

# RESOURCE ADEQUACY AGREEMENT

## COVER SHEET

**Seller:** Valley Clean Energy, a California joint powers authority.

**Buyer:** Redwood Coast Energy Authority, a California joint powers authority.

### **Unit Information**

<b>Project Name:</b>	Resurgence Solar I, LLC
<b>Resource Type:</b>	Hybrid Solar and BESS
<b>Location:</b>	Boron, CA
<b>CAISO Resource ID:</b>	KRAMER_1_R1PX3
<b>Unit SCID:</b>	TVCE
<b>Unit NQC:</b>	Not available until post CAISO COD
<b>Unit EFC:</b>	Not available until post CAISO COD
<b>Resource Category (1, 2, 3 or 4):</b>	4
<b>FCR Category (1, 2 or 3):</b>	2
<b>Path 26 (North or South):</b>	South
<b>Local Capacity Area (if any, as of Effective Date):</b>	N/A
<b>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:</b>	TBD

**RA Product and Attributes:** During the Delivery Term, Seller shall provide Buyer with the Contract Quantity of RAR Attributes and, if applicable, LAR Attributes and FCR Attributes, from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

- RAR Attributes
- LAR Attributes
- FCR Attributes

### **Milestones**

<b>Milestone</b>	<b>Expected Date for Completion</b>
<b>Demonstrate Site Control</b>	7/15/2021
<b>Execute Interconnection Agreement</b>	Q1 2023
<b>Procure Major Equipment</b>	On-going

<b>Milestone</b>	<b>Expected Date for Completion</b>
<b>Complete Project Permitting</b>	9/9/2021
<b>Expected Construction Start Date</b>	3/10/2022
<b>Expected Commercial Operation Date</b>	5/15/2023

**Delivery Term:** 10 years

**Contract Quantities:** The Contract Quantities for the entire Delivery Term shall be:

RAR Attributes: 12 MW NQC

LAR Attributes: 0 MW, subject to revision pursuant to Section 3.1.

FCR Attributes: 0 MW EFC

**Contract Price:** \$ [REDACTED] per kW-month

**Scheduling Coordinator:** Seller or Seller's Agent

**Initial Delivery Date:** 08/01/2023

**Performance Security Amount**

Performance security shall not be required from either Party in connection with this Agreement.

**NOTICES** [to be completed prior to execution]

<b>Seller</b>	<b>Buyer</b>
<b>All Notices:</b> Street: City: Attn: Phone: Facsimile: Email:	<b>All Notices:</b> Street: City: Attn: Phone: Facsimile: Email:
<b>Reference Numbers:</b> Duns: N/A Federal Tax ID Number:	<b>Reference Numbers:</b> Duns: Federal Tax ID Number:
<b>Invoices:</b> Attn: Phone: E-mail:	<b>Invoices:</b> Attn: Phone: E-mail:
<b>Scheduling:</b> Attn: Phone: Facsimile: Email:	<b>Scheduling:</b> Attn: TBD Phone: TBD Email: TBD
<b>Confirmations:</b> Attn: Phone: Facsimile: Email:	<b>Confirmations:</b> Attn: Phone: Email:
<b>Payments:</b> Attn: Phone: Facsimile: E-mail:	<b>Payments:</b> Attn: Phone: E-mail:
<b>ACH Wire Transfer:</b> BNK: ABA: ACCT:	<b>ACH Wire Transfer:</b> BNK: ABA: ACCT:
<b>Credit and Collections:</b> Attn: Phone: Facsimile: E-mail:	<b>Credit and Collections:</b> Attn: Phone: E-mail:
<b>Notice of an Event of Default to:</b> Attn: Phone: Facsimile: Email:	<b>Notice of an Event of Default to:</b> Attn: Phone: Email:

<b>Seller</b>	<b>Buyer</b>
<b>With additional Notices of an Event of Default to:</b> Attn: Phone: Facsimile: Email:	<b>With additional Notices of an Event of Default to:</b> Attn: Phone: Email:
<b>Emergency Contact:</b> Attn: Phone: Facsimile: Email:	<b>Emergency Contact:</b> Attn: Phone: Email:

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# RESOURCE ADEQUACY AGREEMENT

## PREAMBLE

This Resource Adequacy Agreement (“**Agreement**”) is entered into as of [\_\_\_\_\_] (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

## RECITALS

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

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

## ARTICLE 1: DEFINITIONS

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

“**Agreement**” has the meaning set forth in the Preamble.

“**Alternate Capacity**” means any replacement Product which Seller has elected to provide to Buyer from Replacement Units in accordance with the terms of Section 3.5.

“**Applicable Laws**” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Agreement, including without limitation, the Tariff.

“**Availability Incentive Payments**” shall mean Availability Incentive Payments as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

“**Availability Standards**” shall mean Availability Standards as defined in FERC filing ER09-1064 or such other similar term as modified and approved by FERC thereafter to be incorporated in the Tariff or otherwise applicable to CAISO.

“**Bankrupt**” means with respect to any entity, such entity (i) 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 and such petition filed or commenced against it is not stayed or dismissed within ninety (90) days thereafter, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California.

**“Buyer”** has the meaning specified in the introductory paragraph hereof.

**“Buyer Joint Powers Agreement”** means that certain Amended and Restated Joint Powers Agreement dated as of December 15, 2015, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act, Government Code §§ 6500.

**“CAISO”** means the California Independent System Operator or its successor.

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

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

**“Capacity Attributes”** means any and all of the following attributes: RAR Attributes, LAR Attributes, FCR Attributes.

**“Capacity Replacement Price”** means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 3.6 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Contract Quantity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.

**“Claims”** means all third-party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

**“Commercially Operable”** with respect to the Project, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, and the Project has been released by the Developer to Seller for commercial operations.

**“Commercial Operation Date”** has the meaning set forth in Section 19.2(a).

**“Compliance Showing”** means the applicable LSE’s compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

**“Construction Start Date”** means the date on which the EPC Contractor commences construction.

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

**“Contract Quantity”** means, the quantities specified on the Cover Sheet.

**“Contract Year”** means a period of twelve (12) consecutive months; the first Contract Year shall commence on the Initial Delivery Date; and each subsequent Contract Year shall commence on the anniversary of the Initial Delivery Date. The final Contract Year may be a period of less than twelve (12) consecutive months.



“**Contracted Amount**” means the Capacity Attributes Seller procured pursuant to the Seller Supply Agreement.

“**Costs**” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

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

“**CPUC**” means the California Public Utilities Commission or its successor.

“**CPUC Decisions**” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Applicable Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“**CPUC Filing Guide**” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“**Defaulting Party**” has the meaning set forth in Section 11.1.

“**Delivery Point**” has the meaning specified in Section 3.3.

“**Delivery Term**” has the meaning set forth in Section 2.1(b).

“**Developer**” means the project company that owns and operates the Unit subject to the Seller Supply Agreement.

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

“**Effective Date**” is the date set forth in the Preamble.

“**Effective Flexible Capacity**” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

“**EPC Contract**” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

“**EPC Contractor**” means Seller’s engineering, procurement and construction contractor or such Person performing those functions.

“**Equitable Defenses**” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

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

“**FCR Attributes**” means, with respect to a Unit, any and all flexible resource adequacy attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the Tariff, an LRA, or other Governmental Body having jurisdiction, exclusive of any LAR Attributes and any RAR Attributes.

“**FCR Showings**” means the FCR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

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

“**Flexible Capacity Requirements**” or “**FCR**” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

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

“**GADS**” means the Generating Availability Data System or its successor.

“**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 a Terminated Transaction, determined in a commercially reasonable manner.

“**Governmental Approvals**” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, notices to and declarations of or with any Governmental Body and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental law, that are required for the use and operation of the Project.

“**Governmental Authority**” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided that that “Governmental Authority” shall not in any event include any Party.

“**Governmental Body**” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal; provided that “Governmental Body” shall not in any event include any Party.

“**Governmental Charges**” has the meaning set forth in Section 20.2.

“**Initial Delivery Date**” has the meaning set forth on the Cover Sheet.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Project and Seller’s Interconnection Facilities will be interconnected with the Transmission System during the Delivery Term.

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

**“Interest Rate”** means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by Applicable Law.

**“Joint Powers Agreement”** means, as applicable, the Buyer Joint Powers Agreement or the Seller Joint Powers Agreement.

**“LAR”** means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA having jurisdiction over the LSE, as implemented in the Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement (“LCR”) in other regulatory proceedings or legislative actions.

**“LAR Attributes”** means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified from time to time by the CPUC Decisions, CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Agreement.

**“LAR Showings”** means the LAR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the Tariff, or to an LRA having jurisdiction over the LSE.

**“Losses”** means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

**“LRA”** has the meaning set forth in the Tariff.

**“LSE”** means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

**“Mechanical Completion”** means that (a) all components and systems of the Project have been properly constructed, installed and functionally tested according to EPC Contract requirements in a safe and prudent manner that does not void any equipment or system

warranties or violate any permits, approvals or Applicable Laws; (b) the Project is ready for testing and commissioning, as applicable; (c) Seller has provided written acceptance to the EPC Contractor of mechanical completion as that term is specifically defined in the EPC Contract.

**“Milestones”** means the events specified on the Cover Sheet.

**“Monthly Delivery Period”** means each calendar month during the Delivery Term and shall correspond to each Showing Month.

**“Monthly RA Capacity Payment”** has the meaning specified in Section 3.8 hereof.

**“NERC”** means the North American Electric Reliability Corporation, or its successor.

**“NERC Business Day”** means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

**“NERC/GADS Protocols”** means the GADS protocols established by NERC, as may be updated from time to time.

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

**“Non-Availability Charges”** has the meaning set forth in the Tariff.

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

**“Notification Deadline”** is twenty (20) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

**“Outage”** means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage (as defined below).

**“Participating Transmission Owner”** means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO grid. The Participating Transmission Owner for purposes of this Agreement is Pacific Gas and Electric Company (“PG&E”).

**“Person”** means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, or any Governmental Body or Governmental Authority.

**“Planned Outage”** means, subject to and as further described in the Tariff, a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“**Product**” means the RAR Attributes and, if specified on the Cover Sheet, LAR Attributes and FCR Attributes, for the Delivery Term, Unit, Contract Quantity, Contract Price and other specifications contained on the Cover Sheet.

“**Project**” means the Unit described on the Cover Sheet and in Exhibit B.

“**RA Capacity**” means the qualifying and deliverable capacity of the Unit for RAR, LAR, and FCR purposes, as applicable, for the Delivery Term, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the applicable RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit.

“**RAR**” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

“**RAR Attributes**” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified from time to time by the Tariff, CPUC Decisions, LRA, or any Governmental Body having jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and FCR Attributes.

“**RAR Showings**” means the RAR Compliance Showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the Tariff or CPUC Decisions, or to an LRA having jurisdiction.

“**Replacement Capacity**” has the meaning specified in Section 3.6 hereof.

“**Replacement Unit**” means a generating unit or energy storage unit meeting the requirements specified in Section 3.5 hereof. A Replacement Unit may not include a coal-fired or nuclear generating resource.

“**Resold Product**” has the meaning set forth in Section 5.1.

“**Resource Category**” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“**Sales Price**” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, (a) in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability, and (b) if Seller is unable to resell the Product not received by Buyer, then the Sales Price shall be deemed to be zero dollars (\$0). For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

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

“**Scheduling Coordinator**” has the same meaning as in the Tariff.

“**Seller**” has the meaning specified in the introductory paragraph hereof.

“**Seller Joint Powers Agreement**” means that certain Joint Powers Agreement dated as of October 25, 2016, as amended from time to time, under which Seller is organized as a Joint Powers Authority in accordance with the Joint Powers Act, Government Code §§ 6500 et seq.

“**Seller Supply Agreement**” means the agreement between Seller and the project company that owns and operates the Unit identified in Exhibit B under which Seller purchased product being sold pursuant to this Agreement.

“**Settlement Amount**” means, with respect to the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 11.2.

“**Showing Month**” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions or Tariff. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Project is located as identified in Appendix D.

“**Supply Plan**” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count, as applicable, for RAR Attributes, LAR Attributes, and/or FCR Attributes.

“**Swap Agreement**” means the Resource Adequacy Agreement by and between Redwood Coast Energy Authority (defined in that agreement as “Seller”) and Valley Clean Energy (defined in that agreement as “Buyer”) dated as of even date herewith.

“**Swap Reduction Option**” has the meaning set forth in Section 3.4(e).

“**Tariff**” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time.

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

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

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

**“Transmission Provider”** means the CAISO. “Transmission System” means the transmission facilities operated by the CAISO, which provide energy transmission service within the CAISO grid from the Delivery Point.

**“Unit”** or **“Units”** shall mean the generation and/or storage assets described in the Cover Sheet and Exhibit B hereof and any Replacement Units, from which Product is provided by Seller to Buyer. A Unit or Replacement Unit may not include a coal-fired or nuclear generating resource.

**“Unit EFC”** means the Effective Flexible Capacity set by the CAISO for the applicable Unit.

**“Unit NQC”** means the Net Qualifying Capacity set by the CAISO for the applicable Unit.

**“Utility Distribution Company”** has the meaning set forth in the Tariff. The Utility Distribution Company for purposes of this Agreement is PG&E.

## **ARTICLE 2: DELIVERY TERM AND CONDITIONS PRECEDENT**

### **2.1. Delivery Term.**

(a) The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Delivery Term, provided that this Agreement shall thereafter remain in effect until the Parties have fulfilled all obligations arising under this Agreement, including any compensation for the Product, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly, such as through set-off or netting). All provisions relating to invoicing, payment, delivery, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. Notwithstanding anything to the contrary in this Agreement, (i) all rights under Sections 16.1 (Indemnities) and any other indemnity rights survive the end of the Delivery Term for an additional twelve (12) months; (ii) all rights and obligations under Article 18 (Confidentiality) survive the end of the Delivery Term for an additional two (2) years; and (iii) all provisions relating to limitations of liability survive without limit.

(b) The **“Delivery Term”** is the period commencing on the Initial Delivery Date and continuing for the period specified on the Cover Sheet unless earlier terminated in accordance with the terms and conditions of this Agreement.

(c) The **“Initial Delivery Date”** is set forth on the Cover Sheet.

**2.2. Buyer Termination Right.** Buyer has the option to terminate this Agreement, provided that Buyer provides Notice of such termination to Seller at least sixty (60) days prior to the Initial Delivery Date, *provided*, that if Buyer exercises its option to terminate the Agreement under this Section 2.2, the Swap Agreement shall terminate automatically pursuant to Section 2.2 therein. If Buyer terminates the Agreement pursuant to this Section

2.2, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(a).

### **ARTICLE 3: TRANSACTION, DELIVERY AND PAYMENT**

#### **3.1. Resource Adequacy Capacity Product.**

(a) **Sale and Delivery of Product.** For each Showing Month of the Delivery Term, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Contract Quantity of the Product from the Unit, less any reductions to Contract Quantity pursuant to Section 3.4; *provided*, notwithstanding anything to the contrary herein:

(i) the Product does not confer to Buyer any right to the electrical output from the Unit, other than the right to include the Contract Quantity in RAR Showings, LAR Showings, and/or FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Agreement;

(ii) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing local capacity areas that results in a decrease or increase in the amount of LAR Attributes or RAR Attributes related to a local capacity area provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iii) any change by the CAISO, CPUC or other Governmental Body that defines new or re-defines existing RAR or Flexible Capacity Requirements, LAR Attributes or RAR Attributes, or attributes of the Unit, that results in a decrease or increase in the amount of LAR Attributes or RAR Attributes provided hereunder will not result in a change in payments made pursuant to this Agreement;

(iv) the Parties agree that, under this Agreement, if the CAISO, CPUC or other Governmental Body defines new or re-defines existing local capacity areas whereby the Unit subsequently qualifies for a local capacity area, the Product, to the extent specified in the Cover Sheet, shall include all LAR Attributes related to such local capacity area;

(v) the Parties agree that, under this Agreement, no energy or ancillary services associated with the Unit is required to be made available to Buyer as part of this Agreement and Buyer shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Agreement. Seller retains the right to sell, pursuant to the Tariff, any RA Capacity from the Unit that is in excess of the Unit's Contract Quantity and any RAR Attributes, LAR Attributes, or FCR Attributes not otherwise transferred, conveyed, or sold to Buyer under this Agreement;

(vi) Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental, zero-emissions capacity pursuant to D.21-06-035 as subsequently clarified by the CPUC's Energy Division. In accordance with such requirements, Seller represents and warrants that the Project will meet the following requirements throughout the Delivery Term:



(A) the Product qualifies as incremental capacity pursuant to D.21-06-035 and any applicable public guidance documents issued by Energy Division;

(B) the Project is a new resource, which had not become Commercially Operable as of the Effective Date of this Agreement;

(C) no load serving entity other than Buyer is permitted to claim any portion of the Product toward D.21-06-035 compliance obligations.

(b) **Progress Reporting.** Seller shall timely provide to Buyer all development progress reports Developer provides to Seller pursuant to the Seller Supply Agreement, and Seller shall request from Developer such information as Buyer may require to comply with requests for development progress under the Seller Supply Agreement by any regulatory body or other authority.

**3.2. Seller's and Buyer's Obligations.** Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Contract Quantity of the Product at the Delivery Point, less any reductions to Contract Quantity pursuant to Section 3.4, and Buyer shall pay Seller the Contract Price. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

**3.3. Delivery Point.** The "Delivery Point" for the Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

**3.4. Reductions to Contract Quantity; Delivery of Product.** Seller shall provide Buyer with the Contract Quantity of Product for each Showing Month consistent with the following:

(a) No later than the Notification Deadline applicable to each Showing Month, Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Contract Quantity provided to Buyer for each Showing Month of the Delivery Term so that the total amount of Contract Quantity identified and confirmed for such Showing Month equals the Contract Quantity, less any reductions to the Contract Quantity pursuant to this Section 3.4.

(b) Seller's obligation to deliver the Contract Quantity for each Showing Month of the Delivery Term may be reduced at Seller's option by the amount of any Planned Outages which exist with respect to any portion of the Unit during the applicable Showing Month; *provided*, (i) Seller notifies Buyer by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Buyer may include in Buyer's Compliance Showings for that month as a result of such Planned Outage, and (ii) such reduction is able to be reflected on the Supply Plan(s) in accordance with the Tariff. In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a Planned Outage of the Unit, Seller has the option, but not the obligation, to provide

Product up to the amount of the full Contract Quantity for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 3.5.

(c) Seller's obligation to deliver the Contract Quantity for each Showing Month may also be reduced at Seller's option in the event the Unit experiences a reduction in Unit NQC or Unit EFC after the Effective Date as determined by the CAISO; *provided*, (i) Seller notifies Buyer by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Buyer may include in Buyer's Compliance Showings for that month as a result of such reduction in Unit NQC or Unit EFC, and (ii) such reduction is able to be reflected on the Supply Plan(s) in accordance with the Tariff. In the event the Unit experiences such a reduction in Unit NQC or Unit EFC, Seller has the option, but not the obligation, to provide Product up to the amount of the full Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product or (ii) from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 3.5.

(d) Seller's obligation to deliver the Contract Quantity for each Showing Month may also be reduced at Seller's option in the event the Unit fails to deliver the Contracted Amount for any reason, including but not limited to (i) a delay in achieving commercial operation by the Unit; (ii) early termination of the Seller Supply Agreement; or (iii) a reduction in the Contracted Amount in the Seller Supply Agreement; *provided*, (A) Seller notifies Buyer by the Notification Deadline applicable to that Showing Month of the amount of Product from the Unit that Buyer may include in Buyer's Compliance Showings for that month as a result of a reduction in Seller's supply in accordance with this Section 3.4(d), and (B) such reduction is able to be reflected on the Supply Plan(s) in accordance with the Tariff. In the event Seller is unable to provide the Contract Quantity for any portion of a Showing Month because of a reduction in Seller's supply in accordance with this Section 3.4(d), Seller has the option, but not the obligation, to provide Product up to the amount of the full Contract Quantity for such Showing Month from Replacement Units, provided Seller provides and identifies such Replacement Units in accordance with Section 3.5.

(e) Seller's obligation to deliver the Contract Quantity for each Showing Month may also be reduced at Seller's option in the event Buyer fails to deliver or reduces its obligation to deliver, for any reason, the contract quantity of product set forth in the Swap Agreement (such option, the "**Swap Reduction Option**"); *provided*, however, that (i) Seller's obligation to deliver the Contract Quantity of Product may not be reduced by an amount greater than the contract quantity of product that Buyer fails to deliver under the Swap Agreement and (ii) that the Swap Reduction Option is subject to Seller providing written notice to Buyer of such reduction no later than two (2) Business Days before the initial Compliance Showing deadline for such Showing Month. Seller's rights under the Swap Reduction Option are cumulative and in addition to Seller's rights under the Swap Agreement.

**3.5. Alternate Capacity and Replacement Units.** If Seller is unable to provide the full Contract Quantity for any Showing Month for any reason, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no additional cost to Buyer, provide Buyer with equivalent capacity

with RAR Attributes from one or more Replacement Units, with the total amount of Product provided to Buyer from the Unit and Replacement Units up to an amount equal to the Contract Quantity for the applicable Showing Month; *provided*, in each case Seller shall notify Buyer of the amount of Product that Seller will provide with Alternate Capacity from identified Replacement Unit(s) meeting the above requirements no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 3.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Agreement for that Showing Month.

**3.6. Damages for Failure to Provide Contract Quantity.** If Seller fails to provide Buyer with the Contract Quantity of Product for any Showing Month, less any reductions pursuant to Section 3.4, during the Delivery Term, and such failure is not excused under the terms of this Agreement, then Seller shall pay to Buyer on the date payment would otherwise be due in respect of the Showing Month for which the failure occurred, an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer (or charged to Buyer by CAISO) for any RA Capacity purchased to replace the amount of Contract Quantity not provided by Seller (such, RA Capacity, the “**Replacement Capacity**”), plus (B) the product of the Capacity Replacement Price times the amount of the Contract Quantity neither provided by Seller nor purchased by Buyer, and (ii) the product of the Contract Quantity not provided by Seller for the applicable Showing Month times the Contract Price times 1,000 for that month. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

**3.7. Indemnities for Failure to Deliver Contract Quantity.** Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

(a) Seller’s failure to provide any portion of the Contract Quantity for the respective Showing Month for the Delivery Term, less any reductions to Contract Quantity pursuant to Section 3.4;

(b) Seller’s failure to provide notice of the non-availability of any portion of the Contract Quantity consistent with Section 3.4; or

(c) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Buyer’s right to the Contract Quantity purchased hereunder for the respective Showing Month, less any reductions to Contract Quantity pursuant to Section 3.4, or the annual RA compliance filing during the Delivery Term.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these costs, penalties and fines. Seller will have no obligation to Buyer under this Section 3.7 in respect of the portion of the Contract Quantity for any portion of the Delivery Term for which Seller has paid damages for Replacement Capacity under Section 3.6. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties,

finer or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Agreement.

**3.8. Monthly RA Capacity Payment.** Buyer shall make a payment to Seller for the Unit, in arrears, after the applicable Showing Month (the “**Monthly RA Capacity Payment**”). The Parties agree that all invoices under this Agreement shall be paid in accordance with Section 8.2. The Unit’s Monthly RA Capacity Payment shall be equal to the product of (i) the applicable Contract Price for that Monthly Delivery Period, (ii) the Contract Quantity actually delivered for the Monthly Delivery Period, and (iii) 1,000. The final product of this Monthly RA Capacity Payment calculation shall be rounded to the nearest penny (i.e., two decimal places).

**3.9. Allocation of Other Payments and Costs.**

(a) Seller may retain any revenues it may receive from, and shall pay all costs charged by, the CAISO or any other third party with respect to any Unit for sales of any products other than the Product sold to Buyer hereunder, including (i) start-up, shut-down, and minimum load costs, (ii) capacity revenue for ancillary services, (iii) energy sales, (iv) any revenues for black start or reactive power services, or (v) the sale of the unit-contingent call rights on the capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

(b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity of any Unit during the Delivery Term (including any capacity or availability revenues from RMR Contracts (as defined in the Tariff) for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in Section 3.9(a) above).

(c) In accordance with Section 3.9 of this Agreement:

(i) all such Buyer revenues described in Section 3.9(b) received by Seller, or a Unit’s Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer (and upon any such payment by Seller, Seller shall be subrogated to all rights of Buyer against such Unit’s Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Seller fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Agreement.

(ii) all such Seller, or a Unit’s Scheduling Coordinator, owner, or operator revenues described in Section 3.9(a)(i)-(v), but received by Buyer shall be remitted to Seller, and Buyer shall pay such revenues to Seller if the Unit’s Scheduling Coordinator, owner, or operator fails to remit those revenues to Seller (and upon any such payment by Buyer, Buyer shall be subrogated to all rights of Seller against such Unit’s Scheduling Coordinator, owner, or operator for the amount of such revenues paid). If Buyer fails to pay

such revenues to Seller, Seller may offset any amounts owing to it for such revenues against any future amounts it may owe to Buyer under this Agreement.

(d) If a centralized capacity market develops within the CAISO or WECC region, Buyer will have exclusive rights to offer, bid, or otherwise submit Contract Quantity provided to Buyer pursuant to this Agreement for re-sale in such market, and retain and receive any and all related revenues.

(e) Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

**3.10. Change in Law.** If a change in Applicable Laws occurring after the Effective Date would increase Seller's costs to comply with Seller's obligations in excess of Seller's known or reasonably expected costs (as of the Effective Date) with respect to obtaining, maintaining, conveying, or effectuating Buyer's use of (as applicable) RAR Attributes, and, if applicable, LAR Attributes and FCR Attributes, then Seller shall have no obligation to incur any additional out-of-pocket costs and expenses under this Agreement for the costs relating to such change in Applicable Laws. For avoidance of doubt, Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are not considered out-of-pocket expenses for purposes of this Section 3.10.

#### **ARTICLE 4: CAISO OFFER REQUIREMENTS**

**4.1. CAISO Offer Requirements.** During the Delivery Term, except to the extent the Unit is on an Outage, or is affected by an event of Force Majeure that results in a partial or full Outage of the Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO the Unit's Contract Quantity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Contract Quantity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

#### **ARTICLE 5: BUYER'S RE-SALE OF PRODUCT**

**5.1.** Notwithstanding any provision of this Agreement to the contrary, Buyer may not re-sell any portion of the Product.

#### **ARTICLE 6: [RESERVED]**

#### **ARTICLE 7: PERFORMANCE SECURITY**

**7.1. Performance Security.** Performance Security shall not be required from either Party in connection with this Agreement.

## **ARTICLE 8: PAYMENT AND NETTING**

**8.1. Billing Period.** The calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

**8.2. Timeliness of Payment.** Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twenty-fifth (25th) day of each month, or fifteenth (15th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

**8.3. Disputes and Adjustments of Invoices.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, 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. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

**8.4. Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other under this Agreement and the Swap Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including but not limited to, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who

owes it. For the avoidance of doubt, the netting provision of this Section 8.4 shall not apply to any related damages calculated pursuant to Sections 3.6 or 3.8.

**8.5. Payment Obligation Absent Netting.** If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including but not limited to, interest, and payments or credits, that Party shall pay such sum in full when due. Any related damage amounts calculated pursuant to Sections 3.6 or 3.7 shall never be subject to netting and shall be paid in full when due.

## ARTICLE 9: NOTICES

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

**9.2. Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## ARTICLE 10: FORCE MAJEURE

### 10.1. Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or

ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below. Force Majeure may include delays in performance or inability to perform or comply with the terms and conditions of this Agreement due to delays in obtaining necessary equipment, labor or materials or other issues caused by or attributable to pandemics or epidemics, COVID-19, if the elements of Force Majeure defined in this Section 10.1(a) (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) have been satisfied; provided that the general existence of COVID-19 shall not be sufficient to prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate establish that a Force Majeure as defined in the first sentence hereof (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) has occurred.

(b) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a curtailment order by the CAISO or the PTO (as defined in the Tariff); (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Project except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Project; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

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



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

**10.4. Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(a). Further, upon termination under this Section 10.4, the Swap Agreement shall automatically terminate, pursuant to Section 2.2 therein.

## **ARTICLE 11: EVENTS OF DEFAULT; REMEDIES**

**11.1. Events of Default.** An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such Party does not fully mitigate the adverse consequences as reasonably determined by the other Party of such incorrect representation or warranty to the other Party within thirty (30) days after written notice thereof;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Section 3.6 and 3.7) if such failure is not remedied within thirty (30) Business Days after written notice;

(d) such Party becomes Bankrupt; and

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

**11.2. Declaration of an Early Termination Date and Calculation of Settlement Amounts.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“**Early Termination Date**”) to accelerate all amounts owing between the Parties and to terminate this Agreement (referred to as a “**Terminated Transaction**”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance.

**11.3. Result of Early Termination.** In the event of early termination under either the Swap Agreement or the Seller Supply Agreement, the Parties hereby acknowledge and agree that this Agreement shall terminate in accordance with Section 11.2 herein.

**11.4. [Reserved].**

**11.5. [Reserved].**

**11.6. [Reserved].**

**11.7. Suspension of Performance.** Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days unless an Early Termination Date shall have been declared and notice thereof pursuant to Section 11.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

## ARTICLE 12: LIMITATIONS

**12.1. Limitation of Remedies, Liability and Damages.** EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL,

INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

### **ARTICLE 13: REPRESENTATIONS; WARRANTIES; COVENANTS**

**13.1. Representations and Warranties.** On the Effective Date, each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement, except all permits necessary to construct, operate and maintain the Project and sell the Product therefrom in the case of Seller;

(c) 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 law, rule, regulation, order or the like applicable to it;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(e) 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;

(f) there is not pending or, to its knowledge, threatened against it or any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(h) it 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 other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

(i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code; and

(j) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of Product.

**13.2. Buyer and Seller Covenants.** Buyer and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer or any subsequent purchaser under Article 5. Such commercially reasonable actions shall include, without limitation:

(a) Cooperating with and providing, and in the case of Seller causing each Unit’s Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering RAR, LAR, and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, CPUC, or by an LRA having jurisdiction, to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, CAISO or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid, pursuant to “deliverability” standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform the transaction contemplated herein to subsequent clarifications, revisions, or decisions rendered by the CAISO, CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR, LAR, or FCR so as to maintain the benefits of the bargain struck by the Parties on the Effective Date; *provided*, however, that such commercially reasonable actions shall not include any obligation that the owner or operator of the Unit undertake capital improvements, facility enhancements, or the construction of new facilities nor in any way limit the Parties with respect to advocacy for any regulatory policies or market changes before any entity.

**13.3. Seller Representations, Warranties and Covenants.** Seller represents, warrants and covenants to Buyer that, throughout the Delivery Term:

(a) Seller is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the

State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Seller are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Applicable Laws.

(b) Seller owns or has the exclusive right to the RA Capacity sold under this Agreement from the Unit, and shall furnish Buyer, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;

(c) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or analogous obligations in CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or the Unit's owner or operator;

(d) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR, FCR, or analogous obligations in any non-CAISO market;

(e) The Unit is within the CAISO Control Area;

(f) The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(g) If Seller is the owner of the Unit, the respective cumulative amounts of LAR Attributes, RAR Attributes, and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;

(h) With respect to the RA Capacity provided under this Agreement, Seller shall, and the Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR, and FCR;

(i) Seller has notified the Scheduling Coordinator of the Unit that Seller has transferred the Contract Quantity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;

(j) Seller has notified the Scheduling Coordinator of the Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, at least five (5) Business Days before the Notification Deadline, the Contract Quantity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period;

(k) Seller has notified the Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 3.10(b) of this Agreement and that such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues; and

**13.4. Buyer's Representations and Warranties.** Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Applicable Laws.

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

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

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

(e) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

#### **ARTICLE 14: ASSIGNMENT**

**14.1. Assignment.** Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party.

#### **ARTICLE 15: DISPUTE RESOLUTION**

**15.1. 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.

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

**15.3. Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to court costs and any and all other costs recoverable in said action.

## **ARTICLE 16: INDEMNIFICATION**

### **16.1. Indemnification.**

(a) To the full extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, and/or caused in whole or in part by any negligent or wrongful act, error, or omission of Seller or by any individual or agency for which Seller is legally liable, including officers, agents, employees or subcontractors of Seller.

(b) Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with Buyer's access to the Project site, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller and its respective agents, employees, directors or officers.

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or any Buyer of any liability to the other for any breach of this Agreement. No Party shall be indemnified for any damages resulting from its gross negligence, intentional acts, or willful misconduct or for the gross negligence, intentional acts, or willful misconduct of its directors, officers, employees and agents. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

**16.2. Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Party being indemnified by the

other Party (such indemnified Party, the “**Indemnified Party**”) shall notify the Party indemnifying the Indemnified Party (such indemnifying Party, the “**Indemnifying Party**”) in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided that that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

#### **ARTICLE 17: [RESERVED]**

#### **ARTICLE 18: CONFIDENTIAL INFORMATION**

##### **18.1. Confidential Information.**

(a) Each Party agrees, and shall use reasonable efforts to cause its respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Applicable Laws, including without limitation the California Public Records Act (Government Code §§ 6250 et seq, “CPRA”), all documents, data (including operating data provided in connection with the scheduling of energy or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, any Party under this Agreement, and with respect to documents that are clearly marked “Confidential” at the time a Party shares such information with the other Party (“Confidential Information”). The provisions of this Section 18.1 shall survive and shall continue to be binding upon the Parties for a period of two (2) years following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party’s possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.



(b) Subject to the CPRA, either Party may, without violating this Section 18.1, disclose matters that are made confidential by this Agreement on an as needed basis:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party;

(ii) to governmental officials and parties involved in any proceeding in which a Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other requirement of Applicable Laws, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) Notwithstanding the foregoing, the Parties agree that Buyer may disclose the Contract Quantity under this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction in order to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose (i) the transfer of the Contract Quantity under this Agreement to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans, and (ii) to CAISO, the operational characteristics, signature pages, Delivery Term, Initial Delivery Date, and any other Milestones, or other dates as requested by CAISO; provided that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or Scheduling Coordinator to further disclose such information.

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

(e) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by CPRA. Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA; provided that Buyer shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 18.1(c), (ii) endeavor, in good faith, not to disclose any of Seller's "trade secrets" as consistent with the CPRA, and (iii) support, to the extent in compliance with Buyer's rights and obligations under Applicable Laws, Seller in its efforts to obtain a protective order or

other appropriate remedy with respect to the disclosure of operating data from the Project or any engineering drawings, project plans, technical specifications or other similar information regarding the Project.

(f) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments, and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Applicable Laws, the credit support contemplated by this Agreement, and the rights, liens and priorities of Buyer with respect to such credit support.

(g) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the indemnitees from and against all suits, claims, and causes of action brought against Buyer or any indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all indemnitees, as well as all damages or liability of any nature.

(h) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore, each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Article 12.

## **ARTICLE 19: PROJECT CONSTRUCTION AND COMMERCIAL OPERATION**

### **19.1. Construction of the Project.**

(a) Progress Reports. Seller shall provide to Buyer all progress reports that Seller receives pursuant to the Seller Supply Agreement.

### **19.2. Commercial Operation Date.**

(a) Commercial Operation Date. “Commercial Operation Date” has the meaning provided in the Seller Supply Agreement.

(b) Termination for Failure to Achieve Commercial Operation. If the Project has not achieved Commercial Operation on or prior to the relevant Compliance Showing deadline for the Showing Month that contains the Initial Delivery Date, then either Party may terminate this Agreement upon thirty (30) days’ written notice without any further obligation to the other Party. In addition, if the contract for the construction of the Project with the Developer is terminated and not replaced, then either Party may terminate this Agreement on thirty (30) days’ written notice to the other Party without any further obligation. For avoidance of doubt, if either Party terminates the Agreement pursuant to this Section 19.2(b), such termination shall not constitute an Event of Default and the terminating Party shall not, on the basis of such termination, owe the other Party any damages. Further, termination under this Section 19.2(b) shall automatically terminate the Swap Agreement, pursuant to Section 2.2 therein.

## ARTICLE 20: GOVERNMENTAL CHARGES

**20.1. Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

**20.2. Governmental Charges**. Seller shall pay or cause to be paid all taxes imposed by any government authority (“**Governmental Charges**”) on or with respect to the Product or a transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 8 of this Agreement. 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.

## ARTICLE 21: MISCELLANEOUS

**21.1. Title and Risk of Loss**. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Contract Quantity free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

**21.2. Audit**. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the Contract Quantity

delivered hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

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

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

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

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

**21.8. Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or

retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under Applicable Law.

**21.9. Service Contract.** The Parties intend this Agreement to be considered as a service contract for the purposes of Section 7701(e) of the United States Internal Revenue Code of 1986, as amended.

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

**21.11. Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any Applicable Law.

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

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

**21.14. No Recourse to Members of the Parties.** The Parties are each individually organized as a Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and are public entities separate from their respective constituent members. Each Party shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Each Party shall have no rights and shall not make any claims, take any actions or assert any remedies against the other Party’s constituent members, or the

employees, directors, officers, consultants or advisors of the other Party or its constituent members, in connection with this Agreement.

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

**21.16. Change in Electric Market Design.** If a change in the Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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**TABLE OF CONTENTS**

**Acknowledged and agreed to as of the Effective Date.**

**Valley Clean Energy Alliance, a California  
joint powers authority**

**Redwood Coast Energy Authority, a  
California joint powers authority**

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

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

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

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

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

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

**EXHIBIT A: [RESERVED]**



## EXHIBIT B: DESCRIPTION OF PROJECT

The following describes the Project to be constructed, operated and maintained by Seller through the Delivery Term in accordance with the Agreement.

Project name: \_\_\_\_\_

Resource type: \_\_\_\_\_

Nameplate capacity: \_\_\_\_\_ MW

Location: \_\_\_\_\_

Project physical address: \_\_\_\_\_

Project elevation: \_\_\_\_\_

Project latitude: \_\_\_\_\_ ° (decimal form)

Project longitude: \_\_\_\_\_ ° (decimal form)

Interconnection: \_\_\_\_\_

CAISO transmission access charge area (e.g., PG&E): \_\_\_\_\_

Point of interconnection: \_\_\_\_\_

Point of interconnection address: \_\_\_\_\_

Existing zone (e.g., NP-15): \_\_\_\_\_

PNode: \_\_\_\_\_

CAISO Resource ID: \_\_\_\_\_

Substation: Point of interconnection is near \_\_\_\_\_

**EXHIBIT C: [RESERVED]**