of the Delivery Term.
  2. Term of Agreement; Survival of Rights and Obligations.
     1. The term shall commence upon the Execution Date of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Sections 10.4 or 11 of this Agreement (the “Term”).
     2. Notwithstanding anything to the contrary in this Agreement, all of the rights and obligations that this Agreement expressly provides survive termination as well as the rights and obligations that arise from Seller’s or Buyer’s covenants, agreements, representations, and warranties applicable to, or to be performed, at or during any time before or as a result of the termination of this Agreement.
  3. Delivery Term. Seller shall deliver the Product from the Facility to Buyer for a period of twenty (20) Contract Years for all generation technologies. The Delivery Term shall commence on the Commercial Operation Date and continue until the end of the last Contract Year unless the Agreement is terminated sooner pursuant to the terms of the Agreement.
  4. Contract Price.
     1. Throughout the Delivery Term, and subject to and in accordance with the terms of this Agreement, Buyer shall pay the Contract Price to Seller for the Product based on the amount of Delivered Energy. The Contract Price shall be $ \_\_\_\_\_\_\_\_\_\_ per kWh of Delivered Energy with an additional $\_\_\_\_\_\_\_\_\_ per kWh for Delivered Energy during the first five (5) Contract Years.
     2. In any Contract Year, if the amount of Delivered Energy exceeds one hundred fifteen percent (115%) of the annual Contract Quantity amount, the Contract Price for such Delivered Energy in excess of one hundred fifteen percent (115%) shall be adjusted to be seventy-five percent (75%) of the applicable Contract Price.
     3. Seller shall curtail production of the Facility in accordance with the applicable Notice after receipt of: (a) Notice from Buyer that Buyer has been instructed by the CAISO or the Transmission/Distribution Owner or any other jurisdictional entity to curtail Energy deliveries; or (b) Notice that Seller has been given a curtailment order or similar instruction in order to respond to an Emergency; or (c) Notice of a Curtailment Order issued by Buyer. Buyer shall have no obligation to pay Seller for any Product delivered in violation of this Section 3.6.3 or for any Product that Seller would have been able to deliver but for the fact of a curtailment pursuant to this Section 3.6.3. Seller shall assume all liability and reimburse Buyer for any and all costs and charges incurred by Buyer, including but not limited to CAISO penalties, as a result of Seller delivering Energy in violation of the Section 3.6.3.
     4. Buyer shall have the right, but not the obligation, to issue to Seller a Curtailment Order. Buyer shall pay Seller the Contract Price for the Product Seller would have been able to deliver but for the fact that Buyer issued a Curtailment Order (“Paid Curtailed Product”) as calculated pursuant to Section 3.6.5.
     5. No later than fifteen (15) days after the end of a calendar month in which Buyer issued a Curtailment Order, Seller shall prepare and provide to Buyer a calculation of the amount of Product the Facility would have been able to deliver under Sections 3.6.4 for the applicable month. Seller shall apply accepted industry standards in making such calculation and take into consideration past performance of the Facility, and other relevant information, including but not limited to, Facility availability, weather, water flow, and solar irradiance data for the period of time during the Buyer issued Curtailment Order. Upon Buyer’s request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify Seller’s calculation.
     6. If Seller was approved by Buyer as qualifying for the Local Business Incentive based on the circumstances at the time that Seller submitted the Feed-in Tariff Application, but at any time subsequent to the submission of the Feed-in Tariff Application, Seller no longer meets the requirements for the Local Business Incentive, then Seller shall provide Buyer with Notice within sixty (60) days of the date that Seller no longer meets the requirements for the Local Business Incentive. The Notice provided by Seller to Buyer shall state the date on which Seller no longer met the requirements for the Local Business Incentive. The applicable Contract Price specified in Section 3.6.1 shall be reduced by the amount of the Local Business Incentive as of the date on which Seller no longer met the requirements for the Local Business Incentive. If Seller has previously billed Buyer for Delivered Energy at a Contract Price that includes the Local Business Incentive but was generated after the date on which Seller no longer qualifies for the Local Business Incentive, then Seller shall reduce the next invoice by the amount equal to the Local Business Incentive multiplied by the number of hours of Delivered Energy that Seller billed Buyer for, but for which Seller did not qualify for the Local Business Incentive.
  5. Billing.
     1. The amount of Delivered Energy shall be determined by the meter specified in Section 6.2.1 or Check Meter, as applicable. Buyer has no obligation to purchase from Seller any Energy that is not or cannot be delivered to the Delivery Point, regardless of circumstance. Buyer will not be obligated to pay Seller for any Product that Seller delivers in violation of Section 3.6.3, including any Product Seller delivers in excess of the amount specified in any Curtailment Order.
     2. For the purpose of calculating monthly payments under this Agreement, the amount recorded by the meter specified in Section 6.2.1 or Check Meter, as applicable, will be multiplied by the Contract Price noted in Section 3.6.1, as possibly adjusted under Section 3.6.2, less any Energy produced by the Facility for which Buyer is not obligated to pay Seller as set forth in Section 3.7.1.
     3. On or before the last Business Day of the month immediately following each calendar month, Seller shall determine the amount of Delivered Energy received by Buyer pursuant to this Agreement for each monthly period and issue an invoice showing the calculation of the payment. Seller shall also provide to Buyer: (a) records of metered data sufficient to document and verify the generation of Delivered Energy by the Facility during the preceding month; (b) access to any records; and (c) an invoice, in the format specified by Buyer.

In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. In the event adjustments to payments are required as a result of inaccurate meter(s), Buyer in its reasonable discretion shall determine the correct amount of Delivered Energy received under this Agreement during any period of inaccuracy and recompute the amount due from Buyer to Seller for the Delivered Energy delivered during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within thirty (30) days of such resolution.

* + 1. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. In the event adjustments to payments are required as a result of inaccurate meter(s), Buyer in its reasonable discretion shall determine the correct amount of Delivered Energy received under this Agreement during any period of inaccuracy and recompute the amount due from Buyer to Seller for the Delivered Energy delivered during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within thirty (30) days of such resolution.
    2. All interest paid or payable under this Agreement shall be computed as simple interest using the Interest Rate and, unless specified otherwise in this Agreement, shall be paid concurrently with the payment or refund of the underlying amount on which such interest is payable.
  1. Title and Risk of Loss. Title to and risk of loss related to the Energy from the Facility shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product from the Facility free and clear of all liens, security interests, claims, and encumbrances or any interest therein or thereto by any person.
  2. Collateral Requirement. On or before the Commercial Operation Date, Seller shall post and thereafter maintain a collateral requirement equal to twenty dollars ($20.00) for each kilowatt of Contract Capacity (the “Collateral Requirement”). The Collateral Requirement will be held by Buyer and must be in the form of either cash deposit or Letter of Credit. The Collateral Requirement shall be posted to Buyer and maintained at all times during the Delivery Term. Buyer shall be entitled to draw upon the Collateral Requirement for any damages arising upon Buyer’s declaration of an Early Termination Date as set forth in Section 11.3. In the event that Buyer draws on the Collateral Requirement, Seller shall promptly replenish such Collateral Requirement to the amount specified in this Section 3.9. Buyer shall return the unused portion of the Collateral Requirement to Seller promptly at the end of the Delivery Term, once all payment obligations of the Seller under this Agreement have been satisfied. Buyer shall pay simple interest on cash held to satisfy the Collateral Requirements at the rate and in the manner set forth in Section 3.7.4.

# GREEN ATTRIBUTES; RESOURCE ADEQUACY BENEFITS; ERR REQUIREMENTS

* 1. Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.
  2. Conveyance of Product. Throughout the Delivery Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, for Buyer’s benefit throughout the Delivery Term.
  3. WREGIS. Seller shall cause and allow Buyer, or Buyer’s agent, to be the “Qualified Reporting Entity” and “Account Holder” (as such terms are defined by WREGIS) for the Facility within thirty (30) days after the Commercial Operation Date. In the event that Buyer is not the Qualified Reporting Entity, Seller shall, at its sole expense, take all actions necessary and provide any documentation requested by Buyer in support of WREGIS account administration and compliance with the California Renewables Portfolio Standard. Seller, at its sole expense, shall take all necessary steps and submit/file all necessary documentation to ensure that the Facility remains an Eligible Renewable Energy Resource throughout the Delivery Term as outlined in Section 4.5 and that all WREGIS Certificates associated with the Product accrue to Buyer and will satisfy the requirements of the California Renewables Portfolio Standard.
  4. Resource Adequacy Benefits. 
     1. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Contract Capacity, including Capacity Attributes, if any, from the Project to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe (“Resource Adequacy Requirements”).
     2. If providing any Resource Adequacy, Seller shall comply with the Resource Adequacy requirements set forth in the CAISO Tariff, including Section 40 thereof, as may be changed from time to time.
     3. If providing any Resource Adequacy, Seller shall cooperate in good faith with and comply with reasonable requests of Buyer and the CAISO to enable Buyer and/or the CAISO to assign Capacity Attributes and Resource Adequacy Benefits to the Facility.
  5. Eligible Renewable Energy Resource. Seller shall take all actions necessary to achieve and maintain status as an Eligible Renewable Energy Resource or ERR throughout the Delivery Term. Within thirty (30) days after the Commercial Operation Date, Seller shall file an application or other appropriate request with the CEC for CEC Certification for the Facility. Seller shall expeditiously seek CEC Certification, including promptly responding to any requests for information from the requesting authority.

# REPRESENTATION AND WARRANTIES; COVENANTS

* 1. Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:
     1. it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
     2. the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws;
     3. this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;
     4. it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt; and
     5. there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.
  2. General Covenants. Each Party covenants that throughout the Term of this Agreement:
     1. it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
     2. it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
     3. it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law.
  3. Seller’s Representations, Warranties and Covenants. In addition to the representations, warranties and covenants specified in Sections 5.1 and 5.2, Seller makes the following additional representations, warranties and covenants to Buyer, as of the Execution Date:
     1. Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073), the California Solar Initiative (as defined in CPUC Decision 06-01-024), and/or other similar California ratepayer subsidized program relating to energy production or rebated capacity costs with respect to the Facility.
     2. Seller’s execution of this Agreement will not violate Public Utilities Code Section 2821(d)(1), if applicable;
     3. Seller has met all applicable legal and regulatory requirements to sell wholesale electricity in California;
     4. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
     5. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
     6. Throughout the Delivery Term, Seller shall: (a) own and operate the Facility; (b) deliver the Product to Buyer free and clear of all liens, security interests, claims, and encumbrances or any interest therein or thereto by any individual or entity; and (c) hold the rights to all of the Product;
     7. Seller is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the Buyer in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement;
     8. Throughout the Delivery Term: (a) Seller shall not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer; and (b) Seller shall not start-up or operate the Facility per instruction of or for the benefit of any third party, except as required by other Laws;
     9. Seller has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement;
     10. The construction of the Facility shall comply with all Laws, including applicable state and local laws, building standards, and interconnection requirements;
     11. No other person or entity, including any other generating facility, has any rights in connection with Seller’s Interconnection Agreement or Seller’s Interconnection Facilities and no other persons or entities shall have any such rights during the Term;
     12. During the Delivery Term, Seller shall not allow any other person or entity, including any other generating facility, to use Seller’s Interconnection Facilities; and
     13. All representations made by Seller in its Feed-in Tariff Application are true and correct.

# GENERAL CONDITIONS

* 1. CAISO Agreements; CAISO Costs; Interconnection Agreements. During the Delivery Term, Seller shall comply with all contractual, metering, and applicable interconnection requirements, including those set forth in the Interconnection Agreement, Transmission/Distribution Owner’s applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, and all Laws so as to be able to deliver Energy to the Delivery Point. Seller shall provide and maintain during the Delivery Term, at its cost, all data processing gateways or remote intelligence gateways, telemetering equipment and data acquisition services, and associated measuring and recording equipment necessary to meet all applicable WREGIS and CAISO requirements applicable to the Facility during the Delivery Term. Seller shall also secure and maintain in full force all of the CAISO agreements, certifications, and approvals required in order for the Facility to comply with the CAISO Tariff and any other agreement necessary to deliver Product to Buyer during the Delivery Term. Seller shall submit its request to interconnect the Facility and obtain an Interconnection Agreement pursuant to Transmission/Distribution Owner’s Wholesale Distribution Tariff. For avoidance of doubt, Facilities that interconnect pursuant to CPUC Rule 21 are not eligible for this Agreement.
  2. Metering Requirements. 
     1. All Energy from the Project must be delivered through a single revenue quality meter and that meter must be dedicated exclusively to the Project. All Delivered Energy purchased under this Agreement must be measured by the Project’s revenue quality meter(s) to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project.
     2. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Facility at a location provided by Seller that is compliant with Buyer’s electric service requirements. The Check Meter may be interconnected with Buyer’s communication network, or the communication network of Buyer’s Agent, to permit periodic, remote collection of revenue quality meter data. In the event that Buyer elects to install a Check Meter, Buyer may compare the Check Meter data to the Facility’s revenue meter data. If the deviation between the Facility’s revenue meter data and the Check Meter data for any comparison is greater than 0.3%, Buyer may provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or the Facility’s revenue meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter shall be the same as for a comparable Buyer-owned meter. Parties shall have the right to have representatives present during all such tests. The Check Meter, if Buyer elects to install a Check Meter, is intended to be used for back-up purposes in the event of a failure or other malfunction of the Facility’s revenue meter, and Check Meter data shall only be used to validate the Facility’s revenue meter data and, in the event of a failure or other malfunction of the Facility’s revenue meter, in place of the Facility’s revenue meter until such time that the Facility’s revenue meter is recertified.
  3. Meter Data. Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, including any inspection, testing and calibration data and reports. Seller shall grant Buyer and Buyer’s agent the right to retrieve the meter readings from Seller or Seller’s meter reading agent, which may be PG&E.
  4. Standard of Care. Seller shall: (a) maintain and operate the Facility and Interconnection Facilities in conformance with the Interconnection Agreement, the CAISO Tariff, all Laws, and Prudent Electrical Practices; (b) obtain any governmental authorizations and permits required for the construction and operation of the Facility and Interconnection Facilities; and (c) generate, schedule and perform transmission services in compliance with all applicable CAISO operating policies, criteria, rules, guidelines and tariffs and Prudent Electrical Practices. Seller shall reimburse Buyer for any and all losses, damages, claims, penalties, or liability Buyer incurs as a result of Seller’s failure to obtain or maintain any governmental authorizations and permits required for construction and operation of the Facility throughout the Term of this Agreement.
  5. Access Rights. 
     1. Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption (if applicable), efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within twenty (20) days of Buyer’s request.
     2. Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice under the circumstances, visit the Project during normal business hours for purposes reasonably connected with this Agreement. Buyer, its authorized agents, employees and inspectors must (a) at all times adhere to all safety and security procedures as may be required by Seller; and (b) not interfere with the operation of the Project. Buyer shall make reasonable efforts to coordinate its emergency activities with the safety and security departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator’s safety and security departments, if any exist.
  6. Protection of Property. Seller shall be solely responsible for protecting its own facilities from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the Transmission/Distribution Owner's facilities. Buyer shall not be liable for any such damages so caused.
  7. Forecasting. Seller shall comply with the forecasting in Appendix C.
  8. Greenhouse Gas Emissions. Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer’s written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information, or instruments with respect to generation by the Facilityreasonably necessary to permit Buyer to comply with such requirements, if any.
  9. Reporting and Record Retention. 
     1. Seller shall use commercially reasonable efforts to meet the Milestone Schedule set forth in Appendix E and avoid or minimize any delays in meeting such schedule. Seller shall provide Project development status reports in a format and a frequency, which shall not exceed one (1) report per month, specified by the Buyer. The report shall describe Seller’s progress relative to the development, construction, and startup of the Facility, as well as a Notice of any anticipated change to the Commercial Operation Date and whether Seller is on schedule to meet the Commercial Operation Date.
     2. Seller shall within ten (10) Business Days of receipt thereof provide to Buyer copies of any Interconnection Agreement and all other material reports, studies and analyses furnished by any Transmission/Distribution Owner, and any correspondence with the Transmission/Distribution Owner related thereto, concerning the interconnection of the Facility to the Transmission/Distribution Owner’s electric system or the transmission of Energy on the Transmission/Distribution Owners’ electric system.
     3. Seller shall provide to Buyer on the Commercial Operation Date, and within thirty (30) days after the completion of each Contract Year thereafter during the Delivery Term, a copy of any inspection and maintenance report regarding the Facility that was also provided to the Transmission/Distribution Owner during the previous Contract Year.
  10. Tax Withholding Documentation. Upon Buyer’s request, Seller shall promptly provide to Buyer Internal Revenue Service tax Form W-9 and California tax Form 590 (or their equivalent), completed with Seller’s information, and any other documentation necessary for Buyer to comply with its tax reporting or withholding obligations with respect to Seller.
  11. Modifications to Facility. During the Delivery Term, Seller shall not repower or materially modify or alter the Facility without the written consent of Buyer. Material modifications or alterations include, but are not limited to, (a) movement of the Site, (b) changes that may increase or decrease the expected output of the Facility other than as allowed under Section 3.2, (c) changes that may affect the generation profile of the Facility, (d) changes that may affect the ability to accurately measure the output of Product from the Facility and (e) changes that conflict with elections, information or requirements specified elsewhere in this Agreement. Material modifications or alterations do not include maintenance and repairs performed in accordance with Prudent Electrical Practices. Seller shall provide to Buyer Notice not less than ninety (90) days before any proposed repowering, modification or alteration occurs describing the repowering, modification or alteration to Buyer’s reasonable satisfaction.
  12. No Additional Incentives. Seller agrees that during the Term of this Agreement it shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, the California Solar Initiative, as defined in CPUC Decision 06-01-024, Buyer’s net energy metering tariff, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility.
  13. Small Hydro/Private Energy Producer. Seller agrees to provide to Buyer copies of each of the documents identified in California Public Utilities Code Section 2821(d)(1), if applicable, as may be amended from time to time, as evidence of Seller’s compliance with such Public Utilities Code section prior to the Commercial Operation Date and, after the Commercial Operation Date, within thirty (30) days of Seller’s receipt of written request.
  14. Site Control. Seller shall have Site Control as of the earlier of: (a) the Commercial Operation Date; or (b) any date before the Commercial Operation Date to the extent necessary for the Seller to perform its obligations under this Agreement and, in each case, Seller shall maintain Site Control throughout the Delivery Term. Seller shall promptly provide Buyer with Notice if there is any change in the status of Seller’s Site Control.

# INDEMNITY

Seller shall defend, save harmless and indemnify Buyer and its directors, officers, officials, and employees against and from any and all loss, liability, damage, expense , and costs (including without limitation costs and fees of litigation and reasonable attorneys’ fees) of every nature resulting from or arising out of Seller’s performance of its obligations under this Agreement , or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of Buyer.

# INSURANCE

* 1. Insurance Coverage. Seller shall, at its own expense, starting on the Execution Date and until the end of the Term, and for such additional periods as may be specified below, provide and maintain in effect the following insurance policies and minimum limits of coverage as specified below, and such additional coverage as may be required by Law, with insurance companies authorized to do business in the state in which the services are to be performed, with an A.M. Best’s Insurance Rating of not less than A-:VII.
     1. Commercial general liability insurance, written on an occurrence, not claims-made basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, contractual liability, premises-operations, owners and contractors protective, hazard, explosion, collapse and underground. Such insurance must bear a combined single limit per occurrence and annual aggregate of not less than one million dollars ($2,000,000.00), exclusive of defense costs, for all coverages. Such insurance must contain standard cross-liability and severability of interest provisions. If Seller elects, with Buyer’s written concurrence, to use a “claims made” form of commercial general liability insurance, then the following additional requirements apply: (a) the retroactive date of the policy must be prior to the Execution Date; and (b) either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates. Governmental agencies which have an established record of self-insurance may provide the required coverage through self-insurance.
     2. Workers’ compensation insurance with statutory limits, as required by the state having jurisdiction over Seller’s employees, and employer’s liability insurance with limits of not less than: (a) bodily injury by accident - one million dollars ($1,000,000.00) each accident; (b) bodily injury by disease - one million dollars ($1,000,000.00) policy limit; and (c) bodily injury by disease - one million dollars ($1,000,000.00) each employee.
     3. Commercial automobile liability insurance covering bodily injury and property damage with a combined single limit of not less than one million dollars ($1,000,000.00) per occurrence. Such insurance must cover liability arising out of Seller’s use of all owned, non-owned and hired automobiles in the performance of the Agreement.
     4. Umbrella/excess liability insurance, written on an occurrence, not claims-made basis, providing coverage excess of the underlying employer’s liability, commercial general liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than four million dollars ($4,000,000.00) per occurrence and in the annual aggregate.
  2. Additional Insurance Provisions.
     1. On or before the later of (a) sixty (60) days after the Execution Date and (b) the date immediately preceding commencement of construction of the Facility, and again within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to Buyer. Notwithstanding the foregoing sentence, Seller shall in no event furnish Buyer certificates of insurance evidencing required coverage later than the Commercial Operation Date. All deductibles, co-insurance and self-insured retentions applicable to the insurance above must be paid by Seller. All certificates of insurance must note that the insurers issuing coverage must endeavor to provide Buyer with at least thirty (30) days’ prior written notice in the event of cancellation of coverage. Buyer’s receipt of certificates that do not comply with the requirements stated in this Section 8.2.1, or Seller’s failure to provide such certificates, do not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 8 and do not constitute a waiver of any of the requirements of Section 8.
     2. Insurance coverage described above in Section 8.1 shall provide for thirty (30) days written Notice to Buyer prior to cancellation, termination, alteration, or material change of such insurance.
     3. Evidence of coverage described above in Section 8.1 shall state that coverage provided in primary and is not excess to or contributing with any insurance or self-insurance maintained by Buyer.
     4. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.
     5. All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance must be issued, clearly labeled with this Agreement’s identification number and submitted in accordance with Section 9 and Appendix F.
     6. The insurance requirements set forth in Section 8.1 shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The commercial general liability insurance required in Section 8.1.1 and the umbrella/excess liability insurance required in Section 8.1.4 must name Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller’s construction, use or ownership of the Facility.
     7. Seller shall remain liable for all acts, omissions or default of any subcontractor or subsupplier and shall indemnify, defend and hold harmless Buyer for any and all loss or damages, as well as all costs, charges and expenses which Buyer may suffer, incur, or bear as a result of any acts, omissions or default by or on behalf of any subcontractor or subsupplier.
     8. If Seller fails to comply with any of the provisions of this Section 8, Seller, among other things and without restricting Buyer’s remedies under Law or otherwise, shall, at its own cost, act as an insurer and provide insurance in accordance with the terms and conditions of this Section 8. With respect to the required commercial general liability insurance set forth in Section 8.1.1, umbrella/excess liability insurance set forth in Section 8.1.4, and commercial automobile liability insurance set forth in Section 8.1.3, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer with an A.M. Best’s Insurance Rating of A-:VII would have, had the insurance been maintained in accordance with the terms and conditions set forth in this Section 8 and given the required additional insured wording in the commercial general liability insurance and umbrella/excess liability insurance, and standard “Who is an Insured” provision in commercial automobile liability form.

# NOTICES

Notices (other than forecasts and scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile, or electronic messaging (e-mail). A notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received on the next Business Day after such Notice is sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All Notices, requests, invoices, statements or payments for this Facility must reference this Agreements identification number. Notices shall be provided as indicated in Appendix F.

# force majeure

* 1. No Default for Force Majeure. Neither Party shall be in default in the performance of any of its obligations set forth in this Agreement when and to the extent failure of performance is caused by Force Majeure.
  2. Requirements Applicable to Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the “Claiming Party”) shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:
     1. The Claiming Party, on or before the fourteenth (14th) day after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and
     2. The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.
  3. Limitations. The suspension of the Claiming Party’s performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.
  4. Termination. Either Party may terminate this Agreement on at least five (5) Business Days’ prior Notice, in the event of Force Majeure which materially interferes with such Party’s ability to perform its obligations under this Agreement and which (a) extends for more than 365 consecutive days, (b) extends for more than a total of 365 days in any consecutive 540-day period, or (c) is consistent with Section 2.6.2.2.

# EVENTS OF DEFAULT AND TERMINATION

* 1. Termination. Unless terminated earlier pursuant to Section 10.4 or this Section 11, this Agreement automatically terminates immediately following the last day of the Delivery Term.
  2. Events of Default. An “Event of Default” means, with respect to a Party, the occurrence of any of the following:
     1. With respect to either Party:
        1. A Party becomes Bankrupt;
        2. Except for an obligation to make payment when due, if there is a failure of a Party to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice thereof from the non-breaching Party to the breaching Party;
        3. A Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice from the non-breaching Party to the breaching Party; or
        4. Any representation or warranty made by a Party (a) is false or misleading in any material respect when made or (b) becomes false or misleading in any material respect during the Term.
     2. With respect to Seller:
        1. Seller fails to take all corrective actions specified in any Buyer Notice, within the time frame set forth in such Notice, that the Facility is out of compliance with any term of this Agreement; provided that if such corrective action falls under a specific termination right under Section 11.2.2, then the time frame, if any, set forth for such right shall apply;
        2. The Facility has not achieved Commercial Operation by the expected Commercial Operation Date specified in Section 2.6.1 and Seller has not elected to pay daily delay damages pursuant to Section 2.6.4;
        3. Subject to Section 10, Seller delivers less than 80% of the applicable Contract Quantity from the Facility to Buyer for a period of two (2) consecutive Contract Years;
        4. Seller fails to maintain its status as an ERR as set forth in Section 4.5 of the Agreement;
        5. Seller abandons the Facility;
        6. Seller installs generating equipment at the Facility that exceeds the Contract Capacity and such excess generating capacity is not removed within five (5) Business Days after Notice from Buyer;
        7. Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement product that was not generated by the Facility;
        8. Seller fails to install any of the equipment or devices necessary for the Facility to satisfy the Contract Capacity set forth in Section 3.1;
        9. An unauthorized assignment of the Agreement, as set forth in Section 15;
        10. Seller fails to reimburse Buyer any amounts due under this Agreement;
        11. Seller breaches the requirements in Section 6.12 regarding incentives; or
        12. Seller fails to maintain the Collateral Requirement set forth in Section 3.9.
  3. Declaration of an Event of Default. If an Event of Default has occurred, the non-defaulting Party shall have the right to: (a) send Notice, designating a day, no earlier than five (5) days after such Notice and no later than twenty (20) days after such Notice, as an early termination date of this Agreement (“Early Termination Date”); (b) accelerate all amounts owing between the Parties; (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date; (d) collect any Settlement Amount under Section 11.5; and (e) if the defaulting party is the Seller and Buyer terminates the Agreement prior to the start of the Commercial Operation Date, Buyer shall have the right to retain the entire Reservation Deposit.
  4. Suspension of Performance. If an Event of Default shall have occurred, the non-defaulting Party has the right to immediately suspend performance under this Agreement and pursue all remedies available at Law or in equity against the defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.
  5. Calculation of Settlement Amount.
     1. If either Party exercises a termination right under Section 12 after the Commercial Operation Date, the non-defaulting Party shall calculate a settlement amount (“Settlement Amount”) equal to the amount of the non-defaulting Party’s aggregate Losses and Costs less any Gains, determined as of the Early Termination Date. Prior to the Commercial Operation Date, the Settlement Amount shall be Zero dollars ($0).
     2. If the non-defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, determined as of the Early Termination Date, the Settlement Amount shall be Zero dollars ($0).
     3. The Buyer shall not have to enter into replacement transactions to establish a Settlement Amount.
     4. Buyer shall have the right to draw upon the Collateral Requirement to collect any Settlement Amount owed to Buyer.
  6. Rights and Remedies Are Cumulative. The rights and remedies of the Parties pursuant to this Section 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
  7. Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party’s non-performance of this Agreement, including with respect to termination of this Agreement.
  8. Right of First Refusal. 
     1. If Seller terminates this Agreement pursuant to Section 10.4, or if Seller has an Event of Default prior to the Commercial Operation Date, neither Seller nor Seller’s Affiliates may sell, or enter into a contract to sell, Energy, Green Attributes, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than Buyer for a period of two (2) years following the effective date of such termination (“Restricted Period”).
     2. This prohibition on contracting and sale shall not apply if, before entering into such contract or making a sale to a party other than Buyer, Seller or Seller’s Affiliate provides Buyer with a written offer to sell the Energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits to Buyer at the Contract Price and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after Buyer’s receipt thereof.
     3. Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site of the proposed Facility during the Restricted Period so long as the limitations contained in this Section 11.8 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.8 pursuant to a written agreement reasonably approved by Buyer.
     4. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach of the covenants contained within this Section 11.8.

# Governmental Charges

* 1. Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall reimburse Seller for such Governmental Charges within thirty (30) days of Notice by Seller. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller’s payments, Seller shall reimburse Buyer for such amounts within thirty (30) days of Notice from Buyer. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party’s exemption is lost or reduced, each Party’s responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

# RELEASE OF INFORMATION And Recording conversation

* 1. Release of Information. Seller authorizes Buyer to release to the FERC, CEC, the CPUC, other Governmental Authority, and/or media outlet information regarding the Facility, including the Seller’s name and location, and the size, location and operational characteristics of the Facility, the Term, the ERR type, photographs of the project, the Commercial Operation Date, greenhouse gas emissions data, and the net power rating of the Facility, as requested from time to time pursuant to the CEC’s, CPUC’s or applicable Governmental Authority’s rules and regulations.
  2. Public Announcements.  Seller shall make no public announcement regarding any aspect of this Agreement or the role of Seller in regards to the development or operation of the Project without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any public announcement by Seller must comply with California Business and Professions Code § 17580.5 and with the *Guides for the Use of Environmental Marketing Claims*, published by the Federal Trade Commission, as it may be updated from time to time.

# ASSIGNMENT

* 1. General Assignment. Except as provided in Sections 14.2 and 14.3, Seller may not assign this Agreement or its rights hereunder without the prior written consent of the Buyer, which consent shall not be unreasonably withheld or delayed so long as among other things (a) the assignee assumes the Seller’s payment and performance obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) Seller delivers evidence satisfactory to Buyer of the proposed assignee’s technical and financial capability to meet or exceed Seller’s obligations hereunder and (d) the Seller delivers such tax and enforceability assurance as Buyer may reasonably request.
  2. Assignment to Financing Providers. Seller may assign this Agreement as collateral for any financing or refinancing of the Project (including any tax equity or lease financing) with the prior written consent of the Buyer, which consent shall not be unreasonably withheld or delayed. The Parties agree that, the consent provided to Buyer in accordance with this Section 14.2 shall be in a form substantially similar to the Form of Financing Consent attached hereto as Appendix H; provided that (a) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix H, including extension of any cure periods or additional remedies for financing providers, and (b) Seller shall be responsible at Buyer’s request for Buyer’s reasonable costs and attorneys’ fees associated with the review, negotiation, execution and delivery of documents in connection with such assignment.
  3. Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller’s Affiliates, Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

# GOVERNING LAW

This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

# DISPUTE RESOLUTION

* 1. Intent of the Parties. The sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Section 17, except that either Party may seek an injunction in Superior Court Humboldt County, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.
  2. Management Negotiations.
     1. The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party’s authorized representative, or such other person designated in writing as a representative of the Party (each a “Manager”). Either Manager may request a meeting, to be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party’s receipt of such request, at a mutually agreed time and place.
     2. All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed inadmissible as evidence such that it cannot be used or referred to in any subsequent judicial or arbitration process between the Parties, whether with respect to this dispute or any other.
     3. If the matter is not resolved within forty-five (45) days of commencement of negotiations under Section 16.2.1, or if the Party receiving the written request to meet refuses or does not meet within the ten (10) Business Day period specified in Section 16.2.1, either Party may initiate arbitration of the controversy or claim according to the terms of Section 16.3.
  3. Arbitration Initiation. If the dispute cannot be resolved by negotiation as set forth in Section 16.2 above, then the Parties shall resolve such controversy through arbitration (“Arbitration”). The Arbitration shall be adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in Humboldt County, California, and shall be administered by and in accordance with JAMS’ Commercial Arbitration Rules. If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate at any time following the unsuccessful conclusion of the management negotiations provided for in Section 16.2.

# Miscellaneous

* 1. Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
  2. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.
  3. General. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.
  4. Interpretation. Whenever this Agreement specifically refers to any Law, tariff, Governmental Authority, regional reliability council, Transmission/Distribution Owner, or credit rating agency, the Parties hereby agree that the references also refers to any successor to such Law, tariff or organization.
  5. Construction. The Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof.
  6. Joint Powers Authority. Seller hereby acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Third Amended and Restated Joint Powers Agreement dated October 13, 2016 (the “Joint Power Agreement”), that Buyer is a public entity separate from its members, and that under the Joint Powers Agreement the members have no liability for any obligations or liabilities of Buyer. Seller agrees that Buyer shall solely be responsible for all debts, obligations and liabilities to Seller accruing and arising out of this Agreement, and Seller agrees that it shall have no rights against, and shall not make any claim, take any actions or assert any remedies against, any of Buyer’s members, any cities or counties participating in Buyer's community choice aggregation program, or any of Buyer’s retail customers in connection with this Agreement.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

|  |  |  |
| --- | --- | --- |
|  |  | **REDWOOD COAST ENERGY AUTHORITY** |
| (Seller) |  | (Buyer) |
|  |  |  |
| (Signature) |  | (Signature) |
|  |  |  |
| (Type/Print Name) |  | (Type/Print Name) |
|  |  |  |
| (Title) |  | (Title) |
|  |  |  |
| (Date) |  | (Date) |

# Appendix A ‑ Definitions

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party.

“Arbitration" has the meaning set forth in Section 16.

“As-Available Facility” means a generating facility that is powered by one of the following sources, except for a de minimis amount of Energy from other sources: (a) wind, (b) solar energy, (c) hydroelectric potential derived from small conduit water distribution facilities that do not have storage capability, or (d) other variable sources of energy that are contingent upon natural forces other than geothermal.

“Available Capacity” means the rated alternating current (AC) generating capacity of the Facility, expressed in whole kilowatts, that is available to generate Product.

“Bankrupt” means with respect to any entity, such entity:

* 1. Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it;
  2. Makes an assignment or any general arrangement for the benefit of creditors;
  3. Otherwise becomes bankrupt or insolvent (however evidenced);
  4. Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to such entity or any substantial portion of its property or assets; or
  5. Is generally unable to pay its debts as they fall due.

“Baseload Facility” means a generating facility that does not qualify as an As-Available Facility.

“Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, or the Friday following Thanksgiving during the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party in each instance shall be the Party from whom the notice, payment or delivery is being sent.

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

“CAISO Grid” means the system of transmission lines and associated facilities that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO FERC Electric Tariff, Fifth Replacement Volume No. 1, as amended from time to time.

“California Renewables Portfolio Standard” means the renewable energy program and policies codified in California Public Utilities Code Sections 399.11 through 399.33 and California Public Resources Code Sections 25740 through 25751, as such provisions may be amended or supplemented from time to time.

“Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce Energy or ancillary services, including, but not limited to, any accounting construct so that the full Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification” means certification by the CEC that the Facility is an ERR and that all Energy produced by the Facility qualifies as generation from an ERR.

“CEC Pre‑Certification” means provisional certification of the proposed Facility as an ERR by the CEC upon submission by a facility of a complete application and required supplemental information.

“Check Meter” means the Buyer revenue-quality meter section(s) or meter(s), which Buyer may require at its discretion, and which will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.

“Claiming Party” has the meaning set forth in Section 10.2.

“Commercial Operation” means the Contract Capacity has been installed and the Facility is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

“Commercial Operation Date” means the date on which the Facility achieves Commercial Operation.

“Contract Capacity” means the amount of electric energy generating capacity, set forth in Section 3.1, that Seller commits to install at the Site.

“Contract Price” has the meaning set forth in Section 3.6.

“Contract Quantity” has the meaning set forth in Section 3.2.

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

“Costs” means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Transaction; and (b) all reasonable attorneys’ fees and expenses incurred in connection with the termination of the Transaction.

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody’s. If the entity is rated by both S&P and Moody’s and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody’s, but not both, then the available rating shall determine the Credit Rating.

“Current Inverters” means devices used to convert DC electric energy to alternating current electric energy. [*for solar photovoltaic technology]*

“Curtailment Order” means any instruction from Buyer to Seller to reduce the delivery of Energy from the Facility for any reason other than as set forth in Sections 3.6.3 (a) or (b).

“DC” means direct current. *[for solar photovoltaic technology]*

“DC Collection System” means the DC equipment, cables, components, devices and materials that interconnect the Photovoltaic Modules with the Current Inverters. *[for solar photovoltaic technology]*

“Delivered Energy” means all Energy produced from the Facility and delivered by Seller to the Delivery Point, expressed in kWh, as recorded by the meter specified in Section 6.2.1 or the Check Meter, as applicable.

“Delivery Point” has the meaning set forth in Section 2.5.

“Delivery Term” has the meaning set forth in Section 3.5.

“Early Termination Date” has the meaning set forth in Section 11.3.

“Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in Public Utilities Code Sections 399.12 or Section 399.16 and California Public Resources Code Section 25741, as these code provision may be amended or supplemented from time to time.

“Emergency” means (a) an actual or imminent condition or situation which jeopardizes the integrity of the electric system or the integrity of any other systems to which the electric system is connected or any condition so defined and declared by the CAISO; or (b) an emergency condition as defined under an Interconnection Agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

“Energy” means three-phase, 60-cycle alternating current electric energy measured in kWh, net of Station Use. For purposes of the definition of “Green Attributes,” the word “energy” shall have the meaning set forth in this definition.

“Execution Date” means the latest signature date found at the end of the Agreement.

“Facility” has the meaning set forth in Section 2. The terms “Facility” or “Project” as used in this Agreement are interchangeable.

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

“Force Majeure” means any occurrence that was not anticipated as of the Execution Date that:

* 1. In whole or in part:
     1. Delays a Party’s performance under this Agreement;
     2. Causes a Party to be unable to perform its obligations; or
     3. Prevents a Party from complying with or satisfying the conditions of this Agreement;
  2. Is not within the control of that Party; and
  3. The Party has been unable to overcome by the exercise of due diligence, including war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or unforeseen curtailment or reduction in deliveries at the direction of a Transmission/Distribution Owner or the CAISO.

Force Majeure does not include:

* 1. The lack of wind, sun or other fuel source of an inherently intermittent nature;
  2. Reductions in generation from the Facility resulting from ordinary wear and tear, deferred maintenance or operator error; or
  3. Any delay in providing, or cancellation of, interconnection service by a Transmission/Distribution Owner or the CAISO, except to the extent such delay or cancellation is the result of a force majeure claimed by the Transmission/Distribution Owner or the CAISO.

“Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 11.5. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

“Governmental Charges” has the meaning set forth in Section 12.1.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. GreenAttributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluorideand other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law**,** to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere[[1]](#footnote-1); (3) the reporting rights to these avoided emissions, such asGreen Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the GreenAttributes associated with one (1) MWh of Energy. GreenAttributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable GreenAttributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient GreenAttributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

“Interconnection Agreement” means the small generator interconnection agreement entered into separately between Seller, Transmission/Distribution Owner, and CAISO (as appropriate) obtained by Seller pursuant to Transmission/Distribution Owner’s Wholesale Distribution Tariff.

“Interconnection Facilities” has the meaning set forth in the tariff applicable to the Seller’s Interconnection Agreement.

“Interconnection Point” has the meaning set forth in Section 2.4.

“Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

“JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

“kW” means kilowatt.

“kWh” means kilowatt-hour.

“kWPDC” means peak DC power. *[for solar photovoltaic technology]*

“Law” means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective during the Delivery Term; or any binding interpretation of the foregoing.

“Letter of Credit” means an irrevocable, non-transferable standby letter of credit issued either by a U.S. commercial bank or a foreign bank with a U.S. branch office with a Credit Rating of at least “A-” by S&P and “A3” by Moody’s (without a “credit watch”, “negative outlook” or other rating decline alert if its Credit Rating is “A-” by S&P or “A3” by Moody’s). The Letter of Credit must be substantially in the form as contained in Appendix G to this Agreement; provided that if the Letter of Credit is issued by a branch of a foreign bank, Buyer may require changes to such form.

“Local Business Incentive” means an adjustment to the Contract Price available for Delivered Energy during the first five (5) Contract Years, as specified in Section 3.6.1 above, from a Facility where the applicant and/or prime contractor has applied for and been approved as meeting the requirements for being a local business pursuant to the requirements and process specified in the Feed-in Tariff. For purposes of this Agreement, the amount of the Local Business Incentive is equal to $\_\_\_\_\_\_\_\_ per kWh of Delivered Energy.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 11.5. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

“Manager” has the meaning set forth in Section 16.2.

“Mechanical Completion” means that all equipment and systems that are necessary to generate the effective capacity of the Facility are installed. The Facility is mechanically, electrically, and structurally constructed with all control systems installed and connected. The Facility is functionally complete to the extent necessary to begin commissioning and testing of the Facility, though commissioning and testing need not have commenced.”

“MW” means megawatt (AC).

“MWh” means megawatt-hour.

“Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 16 (Governing Law) the word “party” or “parties” shall have the meaning set forth in this definition.

“Photovoltaic Module” means the individual module or component that produces DC electric energy from sun light. *[for solar photovoltaic technology]*

“Photovoltaic Module DC Rating” means, for each Photovoltaic Module installed or to be installed at the Site, the number (expressed in kWPDC) stated on the nameplate affixed thereto representing the manufacturer’s maximum (at “peak” sunlight) DC power rating at the standard test condition (“Pmp” or Power maximum at peak). *[for solar photovoltaic technology]*

“Product” means all Energy produced by the Facility throughout the Delivery Term, net of Station Use and electrical losses from the Facility to the Delivery Point; all Green Attributes; all Capacity Attributes, if any; and all Resource Adequacy Benefits, if any; generated by, associated with or attributable to the Facility throughout the Delivery Term.

“Project” has the meaning set forth in Section 2. The terms “Facility” and “Project” as used in this Agreement are interchangeable.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Laws. Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility’s needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Facility and Emergencies whether caused by events on or off the Site;

(c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the Transmission/Distribution Owner’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

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

“Reservation Deposit” means the deposit submitted by Seller to Buyer at the time Seller submitted its application for a feed-in tariff contract, which amount shall equal four dollars ($4.00) for each kilowatt of proposed alternating current (AC) generator capacity. Buyer shall return the Reservation Deposit to Seller once the Project achieves Commercial Operation by crediting Seller the full amount of the Reservation Deposit on Buyer’s first payment for delivered Product. Buyer shall retain the full amount of the Reservation Deposit in the event the Project does not achieve Commercial Operation by the Commercial Operation Date.

“Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

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

“Resource Adequacy Requirements” has the meaning set forth in Section 4.4.1.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time during the Delivery Term.

“Restricted Period” has the meaning set forth in Section 11.8.1.

“Settlement Amount” has the meaning set forth in Section 11.5.

“Site” means the real property on which the Facility is, or will be, located, as further described in Appendix D.

“Site Control” means the Seller: (a) owns the Site, (b) leases the Site, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) prior to the Commercial Operation Date, has the unilaterally exercisable contractual right to acquire or cause to be acquired on its behalf any of (a), (b), or (c).

“Station Use” means energy consumed within the Facility’s electric energy distribution system as losses, as well as energy used to operate the Facility’s auxiliary equipment. The auxiliary equipment may include, but is not limited to, forced and induced draft fans, cooling towers, boiler feeds pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps. This use is not to exceed 1% of average annual output.

“Term” has the meaning set forth in Section 3.4.1.

“Transaction” means the particular transaction described in Section 3.3.

“Transmission/Distribution Owner” means any entity or entities responsible for operating the electric distribution system or transmission system, as applicable, at and beyond the Interconnection Point.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.

“Wind Turbines” means the wind turbine generators installed on the Site as part of the Facility including any replacements or substitutes therefore. *[for wind technology]*

“WREGIS” means the Western Renewable Energy Generating Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.3.5.  *[for Facilities (1) 500 kW or greater and (2) eligible for a CAISO revenue meter.]*

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard. *[for Facilities (1) 500 kW or greater and (2) eligible for a CAISO revenue meter.]*

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.  *[for Facilities (1) 500 kW or greater and (2) eligible for a CAISO revenue meter.]*

*\*\*\* End of Appendix A \*\*\**

# Appendix B – Commercial Operation Date Confirmation Letter

In accordance with the terms of that certain Small Renewable Generator Power Purchase Agreement dated \_\_\_\_\_\_\_\_(“Agreement”) for the Facility named \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by and between REDWOOD COAST ENERGY AUTHORITY “Buyer”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Seller”), this letter serves to document the Parties further agreement that (i) the conditions precedent to the occurrence of the Commercial Operation Date have been satisfied as of this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_. This letter shall confirm the Commercial Operation Date, as defined in the Agreement, as the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below:

By: By:

|  |  |  |
| --- | --- | --- |
|  |  | **REDWOOD COAST ENERGY AUTHORITY** |
| (Seller) |  | (Buyer) |
|  |  |  |
| (Signature) |  | (Signature) |
|  |  |  |
| (Type/Print Name) |  | (Type/Print Name) |
|  |  |  |
| (Title) |  | (Title) |
|  |  |  |
| (Date) |  | (Date) |

*\*\*\* End of Appendix B \*\*\**

# Appendix C – Forecasting Requirements

**A.** **Available Capacity Forecasting.**

Seller shall provide the Available Capacity forecasts described below. ***[The following bracketed language applies to As-Available solar or wind Projects only]*** **[**Seller’s availability forecasts below shall include Project availability and updated status of ***[The following bracketed language applies to solar Projects only]*** **[**photovoltaic panels, inverters, transformers, and any other equipment that may impact availability**]** or ***[The following bracketed language applies to wind Projects only]*** **[**transformers, wind turbine unit status, and any other equipment that may impact availability**]**.**]** ***[The following bracketed language applies to As-Available Product only]*** Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary.

1. Annual Forecast of Available Capacity. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term (“First Annual Forecast Date”), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

2. Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

*\*\*\* End of Appendix C \*\*\**

**Appendix D – Description of the Facility**

Seller should complete the information below and attach a description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the Facility and loads with Buyer’s electric distribution system.

Name of the Facility:

Address of the Facility:

Description of the Facility, including a summary of its significant components, such as for solar photovoltaic [Photovoltaic Modules, DC Collection System, Current Inverters], meteorological station, instrumentation and any other related electrical equipment:

Drawing showing the general arrangement of the Facility:

A single-line diagram illustrating the interconnection of the Facility with Buyer:

A legal description of the Site, including a Site map:

Longitude and latitude of the centroid of the Site:

*\*\*\* End of Appendix D \*\*\**

# Feed-In Tariff Milestones and Example Action Steps for

# [FIT Project Developer]



*\*\*\* End of Appendix E \*\*\**

# Appendix F – Notices List

|  |  |
| --- | --- |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [***Seller’s Name***], a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [***include place of formation and business type***] (“Seller”) | Name: REDWOOD COAST ENERGY AUTHORITY, a California corporation  (“Buyer” or “RCEA”) |
| All Notices: ***[Seller to complete]*** | All Notices: |
| Delivery Address: | Delivery Address: |
| Street: | [UPDATE] |
| City: State: Zip: |  |
|  |  |
| Mail Address: (if different from above) | Mail Address: |
|  | [UPDATE] |
| Attn: | Attn: |
| Phone: | Phone: |
| Facsimile: | Facsimile: |
|  |  |
| DUNS: | DUNS: |
| Federal Tax ID Number: | Federal Tax ID Number: |
|  |  |
| **Invoices:** | **Invoices:** |
| Attn: | Attn: |
| Phone: | Phone: |
| Facsimile: | Facsimile: |
|  |  |
| **Payments:** | **Payments:** |
| Attn: | Attn: |
| Phone: | Phone: |
| Facsimile: | Facsimile: |
|  |  |
| **Wire Transfer:** | **Wire Transfer:** |
| BNK:  ABA:  ACCT: | BNK:  ABA:  ACCT: |
|  |  |
| **Credit and Collections:** | **Credit and Collections:** |
| Attn: | Attn: |
| Phone: | Phone: |
| Facsimile: | Facsimile: |
|  |  |
| With additional Notices of an Event of Default to Contract Manager: | **Contract Manager:** |
| Attn: | Attn: |
| Phone: | Phone: |
| Facsimile: |  |

*\*\*\* End of Appendix F\*\*\**

**APPENDIX G – FORM OF LETTER OF CREDIT**

***Issuing Bank Letterhead and Address***

STANDBY LETTER OF CREDIT NO. XXXXXXXX

**Date:** [insert issue date]

|  |  |  |  |
| --- | --- | --- | --- |
| **Beneficiary:** | Redwood Coast Energy Authority | **Applicant:** | [Insert name and address of Applicant] |
|  | 633 3rd St,  Eureka, CA 95501 |  |  |
|  |  |  |  |
|  | Attention: |  |  |

**Letter of Credit Amount:** [insert amount]

**Expiry Date:** [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Redwood Coast Energy Authority (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number** **of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. $ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “Pursuant to the terms of that certain **[insert name of the agreement]** (the “Agreement”), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement],** Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the Agreement]** under the Agreement; or

B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the Agreement]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;

2. All banking charges associated with this Letter of Credit are for the account of the Applicant;

3. This Letter of Credit is not transferable; and

4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank’s address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank’s receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision,* International Chamber of Commerce (ICC) Publication No. 600 (the “UCP 600”); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of California shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

|  |  |
| --- | --- |
| **[insert name of issuing bank]** | |
| By: |  |
|  | Authorized Signature |
| Name: | **[print or type name]** |
| Title: |  |

*\*\*\* End of Appendix G\*\*\**

**APPENDIX H – FORM OF CONSENT TO ASSIGNMENT**

**CONSENT AND AGREEMENT**

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of **[\_\_\_\_\_\_\_ \_\_, 2\_\_\_]**, between REDWOOD COAST ENERGY AUTHORITY (“RCEA”), and **[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]** , as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [\_\_\_\_\_\_\_] (“Seller”). RCEA, Seller, and the Financing Provider shall each individually be referred to as a “Party” and collectively as the “Parties”.

**Recitals**

A. Pursuant to that certain Power Purchase Agreement dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_, 2\_\_\_ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between RCEA and Seller, RCEA has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, RCEA has agreed to enter into this Consent and Agreement for the benefit of Seller.

**Agreement**

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, RCEA consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Loan Agreement and/or Security Agreementof (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).

3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to RCEA a written assumption of all of Seller’s rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to RCEA, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as RCEA may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

“Permitted Transferee” means any person or entity who is reasonably acceptable to RCEA. Financing Provider may from time to time, following the occurrence of a Financing Default, notify RCEA in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider’s rights under the Financing Documents, and RCEA shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a “Permitted Transferee” (together with a written statement of the reason(s) for any negative determination) it being understood that if RCEA shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a “Permitted Transferee”.

4. Cure Rights.

(a) Notice to Financing Provider by RCEA. RCEA shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an “Event of Default”) to Seller (a “Default Notice”), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from RCEA, independent of any agreement of RCEA to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by RCEA. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, RCEA shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement “Additional Cure Period” means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by RCEA to Deliver Default Notice. If neither RCEA nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider’s applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either RCEA or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in RCEA’s ability to terminate the Assigned Agreement (in each case only if both RCEA and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of RCEA to deliver any Default Notice shall not waive RCEA’s right to take any action under the Assigned Agreement and will not subject RCEA to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from RCEA or Seller, whichever is received first, Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written notice to RCEA that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from RCEA or Seller, whichever is received first. In the event Financing Provider succeeds to Seller’s interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that RCEA shall have the right to set off or deduct from payments due to Seller each and every amount due RCEA from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action RCEA may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that RCEA makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller’s right, title, and interest in the Assigned Agreement, and Financing Provider releases RCEA from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that RCEA may agree with Seller to modify or amend the Assigned Agreement, and that RCEA is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases RCEARCEA from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. RCEA shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [\_\_\_\_\_\_\_\_\_\_], as depositary agent, to ABA No. [\_\_\_\_\_\_\_\_\_\_], Account No. [\_\_\_\_\_\_\_\_\_\_], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, RCEA and Financing Provider agrees that each such payment by RCEA to such depositary agent of amounts due to Seller from RCEA under the Assigned Agreement shall satisfy RCEA’s corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

|  |  |
| --- | --- |
| If to Financing Provider: |  |
| Name: |  |
| Address: |  |
|  |  |
| Attn: |  |
| Telephone: |  |
| Facsimile: |  |
| Email: |  |

|  |  |
| --- | --- |
| If to RCEA: |  |
| Name: |  |
| Address: |  |
|  |  |
| Attn: |  |
| Telephone: |  |
| Facsimile: |  |
| Email: |  |

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of RCEA, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under theloan agreement and/or security agreement.

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

(e) No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

IN WITNESS WHEREOF, each of RCEA and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

Redwood Coast Energy Authority (RCEA)

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

**[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]** (Financing Provider), as collateral agent

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

**ACKNOWLEDGEMENT**

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from RCEA to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_][name of Seller]

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

*\*\*\* End of Appendix H\*\*\**

1. Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program. [↑](#footnote-ref-1)