

<INSERT JURISDICTION NAME>

CONTRACT TITLE: POWER PURCHASE AGREEMENT

CONTRACT NUMBER:

AWARD DATE:

CONTRACT PERIOD: 20 Years from the Actual Commercial Operation Date

SERVICE: Electricity Service Provision

BUYER CONTACT:

TITLE:

BUYER TEL:

BUYER EMAIL:

SELLER NAME:

SELLER CONTACT:

TITLE:

SELLER TEL:

SELLER EMAIL:

PURPOSE: To establish a service contract for delivery of electricity.

<INSERT JURISDICTION NAME>

POWER PURCHASE AGREEMENT

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SAMPLE

<INSERT JURISDICTION NAME>

POWER PURCHASE AGREEMENT

This Regional Power Purchase Agreement ("PPA" or "Agreement") is dated as of <INSERT DATE>, ("Effective Date") and is witnessed, acknowledged, and executed by authorized representatives of <INSERT VENDOR NAME>, a <INSERT LOCATION OF FIRM> limited liability company ("Seller") and the <INSERT JURISDICTION NAME>, a <A POLITICAL SUBDIVISION OR OTHER RELEVANT NAME> of the State of California ("Buyer" and, together with Seller, each, a "Party" and together, the "Parties"), as evidenced by their signature on the last page of this document.

RECITALS

- A. Buyer wishes to meet its power requirements cost effectively, efficiently and in an environmentally-friendly manner;
- B. Buyer has solicited proposals from persons, firms, organizations, and/or other legal entities to provide such power from renewable resources in a cooperative/joint solicitation led by the <INSERT JURISDICTION NAME>;
- C. Seller is in the business of designing, constructing and operating solar photovoltaic ("PV") electric generating systems for the purpose of selling power generated by the systems to its Buyers;
- D. Buyer has selected Seller to design, construct, own and operate a solar PV generating system to be located on its property subject to the terms, conditions, covenants and provisions set forth herein;
- E. Seller intends to construct, own, and operate renewable energy-powered generating facilities that shall qualify as an eligible renewable energy resource ("ERR") under the State of California Renewable Portfolio Standard ("RPS") and desires to sell electricity produced by such generating facilities together with other attributes to Buyer pursuant to the terms, conditions, covenants and provisions set forth herein;
- F. Buyer desires to purchase electricity generated by Seller's generating facility, together with all Environmental Attributes pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SAMPLE

ARTICLE 1: DEFINITIONS

References in the Agreement to the terms or phrases below shall have the meanings as set forth in this Article. In the event of a conflict between the information in this Article and any more specific provision of the Agreement, the more specific provision shall control.

- 1.1 “Actual Monthly Production” means the amount of energy recorded, in 15 minute intervals, by Seller’s metering equipment during each calendar month of the Term.
- 1.2 “Actual Commercial Operation Date” means the date on which: (i) the Generating Facility has been constructed in accordance with Prudent Industry Practice, all Permits, Requirements of Law, the specifications set forth in Exhibit 2 [Description of Generating Facilities], Exhibit 4 [Technical and Warranty Requirements]; and Exhibit 5 [Engineering & Construction Requirements] and, (ii) Seller has successfully completed the Commissioning Tests and, (iii) PG&E has approved installation and given its “Permission to “Operate” notification, (iv) the data acquisition system has been commissioned and is transmitting data, and, (v) the PV Systems commence generating electricity for sale to the Buyer at the Project Sites.
- 1.3 “Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by such specified Person.
- 1.4 “Agreement” means the power purchase agreement entered into by and between Buyer and Seller, and all exhibits, and schedules (each an “Exhibit” or “Schedule”, as applicable) attached hereto and incorporated herein.
- 1.5 “Annual Escalation Adjustment” means the percentage increase to be applied commencing on the first anniversary date of the Actual Commercial Operation Date, and every anniversary date thereafter during the Term, as described in Exhibit 6 [Contract Price]. (for PPA Unit Pricing only)
- 1.6 “Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.
- 1.7 “Bankruptcy Event” means with respect to a Party, that either:

- a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or
 - b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.
- 1.8** “Base Contract Price” means the price in \$U.S. per kWh to be paid by Buyer to Seller for the purchase of the Adjusted Delivered Energy, as specified in Article 4 and Exhibit 6 [Contract Price].
- 1.9** “Business Day” means any day other than a Saturday, Sunday, public holidays recognized by California governmental entities or any other day on which banking institutions in California are required or authorized by Applicable Law to be closed for business.
- 1.10** “Buyout Option” means Purchase Option, as defined in Article 2.
- 1.11** “Buyout Date” has the meaning assigned to it in Article 2.
- 1.12** “Buyout Payment” means the amount determined to be the Fair Market Value of the applicable Generating Facility, as determine by the Parties’ negotiations or the appraisal process described in Article 2.2
- 1.13** “Buyer Address for Payments” means the address to which invoices to the Buyer should be sent, currently:
<INSERT PARTICIPATING AGENCY ADDRESS HERE>
- 1.14** “Buyer Address for Notices” means the addresses to which notices to the Buyer should be sent as set forth in Exhibit D.
- 1.15** “Buyer Default” – has the meaning set forth in Section 10.3.
- 1.16** “California Renewables Portfolio Standard” means the California State Public Utilities Commission program that requires investor-owned utilities, electric service providers, and community choice aggregators to increase procurement from eligible renewable

energy resources to 33% of total procurement by 2020.

- 1.17** “California Solar Initiative” means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the PUC and implemented through chapter 8.8 (commencing with Section 25780) to Division 15 of the California Public Utilities Code.
- 1.18** “Capital Partner” has the meaning set forth in Section 12.1.
- 1.19** “Commissioning Tests” means the tests set forth in Exhibit 5 [Engineering & Construction Requirements].
- 1.20** “Commencement of Work Date” means the date on which Seller begins the physical construction work at the Premises of the PV System or PV Systems which is/are the subject of this Agreement.
- 1.21** “Commercial Operation Deadline” means the current California Solar Initiative (CSI) Rebate construction deadline date, if applicable, unless such date is extended for any Generating Facilities where Seller has agreed to install a Generating Facility pursuant to this agreement; provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event or breach of the Agreement by Buyer.
- 1.22** The price for “Commercially Available Local Electric Utility Provided Energy” means current applicable PG&E rate tariff time of use price in cents per kilowatt hour for each site listed in Exhibit 2.
- 1.23** “Contract AC Power Rating” means the AC power rating for the Generating Facility in a given Contract Year, as specified in Exhibit 3.
- 1.24** “Contract Capacity” means the maximum instantaneous output of the Generating Facility in kilowatts AC measured at the Delivery Point.
- 1.25** “Contract Year” means each year beginning on January 1st and ending on December 31st of such year following the Actual Commercial Operation Date, unless otherwise mutually negotiated; provided, however, that the first Contract Year shall commence on the Actual Commercial Operation Date and end on the following December 31st, and the last Contract Year shall end on the relevant anniversary of the Actual Commercial Operation Date.
- 1.26** “Data Acquisition System” means physical devices, data monitoring equipment and apparatus associated with real-time monitoring of the quantities of AC energy generated by each Generating Facility and complying with all requirements of Article 4. The Monitoring System shall meet or exceed PG&E monitoring and reporting standards.
- 1.27** “Days” unless otherwise specified, shall mean calendar days.

- 1.28** “Daylight Savings Adjustment” means the time periods that begin and end one hour later for the period between the second Sunday in March and the first Sunday in April, and for the period between the last Sunday in October and the first Sunday in November.
- 1.29** “Degradation” means forecasted deterioration calculated on an annual basis of Generating Facilities due to normal wear and tear and decreasing efficiency causing reductions in power output.
- 1.30** “Delivered Energy” the amount of energy delivered by Seller as recorded by Seller’s Meters.
- 1.31** “Delivery Point” means the metering point at the load side of the transformer for each Generating Facility, as specified in Exhibit 2 [Description of Generating Facilities].
- 1.32** “EA Agency” means any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including the Clean Air Markets Division of the United States Environmental Protection Agency, the California Resources, Conservation and Development Commission, the California Public Utilities Commission, and any successor agency thereto.
- 1.33** “Early Termination Fee” means the negotiated price expressed in \$/Wdc for Buyer to purchase system as described in Exhibit C – Early Termination.
- 1.34** “Effective Date” means the date at which the Buyer’s governing board authorizes the award of the Agreement.
- 1.35** “Energy” means the electricity generated by each Generating Facility pursuant to this Agreement, as expressed in units of kWh.
- 1.36** “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its displacement of conventional energy generation. Environmental Attributes including but not limited to: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions such as Green Tag Reporting Rights.
- 1.37** “Environmental Attributes Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under the Energy Policy Act of 1992, and any regulations promulgated thereof.

- 1.38** “Environmental Laws” shall mean and include all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state super lien or environmental clean-up statutes.
- 1.39** “Existing Financial Incentives” means (i) the ITC and any tax deductions or other benefits under the Internal Revenue Code or applicable state law available as a result of the ownership and operation of the Generating Facilities or the Output generated by the Generating Facilities (including without limitation tax credits, accelerated depreciation, or bonus depreciation) that are in effect on the Effective Date and, (ii) any other financial incentives that result from the ownership and operation of the Generating Facilities or the Output that are in effect on the Effective Date.
- 1.40** “Expected Annual Contract Quantity” means the amount of Delivered Energy and Environmental Attributes that Seller expects to deliver to Buyer hereunder in a given Contract Year other than the first and last Contract Years (which may be partial years), as set forth in Exhibit 8 [Expected Contract Quantity Form]. May also be referred to as the “Estimated Annual Production” in this Agreement.
- 1.41** “Expected Commercial Operation Date” means the date on which the Parties expect the Generating Facilities to achieve Actual Commercial Operation, established in accordance with Article 3.
- 1.42** “Fair Market Value” means the value a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry would determine a photovoltaic system to have when negotiated in an arm’s-length, free market transaction between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction.
- 1.43** “Financing Party” means, as applicable (i) any Person from whom Seller leases the Generating Facilities or (ii) any Person who has made or will make a loan to or otherwise provide capital to Seller with respect to the Generating Facilities.
- 1.44** “Force Majeure Event” has the meaning set forth in Article 9.
- 1.45** “Full Assignment” has the meaning set forth in Section 12.2.
- 1.46** “GAAP” means Generally Accepted Accounting Principles in the United States of America that is consistently applied.

- 1.47** “Generating Facilities” or “PV Systems” mean Seller’s electricity generating facilities as more particularly described in Exhibit 2 [Description of Generating Facilities], excluding the Sites, land rights, and interests in land.
- 1.48** “Governmental Authority” means any federal or state government, or political subdivision thereof, including, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, any corporation or other entity owned or controlled by any of the foregoing.
- 1.49** “Green Tag Reporting Rights” are the right of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green tag purchaser’s discretion, and include those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. “Green Tags” are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.
- 1.50** “Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, and by-products.
- 1.51** “Interconnection” means the interconnection of the Generating Facilities with the Transmission System, including construction, installation, operation, and maintenance of all Interconnection Facilities.
- 1.52** “Interconnection Agreement” means the agreement between Buyer and the Local Electric Utility which sets forth the terms and conditions for Interconnection of the Generating Facilities to the Transmission System, as amended from time to time.
- 1.53** “Investment Tax Credit” or “ITC” means the energy credit under Section 48 of the Internal Revenue Code.
- 1.54** “Kiosk” means a single viewing station for the Buyer and the general public to view the production of electricity of the Generating Facility or Generating Facilities as defined in Article 4.1(c)(i)(1).

- 1.55** “KW” means one kilowatt of energy over a fifteen minute interval
- 1.56** “kWh” means one kilowatt of electricity supplied for one hour.
- 1.57** “Holidays” for the purposes of this agreement are New Year’s Day, President’s Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, and Christmas Day. The dates will be those on which the holidays are legally observed.
- 1.58** “Local Electric Utility” means the local electric distribution owner and operator providing electric distribution and interconnection services to Buyer at the applicable Site.
- 1.59** “Local Electric Utility Tariffs” means the duly authorized tariff, rules, schedules, protocols and other requirements of the Local Electric Utility, as these may be amended from time to time.
- 1.60** “Meter” or “Meters” means the physical metering devices, data acquisition equipment and apparatus associated with the meters owned by Seller and used to determine the quantities of Energy generated by each Generating Facility and to record other related parameters required for the reporting of data to Seller.
- 1.61** “Metered Energy” means the amount of Energy measured at the Meter for each Generating Facility, including any adjustments programmed into the Meter for distribution losses after the Delivery Point.
- 1.62** “MW” means one megawatt of average electric energy over a 15 minute interval multiplied by 4.
- 1.63** “MWh” means one megawatt of electricity supplied for one hour.
- 1.64** “Outage” means a physical state in which all or a portion of the Generating Facilities is unavailable to provide Energy to the Delivery Point “Output” means (i) the Contract Capacity and associated Energy; (ii) Test Energy; and (iii) all Environmental Attributes.
- 1.65** “Parties” means Buyer and Seller, and each such Party’s respective successors and permitted assignees.
- 1.66** “Party” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.
- 1.67** “Permits” means local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Generating Facilities.
- 1.68** “Person” means an individual, corporation, partnership, Limited Liability Company, business trust, Joint Stock Company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.
- 1.69** “PG&E” means the Pacific Gas and Electric Company.

- 1.70** "Preliminary Requirements" has the meaning set forth in Article 3.
- 1.71** "Premises" means Project Sites.
- 1.72** "Prevailing Wage" means the State of California Public Works Contract Requirements pursuant to sections 1770 et seq. of the California Labor Code.
- 1.73** "Project Sites" means the real property, on which the Generating Facilities are to be built and located, as described in Exhibit 3.
- 1.74** "Prudent Industry Practice" means those practices, methods and equipment, as changed from time to time, that: (i) when engaged in, or employed, are commonly used in the State of California in prudent electrical engineering and operations to operate electricity equipment lawfully and with safety, reliability, efficiency and expediency; or (ii) in the exercise of reasonable judgment considering the facts known, when engaged in could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency, and expediency. Prudent Industry Practices include but are not limited to an optimum practice, method, selection of equipment or act.
- 1.75** "PTC" means PV USA Test Conditions.
- 1.76** "Purchase Date" means the 91st day of every year following the 6th year anniversary of the Commercial Operation Date, as defined in Exhibit C – Early Termination.
- 1.77** "Renewable Energy Credit" has the meaning set forth in California Public Utilities Code section 399.12(h) as may be amended from time to time or as further defined or supplemented by applicable law.
- 1.78** "Renewal Term" has the meaning set forth in Article 2.1.
- 1.79** "Replacement Price" means the current PG&E price at which Buyer purchased any Energy required to be, but not delivered by Seller hereunder, to the Delivery Point.
- 1.80** "Requirements of Law" means, collectively, any federal or state law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer or any of their property or to which Seller or Buyer or any of their respective properties are subject.
- 1.81** "Schedule" "Scheduled" or "Scheduling" means the actions of Seller, Buyer and /or their designated representatives, including each Party's Local Electric Utility, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered for each interval on any given day on which the delivery of Energy is scheduled to occur during the Term at the Delivery Point.
- 1.82** "Seller" means <INSERT VENDOR NAME>, the entity that has executed this Agreement as of the date hereof. Seller shall have the meaning set forth in the preamble. For purposes

of access rights and other rights necessary for Seller to perform its obligations hereunder, the term “Seller” shall include Seller’s authorized agents, contractors and subcontractors. The term “Contractor” may be used in place of the term “Seller.”

- 1.83** “Seller Address” means: <INSERT SELLER ADDRESS HERE>.
- 1.84** “Seller Default” has the meaning set forth in Section 10.2(a).
- 1.85** “Seller’s Project Management Team” means individuals identified by Seller as responsible for oversight and contract management of all phases of project design/build, operations, maintenance, verification and billing account management.
- 1.86** “Site” means Project Site.
- 1.87** “Solar Insolation” means the amount of solar energy in kWh per square meter falling on a particular location
- 1.88** “Substantial Completion” means when (i) installation of all necessary components and systems of the Generating Facilities (except for completion of painting, final grading, and similar portions of the construction work not affecting the operability, safety, or mechanical and electrical integrity of the Generating Facilities) has been completed; (ii) the Generating Facilities are mechanically and electrically sound; and (iii) the Generating Facilities are ready for initial operation, adjustment, and testing.
- 1.89** “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.90** “Term” has the meaning set forth in Article 2.
- 1.91** “Terminal Value(s)” means the value or values, as applicable, set forth in Exhibit C.
- 1.92** “Transmission System or Local Electric Utility Electricity Grid” means the facilities used for the distribution and transmission of electricity, including any modifications or upgrades made to such facilities, owned or operated by the Local Electric Utility.
- 1.93** “WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

ARTICLE 2: TERM

- 2.1** Term: This Agreement shall apply to each Generating Facility Described in Exhibit 2 as if separately executed for each such Generating Facility. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Actual Commercial Operation Date of the applicable Generating Facility ("Initial Term"), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may renew for additional five year terms ("Renewal Terms"), if a written request for renewal is given by the Buyer at least one hundred eighty (180) days prior to the expiration of the Initial Term. The Parties shall confer and agree on a schedule for the Price, Escalation Rate, Terminal Values, Expected Annual Contract Quantity and termination and amendment procedure for any Renewal Term. The remainder of the terms and conditions shall remain substantially the same for the Renewal Term as for the Initial Term. If Seller consents to renewal, it shall provide written notice of consent to the renewal within sixty (60) days of the date of the request by Buyer. If consent by Seller is not provided within such sixty (60) day period, the Agreement shall expire as of the last day of the Initial Term. No later than sixty 60 days after Seller provides such consent, which consent shall state the mutually agreed upon schedule for the Price, Escalation Rate, Terminal Values, and Expected Annual Contract Quantity for such Renewal Term, Buyer shall confirm to Seller in writing of its intent to proceed with its option to renew. In the event Buyer does not provide such confirmation, the Agreement shall expire as of the last day of the Initial Term. Upon expiration of the Initial or Renewal Term, Seller shall cause the applicable Generating Facility to be removed from the Buyer's premises pursuant to Article 10.5(a).
- 2.2** BUYER'S EXERCISE OF PURCHASE OPTION: So long as a Buyer Default shall not have occurred and be continuing, Buyer has the option to purchase (the "Purchase Option") the applicable Generating Facility for a purchase price (the "Buyout Price") equal to or below its fair market value, ("FMV"), ninety-one (91) days after the first day of the sixth (6th) anniversary of the Actual Commercial Operation Date of the applicable Generating Facility, provided, however, that such date shall not occur after the twentieth (20th) anniversary of the Actual Commercial Operation Date, unless the Term is extended pursuant to Article 2.1. If Buyer chooses to exercise the purchase option, the following steps shall be followed by the Parties:
- a) Buyer shall provide Seller with at least two hundred and forty (240) days written notice of its intent to purchase the applicable Generating Facility on a date certain. The date that is at least 240 days after Buyer gives Seller its written notice of intent to purchase shall be referred to as the ("Buyout Date").
 - b) For a reasonable period not exceeding thirty (30) days from the date of provision of notice referred to in Article 2.2 (a), the Parties shall make best efforts to mutually agree on a purchase price for the Generating system. If a purchase price cannot be mutually agreed upon, then the Parties shall make best efforts to agree on the selection of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry to

determine the FMV as of the Buyout Date. Within sixty (60) days of the selection of such appraiser, s/he shall evaluate and determine the FMV of the applicable Generating Facility as of the Buyout Date and shall submit a report on same to the Parties. The costs of the appraisal shall be shared equally between Buyer and Seller.

- c) In the event that the Parties cannot agree on the selection of an appraiser to determine the FMV, each Party shall retain the services of a nationally recognized independent, third-party professional appraiser with experience and expertise in the solar photovoltaic industry it selects no later than sixty (60) days from the date of notice referred to in Article 2.2 (a). Each Party shall bear its own costs for its respective appraiser and of any appraisal conducted by him/her. Within fifteen (15) days of their retention, the two appraisers selected by the Parties shall mutually select a third nationally recognized independent, third-party appraiser with experience in the solar photovoltaic industry, whose services shall be equally paid for by the Parties. Within sixty (60) days of the selection of such third appraiser, the three appraisers shall evaluate and determine the FMV of the applicable Generating Facility and shall submit their reports to both Parties. The appraiser's valuation that diverges the greatest from each of the other two appraisers' valuations shall be disregarded, and the arithmetic mean of the remaining two appraisers' valuations shall be deemed to be the FMV of the applicable Generating Facility. If no such valuation may be established then the arithmetic mean of all three valuations shall be deemed to be the FMV of the applicable Generating Facility. The appraisers shall conduct their appraisals independently and shall not share the results of their appraisal or data with each other.
- d) No later than sixty (60) days after determination of the FMV of the applicable Generating Facility, Buyer shall confirm to Seller in writing of its intent to proceed with its option to purchase the applicable Generating Facility at the Buyout Price which shall be the FMV, as determined pursuant to this Article 2.2. In the event Buyer does not provide such written confirmation, the provisions of the Agreement shall be applicable as if Buyer had not exercised the Purchase Option.
- e) If Buyer confirms its intent to proceed with its option to purchase as specified above, the Parties shall promptly execute all documents necessary to (A) cause title and ownership of the applicable Generating Facility to pass to Buyer on the Buyout Date, free and clear of any Liens, and (B) assign all warranties for the applicable Generating Facility to Buyer. Buyer shall pay the Buyout Price to Seller on or about the Buyout Date, in accordance with any previous written instructions delivered to Buyer by Seller for payments under the Agreement. Upon such execution of documents and payment of the Buyout Price, as to the applicable Generating Facility the Agreement shall terminate automatically and Buyer shall own the applicable Generating Facility and all Environmental and Financial Attributes relating to the applicable Generating Facility. For the avoidance of doubt, payment of the Buyout Price shall be in lieu of and instead of any payments described in Article 4 accruing from and after the Buyout Date. Seller shall

provide all necessary cooperation with the Buyer to give prompt effect to this transfer.

- f) All other personal property of the Seller not included in the Buyer's purchase shall be removed by Seller from the Buyer's premises at no cost to Buyer.

2.3 **TERMINATION:** In the event of termination by Buyer, except as specified otherwise in this Agreement (and specifically not including the following circumstances by way of example: (i) termination for either Party's default (Article 10); (ii) termination for Force Majeure (Article 8); and (iii) termination for non-appropriation (Section 8.1(d)), Buyer shall pay to Seller, the applicable Terminal Value set forth in Exhibit C, and Seller shall cause the applicable Generating Facility to be disconnected and removed from the Premises. Within one hundred eighty (180) calendar days of the notice of termination from Buyer, Seller shall remove the applicable Generating Facility and shall remediate and restore the Premises to the condition preceding the installation of the applicable Generating Facility as set forth in Section 10.5.

ARTICLE 3: ENGINEERING AND CONSTRUCTION REQUIREMENTS

- 3.1** All elements of engineering, construction and installation of the applicable Generating Facilities and compliance with all California Solar Initiative ("CSI") requirements are Seller's sole responsibility, provided that Buyer cooperates in good faith with Seller to satisfy the requirements of CSI and those of the Local Electric Utility.
- 3.2** Seller shall provide services as described herein and pursuant to Exhibit 5 – Engineering and Construction Requirements.
- 3.3** [Intentionally left blank].
- 3.4** Seller shall provide weekly status reports throughout this phase, as well as any additional briefing requested by Buyer.
- 3.5** Seller will create, maintain and provide to Buyer, minutes of meetings between Buyer's representatives and Seller's Project Management Team.
- 3.6** CEQA Compliance
 - a) Compliance with the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.*, is a condition precedent to the Buyer's obligations under this Agreement. The Seller shall not have any right to install the System until the Buyer has fully complied with CEQA, issued a statement to Seller attesting to the fact that Buyer has fully complied with CEQA as it relates to all applicable Generating Facilities included in the Agreement ("CEQA Certification"), and issued a notice to proceed ("Buyer NTP") to Seller. In most cases, the Buyer expects to satisfy the CEQA requirements with a Notice of Exemption for each project.

- b) If the Buyer, in its discretion, determines that a mitigated negative declaration (“MND”) or environmental impact report (“EIR”) is required to comply with CEQA, then Buyer shall promptly provide Seller with a written statement detailing the reasons that Buyer believes that MND or EIR is required to comply with CEQA and the estimated cost to comply with CEQA for the applicable Generating Facility. Unless Seller issues Buyer a written statement signed by an authorized representative of Seller agreeing to pay for all of the estimated cost to comply with CEQA within thirty (30) days of receipt of Buyer’s written statement, then the Agreement shall terminate as to the applicable Generating Facility, and neither Party shall have any liability to the other Party (other than any such liabilities that have accrued prior to such termination).

3.7 Engineering - Design Phase

During this phase, Seller shall proceed with all activities necessary to allow commencement of the construction phase, including completing the Preliminary Requirements (as set forth below). Upon completion of this phase, Seller shall proceed with the installation & construction phase. Seller’s failure to meet Preliminary Requirements will be subject to Section 3.9 below.

- a) Preliminary Requirements:
- (i) Prior to the execution of the Power Purchase Agreement, the Seller must comply with the Insurance Requirements for design phase included as Exhibit 10. Seller shall maintain such coverage throughout this phase.
 - (ii) Seller must comply with all requirements set forth in Exhibit 5 [Engineering & Construction Requirements].
 - (iii) Within thirty (30) days of the Effective Date:
 - 1. Seller shall notify the Buyer in writing of the Expected Commercial Operation Date. Such Expected Commercial Operation Date shall be no later than the CSI Reservation Expiration Date which is currently <INSERT CSI RESERVATION EXPIRATION DATE> or any extensions thereof.
 - 2. Each Party, upon request, shall furnish current certificates evidencing that the insurance coverage required under this Agreement is being maintained.
 - (iv) Within sixty (60) days from the Effective Date:
 - 1. Seller must have obtained a financing commitment for construction of each applicable Generating Facility and submitted a

signed term sheet as satisfactory proof of such financing commitment to the Buyer.

(v) Ninety (90) days from the Effective Date for the applicable Generating Facility:

1. Seller must have obtained a building permit for the applicable Generating Facility.

(vi) Seller must have obtained approval from the Buyer, which shall not be unreasonably withheld, conditioned or delayed of the final 100% detailed engineering drawings and specifications for the Generating Facilities. Seller must submit 65% and final 100% detailed engineering drawings and specifications for the Generating Facilities to Buyer for approval no later than ninety (90) days and one hundred and fifty (150) days, respectively from the Effective Date.

3.8 Construction Phase:

- a) Prior to the execution of the Power Purchase Agreement, the Seller must comply with the Insurance Requirements for construction phase included as Exhibit 10. Seller shall maintain such coverage throughout this phase.
- b) Seller will cause each System to be designed, engineered, installed and constructed substantially in accordance with Exhibit 5 of this Agreement and Applicable Law, including but not limited to, the payment of Prevailing Wages, if applicable. All construction of the applicable Generating Facilities, including but not limited to, any site preparation, landscaping or utility installation, shall be performed only by Seller or by independent contractors with demonstrated competence and experience in the construction of the photovoltaic systems, and duly licensed under the laws of the State of California, pursuant to written contracts with such contractors. Prior to the commencement of construction on any applicable Generating Facility, Seller shall deliver to Buyer for its review and approval, which approval shall not be unreasonably withheld, delayed, or conditioned, a complete set of plans and specifications relating to the installation of the applicable Generating Facilities, which shall comply with all applicable uniform construction codes. Buyer shall be deemed to have approved such plans and specifications if Buyer fails to transmit notice of disapproval within thirty (30) calendar days from the date that Seller delivers the plans and specifications to Buyer. Buyer shall have the right, but not the obligation, to inspect all construction for the purpose of confirming that Seller is adhering to the specifications provided for in Exhibit 5 to the Agreement.
- c) Seller must comply with all requirements set forth in applicable building and electrical codes and Exhibit 5.

3.9

Parties' Rights to Terminate Prior to Commercial Operation

- a) Buyer's Rights to Terminate: If Seller fails to complete the Preliminary Requirements in conformance with Article 3.7 with respect to any Generating Facility, Buyer may require Seller to compensate Buyer for CSI reservation, if any, and terminate this Agreement as to the applicable Generating Facility without penalty, liability or expense of any kind to Buyer by providing to Seller a written notice of termination after the deadline for completion of the Preliminary Requirements; provided, however that any such written notice of termination for non-compliance with Article 3.7, sections (a)(i) – (a)(v), (a)(vii) shall be provided by Buyer to Seller prior to the Commencement of Work Date and any written notice of termination for non-compliance with Article 3.7 section (a)(vi) may be provided by Buyer after the Commencement of Work Date. The Buyer may extend deadlines at its option. If Buyer elects to terminate pursuant to this paragraph, Seller shall take all actions necessary to return the Buyer's premises to the condition Seller first encountered them, at no cost to the Buyer. Buyer's right to terminate hereunder shall not be subject to the alternative dispute resolution procedures in Section 9.1.
- b) Seller's Rights to Terminate: In the event that any of the following events or circumstances occur prior to the Actual Commercial Operation Date, Seller may (at its sole discretion) terminate the Agreement, subject to Articles 3.9(c) - (e), as to the applicable Generating Facility, in which case neither Party shall have any liability to the other Party as to the applicable Generating Facility:
- (i) Seller and Buyer mutually determine that the Premises, as is, are insufficient to accommodate the applicable Generating Facility.
 - (ii) Seller and Buyer mutually agree that there exist site conditions at the Premises (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of installing the applicable Generating Facility or would adversely affect the electricity production from the applicable Generating Facility as designed.
 - (iii) Seller has not received a fully executed (i) Grant of Access Right (Exhibit A), and (ii) a release or acknowledgement from any mortgagee of the Premises, if required by Seller's Financing Party, to establish the priority of its security interest in the applicable Generating Facility.
 - (iv) Seller and Buyer have reasonably determined that there has been a material adverse change in the rights of the Buyer to occupy the premises or the Seller to construct the applicable Generating Facility on the Premises.
 - (v) Seller, after making best efforts to do so, has not received evidence that interconnection services will be available with respect to energy generated by the applicable Generating Facility.

- (vi) Seller has reasonably determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the applicable Generating Facility.
- c) Remediation: If Seller wishes to exercise its termination rights listed in section 3.9(b) with regard to a specific Generating Facility, Seller shall take all actions necessary to return the Buyer's Premises where the applicable Generating Facility was to be installed to the condition the Seller first encountered it in.
- d) Seller's Project Documents: If Seller exercises its rights under section 3.9(b) for any Generating Facility, Seller shall provide to Buyer all calculations, documents, plans and reports related to the planning and installation of the applicable Generating Facility provided that Buyer shall indemnify and hold harmless Seller for any and all claims based on any person's use, consultation, or reliance on such calculations, documents, plans and reports related to the planning and installation of the applicable Generating Facility.
- e) Buyer Option to Cure: Notwithstanding anything to the contrary, if Seller determines that it wishes to exercise termination pursuant to section 3.9(b), Seller shall give written notice to Buyer within 15 days of such determination. Upon receiving such notice, Buyer shall have 45 days to provide a cure for the circumstance causing Seller to consider termination. The Seller shall not exercise its rights under section 3.9(b) until it has provided a written notice to the Buyer of its intent to do so and allowed the Buyer 45 days to attempt to cure. The Buyer shall have the option, but not the obligation, to cure.

ARTICLE 4: DELIVERY OF POWER, METERING & MONITORING

4.1 Purchase & Sale

- a) Commencing on the Actual Commercial Operation Date and continuing throughout the Term, subject to Article 4, Seller shall sell and deliver at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay for, the Output as follows:

Energy Pricing: The pricing for Energy delivered at the Delivery Point shall be based on the Seller's bid price and escalation rate during the current contract year. The invoice for Energy delivered by the Seller for the applicable monthly billing period shall be determined as follows:

P = Payment to Seller for Energy supplied to the Buyer over the billing period.

P = EE x EP

EE = the total kWh of Delivered Energy to Buyer by Seller in time-of-use period during the billing period.

EP= the Base Contract Price as per Exhibit 6 – [Contract Price].

- b) Annual Escalation Adjustment. Commencing on the first anniversary date of the Actual Commercial Operation Date, and every anniversary date thereafter during the Term, the applicable Contract Price shall be escalated to reflect the Annual Escalation Adjustment as set forth in Exhibit 6- [Contract Price].
- c) Meters
 - (i) The transfer of Energy from Seller to Buyer shall be measured by Meters at the Delivery Point, which are selected, provided, installed, owned, maintained, programmed and operated, at the Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of the Local Electric Utility Tariffs and the Buyer-PG&E Interconnection Agreement. Seller shall exercise reasonable care in the maintenance and operation of the Meters, and shall test and verify the accuracy of each Meter at least every two (2) years. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of +/- 2% or better and monitoring results from Seller's Performance Monitoring and Reporting Service (PMRS) that is viewable by Buyer at all times. Eligible meters and PMRS providers must be listed as approved on the Go Solar California website.
 - 1. Single Viewing Kiosk for Generating Facilities: At location of Buyer's choice, Seller will install a single kiosk for viewing by the general public consisting of a 20"LCD screen with a computer and keyboard sufficient to view the data acquisition system ("DAS") monitoring of the Generating Facilities. The computer and keyboard shall be housed in a cabinet whose design, aesthetics, and cost are mutually agreed upon by Buyer and Seller. Buyer will allow Seller to use a 120v electrical outlet and data outlet located at the mutually agreed upon location which will be within a reasonable distance of an existing 120v electrical outlet. The total installed cost of the kiosk consisting shall not exceed \$5,000 US dollars.
 - (ii) Communications Equipment. After Actual Operating Date Seller shall install, own and maintain, at its sole cost and expense, communications equipment and services necessary to allow remote reading of the Meters.
 - (iii) Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an

accurate determination of the quantities of Energy delivered under this Agreement. Seller shall permit the Buyer or Buyer's representative access to its Generating Facilities for the purpose of verifying meters.

d) **Delivery Obligations.**

Beginning on the Actual Commercial Operation Date for each applicable Generating Facility, such Generating Facility shall produce not less than 90% of the applicable Expected Annual Contract Quantity (after accounting for weather-related and seasonal changes) as of the Effective Date during the Initial Term, measured on a rolling, two (2)-year, cumulative basis, unless, and then only to the extent that, the failure to satisfy the Expected Annual Contract Quantity is due to (a) Facility failure, damage or downtime attributable to third parties, (b) resulting from general utility outages or any failure of any electric grid, (c) a Force Majeure Event or (d) acts or omissions of Buyer of any of its obligations hereunder, provided Buyer has received prior written notice from Seller of such acts or omissions. Subject to the terms and conditions of this Agreement, beginning on the second anniversary of the Actual Commercial Operation Date if, the actual output of such Generating Facility for the two (2) year period prior to such anniversary (the "Actual System Output") does not equal or exceed the Expected Annual Contract Quantity for such two (2) year period, Seller will credit Buyer on its net invoice amount equal to the product of (i) the positive difference, if any, of the average price per kWh for Commercially Available Local Electric Utility-provided energy in the applicable market during such two (2)-year period minus the applicable PPA Rate hereunder, multiplied by (ii) the difference between the Actual System Output for such two (2)-year period and the Expected Annual Contract Quantity for such two (2)-year period.

- e) **Excess Energy:** Buyer agrees to purchase up to 110% of the Expected Annual Contract Quantity. Buyer agrees to purchase up to 110% of the Expected Annual Contract Quantity. Buyer shall have the option, but not the obligation, to purchase the Output of any particular Generating Facility that exceeds 110% of the Expected Annual Contract Quantity. Seller will first offer any Energy beyond the 110% cap to Buyer and, only if Buyer does not exercise its option to purchase all or a portion of such excess Energy, Seller shall be permitted to resell the excess Energy, provided such sale is in accordance with all applicable laws.

4.2 Monitoring System and Web Interface

- a) Seller shall install, maintain, own, and operate a Monitoring System for each Generating Facility.
- b) The Monitoring System shall include, without limitation, ability to monitor Revenue grade AC production data; weather data, (including ambient temperature and wind speed); and shall include a pyranometer.
- c) Seller shall make available to Buyer a web-based tool or interface to view, collect and store data, in real time, including the energy delivered, and greenhouse gas emissions reduced.
- d) Additional requirements and specifications for monitoring are described in Exhibit 7 – [Operations Forecasts, Scheduling Protocols, & Monitoring].
- e) Insolation. To the extent that (1) Buyer's actions or failure to honor its obligations under this Agreement or the Right of Access result in a reduction of the Insolation available to the Generating Facilities, and (2) this reduction in turn causes the actual AC power rating of the Generating Facility to be less than 90% of the Contract AC Power Rating, then the reductions in the Contract Price set forth in Articles (a) and (b) shall not apply. For purposes of this Article, "Insolation" shall mean Solar Insolation as defined in Article 1.

4.3 Delivery Point

- a) Allocation of Costs and Risks. Except as expressly set forth in this Agreement, Seller shall be responsible for any costs or charges imposed on or associated with the Output or the delivery of the Output hereunder up to and at the Delivery Point. Except as expressly set forth in this Agreement, the Buyer shall be responsible for any costs or charges imposed on or associated with the Output, or its receipt, after the Delivery Point.

4.4 Environmental Attributes

- a) Throughout the Term, Seller shall transfer to Buyer, and Buyer shall receive from the Seller, all rights, titles and interest in and to the Environmental Attributes, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller agrees that the Base Contract Price, as applicable is the full compensation for all Environmental Attributes.

- b) Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes to any Person other than Buyer.
- c) During the Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to the Buyer belong to anyone other than the Buyer, and the Buyer may report under any program that such attributes purchased hereunder belong to it.
- d) Seller shall document the production of Environmental Attributes under this Agreement by delivering on an annual basis to Buyer an attestation of Environmental Attributes produced by the Generating Facilities and purchased by Buyer in the preceding calendar month. On or before the Commencement Anniversary of each year following a Contract Year, Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to the Buyer an attestation of Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit 11 [Form of Attestation]. Exhibit 9 [Form of Attestation] may be updated or changed by Buyer as necessary to ensure that the Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder.
- e) Documentation. At Buyer's option, the Parties, each at their own expense, shall execute all such documents and instruments in order to affect the transfer of the Environmental Attributes specified in this Agreement to the Buyer or its designees, as Buyer may reasonably request. Upon notification by an EA Agency that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.

4.5 Tax Credits and Financial Incentives

- a) Buyer agrees to provide Seller information and documentation in support of Seller's rights and interests in IRS tax related benefits. In connection with Buyer's rights and interests in performance based incentive payments to be made under the California Solar Initiative after the Actual Commercial Operation Date, Seller agrees to cooperate with Buyer, including signing authorizations needed by Buyer, to obtain any such performance based incentives under the California Solar Initiative.

ARTICLE 5: BILLING AND PAYMENT

5.1 Billing and Payment

- a) During the Term on a monthly basis Seller shall invoice Buyer, and Buyer shall make payment for Energy delivered to Buyer and peak Demand Reduction achieved, if applicable, in accordance with Article 4. Such payment shall be full compensation to Seller for the Delivered Energy received under this Agreement. Invoices furnished by Seller under this Agreement must be in a form acceptable to the Buyer, and must include a unique invoice number.
- b) All payments shall be made on or before thirty (30) days after receipt of an undisputed invoice. Each Party shall make payments by electronic funds transfer, if available, or by other mutually agreeable method(s), to the account designated by the other Party.
- c) All payments made hereunder shall be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set-off, or adjustment of any kind.

5.2 Allocation of Taxes and Possessory Interest Tax

- a) **Delivery Point.** Seller shall pay or cause to be paid all Taxes due under or by virtue of this Agreement or the sale and delivery of Output sold hereunder including but not limited to ad valorem, franchise or income taxes which are related to the sale of Output.
- b) **Real Estate or Property Taxes.** Seller shall pay or cause to be paid all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are now or hereafter assessed, levied, charged, confirmed or imposed by any Governmental Authority on Seller's Occupancy and use of the Property (or any portion or component thereof) or on Seller's ownership which are assessed as a result of the operation of Seller's Generating Facilities.
- c) **Buyer Credit for Payment of Taxes.** If the Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, the Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law.

ARTICLE 6: REMOVAL OF GENERATING FACILITIES

6.1 Removal and Deposit Fund Requirements

- a) **Removal and Disposal Fund – General.** In order to ensure that funds are available for the removal of the Generating Facilities and remediation of the Site upon the expiration or termination of this Agreement, Seller agrees to establish an interest

bearing escrow account at a federally insured banking institution to hold funds dedicated for such purpose (the "Removal Fund"). The terms for the escrow account shall be reasonably acceptable to the Buyer and the Seller.

- b) Interest. All interest earned shall become part of the Removal Fund.
- c) Buyer shall have the right to request and review fund balances at any point prior to expiration of Term, upon written notice to Seller.
- d) Deposits. Seller shall make deposits into the Removal Fund in annual amounts of \$6 per KW, one-twelfth (1/12th) of which shall be the "Monthly Contribution." The Seller shall deposit the first Monthly Contribution into the Removal Fund on the first day of the month following the Actual Commercial Operation Date, and shall deposit additional Monthly Contributions on the first day of each subsequent month during the Term. Seller agrees to deposit the Monthly Contribution until the Removal Fund (including interest income) has a balance equal to or greater than \$120 per KW. Such Removal Fund shall be disbursed, as needed, on a pro- rata per KW basis for individual Sites.
- e) Estimate of Removal Costs. No later than five hundred and forty-five (545) days prior to the expiration of the Term for each applicable Generating Facility, Seller shall provide Buyer a written estimate of the cost to remove the applicable Generating Facility and restore the applicable Site to its condition prior to the installation of the applicable Generating Facility. The Parties shall meet and confer within thirty (30) days after such written estimate is received by Buyer to resolve any concerns regarding such estimated cost.

6.2 Abandonment.

If Seller fails to complete its removal and restoration obligations under this Agreement within one hundred and twenty (120) Days of after termination of this Agreement, then, in addition to Buyer's other remedies under this Agreement, at law or in equity for such failure, any part of the generating facilities and all personal property of Seller not removed from the project sites within one hundred twenty (120) Days after such termination of this Agreement shall be deemed abandoned by Seller, and shall become the property of Buyer, and Buyer may, at its option, remove and warehouse or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion.

ARTICLE 7: SELLER'S ADDITIONAL OBLIGATIONS

- 7.1** Seller shall provide Buyer with an as-built plan set after project completion.
- 7.2** Seller shall develop, finance, own, maintain and operate the Generating Facilities in accordance with this Agreement including the Technical Requirements appended as

Exhibit 4 [Technical and Warranty Requirements], Grant of Access Right, all Requirements of Law, all Permits, the Local Electric Utility Tariffs and Prudent Industry Practice. Additionally, Seller shall obtain the warranties described in Exhibit 4 [Technical and Warranty Requirements] for the equipment detailed in that Exhibit.

7.3 Seller agrees it shall pay Prevailing Wages in connection with the construction and operation of the Generation Facilities.

7.4 Milestones

a) Generally.

Seller shall diligently pursue all milestones established pursuant to Article 3 and the Expected Commercial Operation Date. The Parties agree that time is of the essence in connection with the completion of the Generating Facilities, and that Milestones for the development, financing and construction of the Generating Facilities must be achieved in a timely fashion. Seller shall strive to achieve the Milestones mutually agreed to at the time of PPA execution by the Seller and Buyer.

b) Weekly Reports.

Unless otherwise specified in this Agreement, starting on the Effective Date, Seller shall provide weekly progress reports concerning the progress towards completion of the Milestones. In addition, within five (5) Business Days of the completion of each Milestone, Seller shall provide a certification to the Buyer (along with any supporting documentation) demonstrating the satisfaction of such Milestone. Seller shall provide to the Buyer additional information concerning Seller's progress towards, or confirmation of, achievement of the Milestones, as the Buyer may reasonably request from time to time.

c) Notice of Failure to Achieve a Milestone.

Upon becoming aware that Seller will, or is reasonably likely to, fail to achieve one or more Milestone(s) by the required date, for any reason including a Force Majeure Event, Seller shall so notify the Buyer in writing immediately. Such notice shall explain the cause of the delay, provide an updated date for achievement of the Milestone(s), and describe Seller's plan for meeting such Milestone(s). Seller's notice will also explain any impact such delay may, or will have, on any other Milestone, and the measures to be taken to mitigate such impact.

d) Facility Substantial Completion Inspection.

Seller shall notify Buyer when Substantial Completion of each of the Generating Facilities is achieved. At discretion of Buyer, Seller shall schedule and arrange for

Buyer to conduct an inspection of each of the Generating Facilities. The inspection shall be scheduled for a date, mutually agreeable to Seller and Buyer, which is within ten (10) Business Days of Seller's notification of Substantial Completion of the applicable Generating Facility. Based on the inspection, Buyer may, within ten (10) Business Days of the inspection, prepare and provide to Seller a punch list of any observed defects or deficiencies in the construction work or discrepancies between installed equipment and workmanship and this Agreement. Seller shall be responsible for completion, correction, or otherwise addressing issues identified by the Buyer, and shall provide a written response to document actions taken in response to the punch list items. If requested by Buyer, Seller shall schedule and arrange a follow-up inspection for Buyer after all punch list items are resolved. All punch list items shall be resolved prior to the Actual Commercial Operation Date of the Generating Facilities except those items specifically excepted by mutual agreement between Buyer and Seller.

- e) Force Majeure Event. In the event that a Force Majeure Event causes any delay in the achievement of a Milestone, such Milestone's deadline may be extended, together with any Force Majeure Event extensions for other Milestones, for a period not to exceed, in the aggregate, six (6) months. The extension of the deadline for any Milestone shall extend the deadline for all subsequent Milestones, provided that in no event shall the combined extensions for Force Majeure Events for any or all of the Milestones exceed six (6) months. The extension provided for in this Article shall be the only effect of a Force Majeure Event on Seller's obligations with respect to the Milestones.
- f) Waiver of Right. The Buyer may, at its discretion, grant waivers for Seller's failure to meet any of the Milestones, but in no way shall any such waiver constitute a waiver of any future failures by Seller to meet other Milestones.

7.5 Compliance: Seller shall, in its own name and at its own expense, seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits and other authorizations that are required by any Requirements of Law, the ISO Tariff, the Local Electric Utility Tariffs or any Governmental Authority as are necessary for Seller to engage in the activities and obligations required by the Agreement.

7.6 Maintenance, Audit and Inspection of Records

- a) Maintenance of Records. Seller shall maintain any and all documents and records which demonstrate performance under this Agreement and the lease, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to Buyer for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement.

- b) Inspection. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to Buyer, at any time during regular business hours, upon written request by a designated representative of the Buyer. Seller shall provide copies of such documents to Buyer for inspection at a time and place that is convenient to Buyer.

7.7 Insurance:

Seller shall obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 10 [Insurance Requirements] for the term of this Agreement.

7.8 Commissioning Tests:

Seller shall comply with all applicable ISO and Local Electric Utility requirements for pre-operational testing. In addition, no later than fourteen (14) days prior to conducting its Commissioning Tests, Seller shall notify Buyer of the date on which it intends to conduct such tests. Within seven (7) days of the successful completion of Seller's Commissioning Tests, Seller shall provide to Buyer written notification of the Actual Commercial Operation Date, including any relevant data demonstrating that Commercial Operation has occurred. Buyer has the right to be present during any Commissioning Test, and to receive all information, including meter and performance data associated with such tests. Seller may change the date for such tests upon written notice to Buyer, provided that Buyer has at least fourteen (14) days notice of the date of such tests.

7.9 Obligation to Interconnect:

Seller shall be solely responsible for Interconnection of the Generating Facilities to the Transmission System. Seller shall, at its own cost and expense, negotiate and enter into an Interconnection Agreement and such other agreements with the Local Electric Utility as needed to enable Seller to transmit Energy to the Delivery Points. Seller shall be responsible for all costs under the Interconnection Agreement and any other agreements with the Local Electric Utility including but not limited to the costs of any upgrades to the Transmission System associated with the Interconnection of the Generating Facilities. Seller shall, at its own cost and expense, maintain the Interconnection Facilities including metering facilities.

7.10 WREGIS

As applicable, prior to the Actual Commercial Operation Dates of the applicable Generating Facilities, Seller shall register the applicable Generating Facilities in the WREGIS, and take all other actions necessary to ensure that the Energy or Environmental Attributes produced by the Generating Facilities are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred to Buyer as applicable. In the event that WREGIS is not in operation as of the Actual Commercial Operation Date, Seller shall perform its obligations, as required under

this Article as soon as WREGIS is in operation.

- 7.11** Facility Conformance to Buyer Specifications. Seller shall assure that each Generating Facility remains in conformance with the most recent version of the as-built drawings approved by the Buyer; all specifications and requirements of this Agreement during the Term, including when maintenance is performed or when modifications are implemented. Buyer may, at any time, prepare and provide to Seller a letter or notice of any observed defects, deficiencies or deviations between each Generating Facility and the most recent version of the as-built drawings approved by the Buyer, or any specification or requirement of this Agreement. Within twenty (20) Days of Buyer's notification, Seller shall correct or address the issue(s) or propose to Buyer a reasonable schedule for correcting or addressing the issue(s). The schedule shall be subject to the written consent of the Buyer which consent shall not be unreasonably withheld or delayed. If Seller fails to correct or address issue(s) identified by Buyer, Buyer shall have the right to receive a Delay Correction payment from Seller. Delay Correction Payments shall be 75% of the Contract Price multiplied by the expected Contract Quantity per day, beginning twenty one (21) Days after receipt of notification or ten (10) Days after the agreed upon date for resolution, whichever is later, and continuing for each day that the non-conformance remains uncorrected. Any such Delay Correction Payments shall be in addition to all other rights and remedies available to Buyer under this Agreement, in law or in equity.
- 7.12** So long as Seller is paying such Delay Correction Payments as described above on a weekly basis, Buyer shall not be permitted to declare Seller in default of this Agreement or otherwise terminate this Agreement, provided that in no event, shall the extension from such Delay Correction Payment damages exceed twenty (20) Business Days. The Parties agree that Buyer will suffer damages if the corrections are not timely made, and that the Buyer's actual damages in the event that corrections are delayed would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Delay Correction Payments constitute an appropriate remedy. The Delay correction Payments do not constitute a forfeiture or penalty of any kind.
- 7.13** Coordination with the ISO, Local Electric Utility and Western Electricity Coordinating Council ("WECC")
- a) ISO, Local Electric Utility and WECC Standards. Each Party shall undertake its obligations under this Agreement in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the ISO and Local Electric Utility; (ii) WECC scheduling practices; and (iii) Prudent Utility Practices.
 - b) Start-ups and Shut-downs. Seller shall coordinate all Generating Facilities start-ups and shut-downs, in whole or in part, with Buyer in accordance with the reasonable protocols established by Buyer in Exhibit 7 [Operations Forecasts, Scheduling Protocols, & Monitoring] and applicable requirements of the ISO Tariff.

- 7.14** Seller shall use commercially reasonable efforts to minimize the number and duration of Outages during periods when the Generating Facilities otherwise would be able to produce Energy. Planned Outages shall be limited to no more than five (5) calendar days per Contract Year. Seller shall be responsible for all expenses and costs associated with all requirements and timelines for generation Outage scheduling, including, if applicable, those posted on the ISO's website. Planned and forced Outages shall be coordinated between Seller and the Buyer in accordance with Exhibit 7 [Operations Forecasts, Scheduling Protocols, & Monitoring].
- 7.15** Transmission and Distribution Maintenance Information: If either Party receives information through the ISO or from the Local Electric Utility regarding maintenance that will directly affect the Generating Facilities, it will provide this information promptly to the other Party.
- 7.16** Modifications to the Generating Facilities After Their Applicable Actual Commercial Operation Dates

After the Actual Commercial Operation Dates of the applicable Generating Facilities, Seller shall have no right to change, replace or alter the applicable Generating Facilities nor attach fixtures or erect additions or structures in or upon the applicable Generating Facilities (collectively "Alterations") without receiving prior written approval of Buyer prior to undertaking any such Alterations. Seller shall submit to Buyer detailed and complete plans and specifications for the proposed Alterations. To the extent any change, replacement or alteration consists solely of modification or replacement of like-kind equipment it shall not be deemed to be an Alteration. Buyer shall not unreasonably delay or withhold written approval of Seller's proposed Alteration, provided that such Alteration shall impose no additional burdens or obligations on Buyer. As a condition to consenting to the Alterations, Buyer may impose reasonable requirements, including the reimbursement of any costs incurred by Buyer in responding to Seller's request or inspecting such Alterations. Any such Alterations performed by Seller shall be performed in accordance with all Applicable Laws and Requirements, including any and all necessary permits and approvals to be obtained from Buyer. Seller agrees to provide Buyer with sufficient advance notice of any proposed Alterations to allow the coordination and consideration by Buyer of the construction schedule for such Alterations. Notwithstanding the foregoing, Seller's routine repair, replacement, or maintenance of the equipment components of the Generating Facilities shall not require Buyer's consent, but shall require sufficient advance notice to Buyer.

ARTICLE 8: FORCE MAJEURE

8.1 Force Majeure Events

- a) Excuse. Subject to Article 8.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to

deliver or accept Output) if such delay or failure is due to a Force Majeure Event, but only to the extent that:

- (i) Such Force Majeure Event is not attributable to fault or negligence or action or inaction on the part of that Party;
- (ii) Such Force Majeure Event is caused by factors beyond that Party's reasonable control; and
- (iii) Despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences.

b) "Force Majeure Event" may include, subject to this Article:

- (i) acts of Nature such as storms, floods, lightning and earthquakes;
- (ii) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;
- (iii) Utility Transmission System outage or failure not caused by Seller or Seller activities;
- (iv) war, riot, acts of a public enemy or other civil disturbance;
- (v) strike, walkout, lockout or other significant labor dispute;
- (vi) theft, vandalism, accidents, or construction related power interruptions and mechanical moves; and
- (vii) curtailment by the ISO, or its successor, but only to the extent that the ISO declares a "Force Majeure" under the ISO Tariff.

c) Exclusion. "Force Majeure Event" does not include the following:

- (i) economic hardship of either Party except pursuant to 8.1(d);
- (ii) an Outage, except if caused directly by an event or circumstance that meets the requirements set forth in this Article 8.1;
- (iii) failure or delay in the granting of Permits;

- (iv) failures or delays by the Local Electric Utility or the ISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement;
 - (v) curtailment or interruption of transmission services, other than by the ISO where the ISO declares a "Force Majeure" under the ISO Tariff; or
 - (vi) insufficiency, unavailability, failure, or diminishment of solar resource, except as a result of an event that would otherwise qualify as a Force Majeure Event
- (d) Notwithstanding anything to the contrary, due to the constitutional limitations on Buyer, a Force Majeure event shall include a "budget non-appropriation event" in which the Buyer's appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any utility services for Buyer. During the continuation of a budget non-appropriation event as defined above, if the Buyer does not otherwise have other funds available to make payments otherwise due on this Agreement, the Buyer shall not be obligated to pay for (and the Seller shall not be required to deliver) any services provided under this Agreement until the budget non-appropriation event has terminated. Buyer agrees that it shall use its best efforts to seek appropriation for utility services during the term of this Agreement. If a budget non-appropriation event continues for more than 180 days, Seller (but not Buyer) may terminate this Agreement.

8.2 Conditions

- a) In addition to the conditions set forth in Article 8.1(a) above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party:
 - (i) provides prompt notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;
 - (ii) exercises all reasonable efforts to continue to perform its obligations under this Agreement;
 - (iii) expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes shall be completely within the sole discretion of the Party affected by such strike or labor dispute;

- (iv) exercises all reasonable efforts to mitigate or limit damages to the other Party; and
- (v) provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

8.3 Termination Due To Force Majeure Event

In addition to and without limiting any other provisions of this Agreement, if a Party is prevented from performing its material obligations under this Agreement for a period of three hundred and sixty-five (365) consecutive days or more (whether full or partial days) due to a Force Majeure event, the other Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days written notice after the Force Majeure Event. In the event that a Generating Facility is unable to function for a period of three hundred and sixty-five (365) consecutive days and the Agreement as it relates to that Generating Facility is thereby terminated, Seller shall be responsible for removing the applicable Generating Facility and restoring the Premises where the applicable Generating Facility was installed to its pre-installation condition within ninety (90) days after provision of written notice. Seller agrees to work in good faith to keep Buyer informed of its plans to address the Force Majeure Event. If such Force Majeure Event results in a Generating Facility being unable to function for a period of eighty consecutive (80) days then within ten (10) days of such event, Seller shall present Buyer with a plan to restore the Generating Facility.

ARTICLE 9: DISPUTE RESOLUTION

- 9.1** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a “Dispute”) within fifteen (15) days after the date that a Party gives written notice of such Dispute to the other Party, other than the Seller’s failure to comply with the Preliminary Requirements in Section 3.7 for which a specific Buyer termination procedure exists pursuant to Section 3.9 which shall not require compliance with Article 9.1. Except to the extent that the Agreement expressly permits a Party to suspend performance, pending final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under the Agreement. If the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator mutually agreeable to the parties whom they choose together, and share costs for such equally.
- 9.2** Notwithstanding anything to the contrary, this Article is not intended to limit or restrict the rights of either Party to seek any judicial remedy.

ARTICLE 10: DEFAULT & REMEDIES

10.1 Events of Default Generally.

The following is a list of non-exclusive events of default (collectively “Events of Default”) They shall constitute a Seller’s default or Buyer’s default as specified below:

- a) Seller Schedules and/or delivers to Buyer, without Buyer’s consent, energy or other product from a resource other than the Generating Facilities specified in this Agreement (Seller default); or
- b) If a Generating Facility does not provide at least 50% of the Estimated Annual Production as specified in Exhibit 8 for six consecutive months after adjustments for weather, acts and omissions of third parties issues out of Seller’s control, and Force Majeure Events (Seller default)
- c) Seller sells or transfers Output to any Person other than Buyer (Seller default); or
- d) Either Party shall have failed to maintain any insurance required pursuant to this Agreement (Seller or Buyer default depending on circumstances); or
- e) Seller shall have failed to achieve Substantial Completion by the Expected Commercial Operation Date as such deadline is established pursuant to Article 3 (Seller default); or
- f) Seller shall have failed to maintain continuous operations at any Project Site for any three hundred and sixty-five (365) consecutive days, have been dispossessed by process of law or otherwise, or have otherwise abandoned the Project Site (Seller default); or
- g) A court shall have made or entered any decree or order: (i) adjudging a Party to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of such Party or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of such Party in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of such Party and such decree or order shall have continued for a period of sixty (60) days; or (v) such Party shall have voluntarily submitted to or filed a petition seeking any such decree or order (Seller or Buyer default depending on circumstances); or
- h) The sequestration or attachment of or execution or other levy on a Party's interest in this Agreement or the Premises or any improvements located thereon shall have occurred and such Party shall have failed to obtain a return or release of such property within thirty (30) days thereafter, or prior to sale pursuant to such

levy, whichever first occurs (Seller or Buyer default depending on circumstances); or

- i) The occurrence of any act or omission on the part of a Party which operates to suspend, revoke or terminate any certificate, permit, franchise, approval, authorization or power necessary for a Party to lawfully conduct the operations which a Party is required or permitted to conduct on the Premises or on the Site (Seller or Buyer default depending on circumstances); or
- j) A Seller default would occur if a mechanics lien was filed against the Generating Facilities because of any act or omission of the Seller, that has not been discharged or contested by the Seller in good faith by proper legal proceedings within twenty (20) calendar days after receipt of notice.

10.2 Seller Defaults and Buyer Remedies

- (a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a "Seller Default"):
 - (i) A Bankruptcy Event shall have occurred with respect to Seller;
 - (ii) Seller fails to pay Buyer any undisputed amount owed under the Agreement within sixty (60) days after receipt of notice from Buyer of such past due amount; and
 - (iii) Seller breaches any material term of the Agreement, (including, where applicable to Seller, the circumstances listed in Section 10.1), and (A) if such breach can be cured within thirty (30) days after Buyer's written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.
- (b) Buyer's Remedies. If a Seller Default described in Article 10 has occurred and is continuing, in addition to all rights and remedies expressly provided herein,, Buyer may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of Seller Default has been delivered by Buyer to each Financing Party – which Seller shall have the obligation to provide to Buyer - and such Seller Default has not been cured within thirty (30) days of delivery of such notice or a Financing Party has failed to commence and pursue a cure to the reasonable satisfaction of the Buyer within such thirty (30) day period if a longer cure period is needed. Any Financing Party shall be an intended third-party beneficiary of this Article 10. Upon Buyer's exercise of termination rights pursuant to this subsection, Buyer may, at its option, provide written notice to Seller to remove one or more Generating Facilities from the

Premises of the Buyer. If Buyer makes such election, Seller shall be responsible for removing the applicable Generating Facility at its own cost and restoring the site where the applicable Generating Facility was installed to its pre-installation condition, within 90 days of provision of written notice.

- (c) No Early Termination Fee. Buyer exercising its' rights under this section 10.2 is not liable for an Early Termination Fee.

10.3 Buyer Defaults and Seller Remedies

(a) Buyer Default. The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Buyer;
- (ii) Buyer fails to pay Seller any undisputed amount owed under the Agreement within sixty (60) days after receipt of notice from Seller of such past due amount, which Seller shall send to Buyer 45 days after amount is due; and
- (iii) Buyer breaches any material term of the Agreement, (including where applicable to Buyer, the circumstances listed in Article 10.1), if (A) such breach can be cured within thirty (30) days after Seller's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed.

(b) Seller's Remedies. If a Buyer Default described in Article 10 has occurred and is continuing, in addition to all rights and remedies provided at law or in equity, and all the rights and remedies expressly provided to Seller pursuant to this Agreement, and subject to Article 11, Seller may terminate the Agreement.

10.4 Limitation of Liabilities

(a) Except as otherwise specifically and expressly provided in this Agreement, neither Party shall be liable to the other Party under this Agreement for any indirect, special or consequential damages, including loss of use, loss of revenues, loss of profit, interest charges, cost of capital or claims of its Buyers or members to which service is made.

(b) Under no circumstances shall the non-defaulting Party be required to make a termination payment or any other payment to the defaulting Party (except for payments due under this Agreement for performance prior to termination).

10.5 Effect of Termination - Survival of Obligations

(a) Removal and Restoration. Unless the Parties otherwise mutually agree in writing, upon expiration of any Initial or Renewal Terms, or upon termination of the Agreement

as to the applicable Generating Facility for any reason other than the exercise of Buyer's purchase option pursuant to Section 2.2, Seller shall disconnect and remove the applicable Generating Facility from the Buyer's premises and shall remediate and restore the Buyer's premises to the condition preceding the installation of the Generating Facility at no cost to the Buyer. Within one hundred eighty (180) calendar days of the notice of termination from Buyer, Seller shall remove the applicable Generating Facility and shall remediate and restore the Premises to the condition preceding the installation of the applicable Generating Facility. If the Generating Facility is located on Buyer's roof, Seller shall ensure that its removal shall not affect the integrity of the roof, including, without limitation, its leak proof capacity (other than ordinary wear and tear). Upon removal of the Generating Facility, Seller shall leave the applicable site in broom-clean condition at no cost to the Buyer.

(b) The following sections shall survive termination or expiration of this Agreement;

- (i) Obligations to pay by either Party that have accrued prior to termination or expiration
- (ii) Indemnification obligations
- (iii) Limitation of liability provisions
- (iv) Obligations to remove Generating Facilities and remediate premises
- (v) Obligations (if any) to repair damage caused by either Party (13.28)
- (vi) Obligations to retain records and provide access to same (13.29)
- (vii) Restriction regarding use of Buyer's name for commercial purposes (13.36)
- (viii) This provision, section 10.5.

10.6 Indemnification

To the fullest extent permitted by law, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless, with counsel of its own choosing, the other Party, and its permitted successors and assigns, and their elective or appointive board, officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all claims, liability or losses, including but not limited to those losses arising from (i) personal injury or death, (ii) damage to property, (iii) taxes for which the Indemnifying Party is responsible under this Agreement, or (iv) fines or penalties payable by the Indemnified Party, to the extent such losses result from or arise out of or in any way are connected with the Indemnifying Party's performance of this Agreement or, in the case of Seller, the design, construction, use, operation, maintenance, or removal of the Generating Facilities, except as may arise solely from the negligence, willful misconduct or violation of law by the Indemnified Party, its officers, employees, subcontractors or agents. Notwithstanding the above, an Indemnified Party shall not be

required to defend, indemnify and hold harmless an Indemnified Party for the Indemnified Party's own negligent acts, omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

If requested by any of the indemnitees, Seller shall defend any such suits at its cost and expense. In an action or claim against Buyer in which Seller is required to defend Buyer, Buyer shall have the right to approve legal counsel retained by Seller to provide Buyer's defense, which approval shall not be unreasonably withheld, conditioned or delayed. If Seller refuses or fails to undertake or diligently prosecute such defense on behalf of Buyer, Buyer will have the right to provide its own defense, and Seller will reimburse Buyer for such expenditures, including reasonable attorney's fees and costs. Seller's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of Buyer or any other person, except as may arise solely from the negligence or solely from the willful misconduct of Buyer, its officers, employees or agents, and shall apply without limitation to claims and litigation arising under the Americans with Disabilities Act, inverse condemnation, or any other statutory or legal theory. All of Seller's obligations under this section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.

To the extent that a portion of Seller's services under this Agreement are design professional services subject to Civil Code Section 2782.8, and to the extent that a particular claim or litigation arises from such design professional services, Seller's obligations under this Section shall be subject to any applicable limitations mandated by Section 2782.2.

Seller shall, at its own expense, indemnify, defend, settle, and hold harmless the Buyer and its agencies against any claim or potential claim that any service, technology or good provided by Seller to Buyer under this Agreement, or Buyer's use thereof, infringes any patent, trademark, copyright or other intellectual property rights, including trade secret rights. Seller shall pay all costs, damages and attorneys' fees that a court awards as a result of any such claim.

Seller shall reimburse Buyer for all costs incurred in successfully enforcing the indemnification provisions of this Agreement against Seller.

ARTICLE 11: REPRESENTATIONS, WARRANTIES AND COVENANTS

11.1 SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller represents, warrants, and covenants to the Buyer that as of the date of the execution of this Agreement:

a) Seller is duly organized and validly existing as a <INSERT LOCATION e.g. DELAWARE >limited liability company, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;

b) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part;

c) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;

d) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement;

e) Seller will deliver to Buyer at the Delivery Point the Adjusted Delivered Energy free and clear of all liens, security interests, claims and encumbrances or any interest therein, or thereto, by any Person.

f) Prior to conveyance to Buyer, Seller holds and will hold throughout the Term, the rights to all Environmental Attributes, which it has conveyed and has committed to convey to Buyer hereunder; and

g) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or

by which it is bound or affected.

11.2 Seller's Additional Representations, Warranties and Covenants

a) Seller warrants, represents and covenants that all of its operating and maintenance personnel shall be adequately qualified and trained throughout the term of the Agreement.

b) Seller represents, warrants and covenants that any goods and/or services furnished under this Agreement shall be covered by the most favorable commercial warranties that Seller gives to any of its Buyers for the same or substantially similar goods and/or services. Any warranties so provided shall supplement, and shall not limit or reduce, any rights afforded to Buyer by any clause in this Agreement, any applicable Uniform Commercial Code warranties, including, without limitation, Implied Warranty of Merchantability and Implied Warranty of Fitness for a Particular Purpose as well as any other express warranty.

c) Seller expressly warrants that all goods supplied shall be new, suitable for the use intended, of the grade and quality specified, free from all defects in design, material and workmanship, in conformance with all samples, drawings, descriptions and specifications furnished by the Buyer, in compliance with all applicable federal, state and local laws and regulations.

d) Seller warrants that all services shall strictly conform to the Buyer's requirements.

e) During the provision of goods and services, Seller may not disclaim any warranty, express or implied, and any such disclaimer shall be void. Additionally, the warranties above shall not be deemed to exclude Seller's standard warranties or other rights and warranties that the Buyer may have or obtain.

f) Seller covenants to maintain and repair Project Sites if such maintenance and repairs are necessary as a result of Sellers' authorized or permitted use, including without limitation, the repair of any roofs to the reasonable satisfaction of Buyer.

11.3 Buyer Representations and Warranties

Buyer represents and warrants to Seller that as of the Effective Date of this Agreement:

a) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part; and

b) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and

c) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to result in any impairment of the Buyer's ability to perform its obligations under this Agreement. Seller and Buyer further understand and agree that the Buyer is entering into this Agreement in its capacity as a purchaser of electric power. Nothing in this Agreement shall limit in any way Seller's obligation to obtain any required approvals from departments, boards, commissions or governmental entities having jurisdiction over this Agreement. By entering into this Agreement, Buyer is in no way modifying Seller's obligation to cause the Generating Facilities to be installed and operated in accordance with all Requirements of Law.

ARTICLE 12: ASSIGNMENT AND FINANCING

12.1 Collateral Assignment. Buyer acknowledges that Seller may finance the acquisition and installation of the system through a loan, lease or partnership from or with one or more third party capital lenders, lessors, limited liability companies or partnerships ("each a Capital Partner").

Seller may secure such financing with a collateral security assignment of this Agreement which may include a first security interest in the system (a "Collateral Assignment"). In order to facilitate any such transaction, Buyer (i) consents to a Collateral Assignment by Seller to a Capital Partner, and (ii) agrees to take any actions and provide any documentation reasonably requested by Seller in connection with such a transaction.

12.2 FINANCING PARTY - Full Assignment. Notwithstanding Article 12.1 Seller shall not sell, transfer or assign the Seller's rights and obligations under this Agreement, or any interest

in this Agreement (collectively, a "Full Assignment"), without the prior written consent of Buyer. Buyer has thirty (30) days to approve or deny Seller's written request for Full Assignment (unless the parties mutually agree in writing to a longer period). Upon the completion of a Full Assignment by Seller that follows the requirements of this Agreement, the term "Seller" shall mean the Assignment Assignee. Buyer's consent to any Full Assignment shall not be unreasonably withheld if Buyer has been provided with proof to the Buyer's reasonable satisfaction that the proposed assignee (and subcontractor(s) with whom it has an active contract):

- (a) has experience in operating and maintaining fuel cell or solar PV systems, as applicable, greater than or equal to that of Seller; and
- (b) has the financial capability and credit rating equal to or greater than that of Seller; and
- (c) has the ability to maintain the System and provide the Services provided pursuant to this Agreement in the manner required by this Agreement and provides all applicable warranties that it shall do so; and
- (d) provides proof that it complies with the Removal Fund requirements of this Agreement.

Seller will not sell, lease, or otherwise convey its interest in the System to any Person unless it also makes a Full Assignment to such Person and such assignment is permitted by this Agreement. Assignments or transfers not in compliance with this section will be void. Any Collateral Assignment by Seller shall not release either Party of its obligations hereunder. In the event that a Financing Party exercises its right to assume all of Seller's rights, interests and obligations under this Agreement, it shall do so in writing. Any assignment by Seller without required prior written consent of Buyer shall not release Seller of its obligations hereunder.

12.3 Rights of Assignees Upon Event of Default.

- (i) In the case where a Seller has defaulted under its obligations to a Financing Party, any Capital Partner shall have the right but not the obligation to assume the Seller's obligations under this Agreement within 45 days of the Seller's default. For avoidance of doubt, in the event that a Financing Party exercises its right contemplated in this section, such Financing Party shall assume all obligations under this Agreement as well as assuming all of Seller's rights and interests under the Agreement, and thereafter shall become the Successor-in-Interest to Seller under this Agreement. In the event that a Financing Party exercises its right to assume all of Seller's rights, interests, and obligations under the Agreement, it shall so assume in writing, and Seller shall have no further obligation to Buyer unless accrued up to that point and will provide notice to Buyer in writing.
- (ii) A Successor-in-Interest shall cure any ongoing Seller Defaults promptly after becoming the Successor-in-Interest and no later than 90 days after

becoming Successor-in-Interest. If the Successor-in-Interest does not cure all Seller Defaults, it will also be considered to be in default and Buyer shall have all rights afforded to Buyer against such Successor-in-Interest under this Agreement as in the case of a Seller Default.

- (iii) Buyer shall be relieved of its obligations under this Agreement during the Default Period and may exercise its termination rights pursuant to this Agreement (including without limitation, invoking the use of the Removal Fund to have any facilities/equipment removed). If Buyer chooses not to exercise any available termination rights and when the Successor-in-Interest cures any and all Seller Defaults, the respective Buyer and Seller rights and obligations shall resume for the remainder of the Term. No partial or complete waiver of Buyer's rights shall be implied from Buyer's actions pursuant to this paragraph.

12.4 Payments and Notices.

If a Collateral Assignee elects to become the Successor-in-Interest, it will be solely responsible for notifying the Seller and any other Collateral Assignees of this intention. The Buyer shall not be responsible for passing any notices, information and/or communications between the Seller and Collateral Assignees. If a Collateral Assignee does become a Successor-in-Interest, Buyer shall make all payments due under this Agreement to an account specified by such Collateral Assignee. For avoidance of doubt, upon the Collateral Assignee becoming the Successor-in-Interest the previous Seller shall not retain any of its rights or obligations under this Agreement and payments made by Buyer to the Successor-in-Interest shall satisfy Buyer's payment obligations under this Agreement.

Seller shall be solely responsible to provide contact information, including mailing addresses, email addresses and phone numbers for all Collateral and Full Assignees to Buyer. Buyer shall notify all Collateral Assignees for which it has contact information within 15 days of a Seller Default. Seller shall be solely responsible for any instance where a Collateral Assignee does not receive notice due to the Seller not providing contact information to Buyer.

12.5 Collateral Assignee Changes. Buyer acknowledges and agrees that Seller, subject to the terms and conditions of this Agreement may change one or more Collateral Assignees. In the case that a Seller changes a Collateral Assignee, Seller shall provide Buyer with any relevant, new contact information and payment directions as instructed by Seller. The terms and conditions of this Agreement, shall apply to any change in Financing Party by Seller.

12.6 Notwithstanding any language to the contrary, when any assignee chooses to exercise any rights against Buyer, it shall Indemnify per the terms of this Agreement (and shall agree to do so in writing upon request by Buyer) Buyer for any claims arising from exercise of such rights. By way of example and not limitation, such indemnification obligations shall extend to claims by other Financing Parties or Collateral Assignees

asserted against Buyer. Any assignee's ability to exercise any rights against Buyer shall be contingent on the assignee's assumption of such indemnification obligations.

ARTICLE 13: OTHER TERMS & CONDITIONS

13.1 NOTICES

All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed to:

Buyer: As listed in Exhibit D

Seller: As listed in Exhibit D

Each party may designate a different person and address by sending written notice to the other party, to be effective no sooner than ten (10) days after the date of the notice.

13.2 COMPLIANCE WITH ALL LAWS

The Parties shall at all times comply with all applicable laws, ordinances, rules and regulations. The Parties shall keep themselves fully informed of Buyer's charter, codes, ordinances and regulations and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with all applicable local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Seller shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. Examples of such Regulations include but are not limited to California Occupational Safety and Health Act of 1973, Labor Code §6300 et. seq. the Fair Packaging and Labeling Act, etc. and the standards and regulations issued there under.

13.3 NO DEDICATION

Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Generating Facilities or any portion thereof to the public or to any portion thereof.

13.4 NON-WAIVER OF RIGHTS

Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

13.5 HEADINGS

All titles, subject headings, Article titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

13.6 NO THIRD PARTY BENEFICIARY

Except as to those parties referred to in Article 12 of this Agreement, including but not limited to Seller's Financing Parties, who are intended third party beneficiaries of this Agreement and the Grant of Access Rights, neither this Agreement nor the Grant of Access Rights shall not be construed to create rights in, or to grant remedies to, any third party.

13.7 FORWARD CONTRACT

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code.

13.8 GOVERNING LAW

This Agreement is made in the State of California and shall be interpreted and governed by the laws of the State of California without regard to conflict of law principles.

13.9 VENUE

In the event that suit shall be brought by either party hereunder, the parties agree that venue shall be exclusively vested in the state courts of California in the <INSERT JURISDICTION NAME> or if federal jurisdiction is appropriate, exclusively in the United

States District Court in the Northern District of California, <INSERT JURISDICTION>, California.

13.10 NATURE OF RELATIONSHIP

- a) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and the Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. A Party shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.
- b) Seller shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of Buyer. Seller shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the Buyer and Seller. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of Buyer, nor shall any such person be entitled to any benefits available or granted to employees of the Buyer.
- c) Seller shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Seller's performing services and work, or any agent or employee of Seller providing same.
- d) Any terms in this Agreement referring to direction from Buyer shall be construed as providing for direction as to policy and the result of Seller's work only, and not as to the means by which such a result is obtained. Buyer does not retain the right to control the means or the method by which Seller performs work under this Agreement.

13.11 SUBCONTRACTING

All subcontractors shall be subject to background checks and Seller shall notify Buyer of its intent to use a subcontractor prior to such subcontractor's entry on the Premises. For any subcontract with a contract price of \$20,000 or greater, Seller is prohibited from

subcontracting this Agreement or any part of it unless written notice is provided to the Buyer of such subcontracting which notice will be provided five (5) days prior to subcontractor accessing the site. Seller shall be responsible for directing the work of any approved subcontractors and for any compensation due to any approved subcontractors. Seller shall ensure that all Seller subcontractors comply with this Agreement and shall be responsible for such compliance. Seller shall require any or all subcontractors to sign an agreement requiring compliance with this Agreement. Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to subcontractors.

13.12 GOOD FAITH & FAIR DEALING

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: (i) wherever the Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

13.13 SEVERABILITY

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

13.14 COUNTERPARTS

This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same Agreement, and each of which shall be deemed an original.

13.15 COOPERATION

The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.

13.16 NECESSARY ACTS AND FURTHER ASSURANCES

The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement. Buyer shall provide Seller estoppels certificates confirming the status of the Agreement and acknowledging that Seller has no rights in the Generating Facilities. Buyer shall obtain, and pay any costs to obtain, all consents required for Buyer to enter into and perform its obligations under this Agreement from Buyer's lenders, landlords and tenants, if any, and those of any other persons with interests in Buyer's real property upon which Seller's personal property is located. These consents shall include estoppels certificates which recognize the rights of Seller, Seller's Financing Parties, and Seller and Seller's Financing Parties' assignees and successors under this Agreement.

13.17 TIME OF THE ESSENCE

Time is of the essence in performance by the Parties.

13.18 CONSTRUCTION

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

13.19 ENTIRE AGREEMENT, INTEGRATION/MERGER CLAUSE

This Agreement and the Lease, together with all exhibits and schedules attached hereto, constitute the entire agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.

13.20 NON-DISCRIMINATION

Seller shall comply with all applicable Federal, State, and local laws and regulations including Buyer's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil

Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code sections 12900 et seq.); and California Labor Code sections 1101 and 1102. Seller shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Seller discriminate in provision of services provided under this contract because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

13.21 NON-EXCLUSIVE CONTRACT

This Agreement does not establish an exclusive contract between the Buyer and the Seller for the purchase of electricity or power or any services. The Buyer expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide Electricity, products, support and services; the right to request proposals from others with or without requesting proposals from the Seller; and the unrestricted right to bid any such product, support or service.

13.22 MODIFICATION

This Agreement may be supplemented, amended, or modified only by the mutual written agreement of the Parties.

13.23 HAZARDOUS SUBSTANCES

If any product being offered, delivered or supplied to the Buyer in connection with this Agreement is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Contractor must include a Material Safety Data Sheet (MSDS) with delivery, or shipment. Each MSDS must reference the contract/purchase order number, and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the

hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.

13.24 DISENTANGLEMENT

Seller shall cooperate with Buyer and Buyer's other Sellers to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Seller shall cooperate with Buyer's efforts to ensure that there is no interruption of Electricity and no adverse impact on the provision of services or Buyer's activities. Seller shall return to Buyer all Buyer assets or information in Seller's possession. Seller shall deliver to Buyer or its designee, at Buyer's request, all documentation and data related to Buyer, including, but not limited to, the Buyer Data and client files, held by Seller, and Seller shall destroy all copies thereof not turned over to Buyer, all at no charge to Buyer.

13.25 ACCOUNTABILITY

Seller will be the primary point of contact and assume the responsibility of all matters relating to the Agreement, including those involving the manufacturer and/or deliverer and/or any subcontractor, as well as payment issues. If issues arise, the Seller must take immediate action to correct or resolve the issues.

13.26 CONFLICT OF INTEREST

Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.

13.27 DAMAGE AND REPAIR BY SELLER

Any and all damages caused by Seller's negligence or operations shall be repaired, replaced or reimbursed by Seller at no charge to the Buyer. Repairs and replacements shall be completed with seventy-two (72) hours of the incident unless the Buyer requests or agrees to an extension or another time frame. The cleanup of all damage related to accidental or intentional release of any/all non-hazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Seller's vehicles or during performance shall be responsibility of the Seller. All materials must be cleaned up in a manner and time acceptable to Buyer (completely and immediately to prevent potential as well as actual environmental damage). Seller must immediately report each incident to the Buyer's <INSERT ORGANIZATION NAME AND CONTACT>. Damage observed by Seller, whether or not resulting from Seller's operations or negligence shall be promptly reported by Seller to Buyer. Buyer may, at its option, approve and/or dictate the actions that are in Buyer's best interests.

13.28 ACCESS AND RETENTION OF RECORDS AND PROVISION OF REPORTS

Seller shall maintain financial records adequate to show that Buyer funds paid were used for purposes consistent with the terms of the contract between Seller and Buyer.

Records shall be maintained during the terms of the Agreement and for a period of three (3) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract.

13.29 COOPERATION WITH REVIEW

Seller shall cooperate with Buyer's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option of the Buyer. Seller shall make itself available onsite to review the progress of the project and Agreement, as requested by the Buyer, upon reasonable advanced notice. Seller agrees to extend to the Buyer or his/her designees and/or designated auditor of the Buyer, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures to assure that the project is achieving its purpose, that all applicable Buyer, State, and Federal regulations are met, and that adequate internal fiscal controls are maintained. The Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Buyer audits. The Seller shall pay to Buyer the full amount of any audit determined to be due as a result of Buyer audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.

13.30 AUDIT RIGHTS UNDER STATE LAW

Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor.

13.31 DEBARMENT

Seller represents and warrants that it, its employees, Sellers, or agents are not suspended, debarred, or excluded from, or ineligible from, receiving Federal or state funds. Seller must within 30 calendar days advise the Buyer if, during the term of this Agreement, the Seller becomes suspended, debarred or excluded from or ineligible for, receiving Federal or state funds.

13.32 CALIFORNIA PUBLIC RECORDS ACT

The Buyer is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Seller's proprietary information is contained in documents or information submitted to Buyer, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the Buyer will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in <INSERT APPROPRIATE JURISDICTION> before the Buyer's deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Buyer's deadline for responding to the CPRA request, Buyer may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Buyer harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys fees) that may result from denial by Buyer of a CPRA request for information arising from any representation, or any action (or inaction), by the Seller.

13.33 DEBT LIABILITY DISCLAIMER

The Buyer, including, but not limited to, any source of funding for Buyer, any General Fund or any special self insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the Seller or its heirs, successors or assigns. The Buyer shall not be liable for and shall be held harmless and indemnified by Seller for any claims or damages arising out of any other contract to which Seller is a party, tort, action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other acts taken or not taken by the Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the Seller. The Buyer and its agencies and divisions, has no obligation to defend or undertake the defense on behalf of the Seller or its heirs, successors or assigns.

13.34 USE OF BUYER'S NAME FOR COMMERCIAL PURPOSES

Seller may not use the name of the Buyer or reference any endorsement from the Buyer in any fashion for any purpose, without the prior express written consent of the Buyer.

13.35 PAYMENT OF PREVAILING WAGES

The Seller and all Subcontractors under the Seller shall pay all workers on all Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed within the boundaries of <INSERT JURISDICTION>, pursuant to sections 1770 et seq. of the California Labor Code.

13.36 ACCOUNT MANAGER

Seller must assign an Account Manager to the Buyer to facilitate the contractual relationship, be fully responsible and accountable for fulfilling the Buyer's requirements. Seller represents and warrants that such person will ensure that the Buyer receives adequate support, problem resolution assistance and required information on a timely basis.

//

SAMPLE

By signing below, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity, that he/she has the authority to bind the entity listed to contractual obligations and that by his/her signature on this Agreement, the entity on behalf of which he/she acted, executed this Agreement.

SELLER: <INSERT NAME>

By:

By:

By:

By: _____

Name:

Title:

BUYER: THE <INSERT JURISDICTION NAME>

<INSERT NAME>

<INSERT TITLE>

Approval as to Form:

Approval of <INSERT TITLE>:

<INSERT NAME>

<<INSERT JURISDICTION NAME>> Counsel

EXHIBITS INCORPORATED INTO AGREEMENT

<EXHIBITS PROVIDED BELOW ARE SAMPLE DOCUMENTS>

Exhibit A – Grant of Access Rights

Exhibit B – Certain Agreements for the Benefit of Financing Parties

Exhibit C – Early Termination

Exhibit D – Notice Information

Exhibit 1 – [Intentionally Left Blank].

Exhibit 2 – Description of Generating Facilities

Exhibit 3 – Sites Descriptions

Exhibit 4 – Technical and Warranty Requirements

Exhibit 5 – Engineering and Construction Requirements

Exhibit 6 – Contract Price

Exhibit 7 – Operations Forecasts, Scheduling Protocols, & Monitoring

Exhibit 8 – Expected Contract Quantity Form

Exhibit 9– Form of Attestation

Exhibit 10 – Insurance Requirements

Exhibit 11 – Cash Flow Tables Showing Value of Solar

Exhibit A – EXAMPLE

Grant of Access Rights For SITES TO BE NAMED

Proposed Solar Power Installations at <INSERT ADDRESS>, and Proposed Solar Power Installations at <INSERT ADDRESS> (the “Sites”).

Dear Authorized Representative:

Reference is made to the Power Purchase Agreement dated as of DATE (the “Agreement”) and entered into by and between the undersigned the <INSERT JURISDICTION NAME> (“Buyer”) and <INSERT SELLER’S NAME> (“Seller”), pursuant to which Seller will install, finance, operate, and maintain a solar photovoltaic system at each of the above-referenced Sites. Capitalized terms used herein but not defined herein shall have the meaning set forth in the Agreement. By our signature below, we hereby grant to Seller and to Seller’s agents, employees, contractors and subcontractors throughout the Term (as defined in the Agreement), and for a reasonable period after the Term, but in no case later than one hundred eighty (180) calendar days, to remove the applicable Generating Facility or Generating Facilities and restore the Premises pursuant to this Agreement, commercial access rights which are irrevocable during the Term of the Agreement (the “Access Rights”), for the installation, operation, and maintenance of the applicable Generating Facility or Generating Facilities, including commercially reasonable access to, on, over, under and across the Premises during reasonable business hours, and during non-business hours in the event of any event or circumstance that poses an imminent risk to human health, the environment, the applicable Generating Facility or Generating Facilities or the Premises. We further acknowledge and agree that:

1. The applicable Generating Facility or Generating Facilities are the personal property of Seller, and shall not be considered the property (personal or otherwise) of Buyer upon installation of the applicable Generating Facility or Generating Facilities at the applicable Premises. Each applicable Generating Facility is more particularly described in the Specifications.
2. The applicable Generating Facility or Generating Facilities shall not be considered a fixture of the applicable Premises. Accordingly, Buyer hereby grants Seller and any Financing Party the right to file any UCC-1 financing statement or fixture filing that confirms its interest in the applicable Generating Facility or Generating Facilities.
3. Seller or its designee (including any Financing Party) shall have the right without cost to access the Premises in order to perform its obligations under the Agreement. Buyer will not charge Seller any rent for such right to access the Premises.
4. The Financing Parties have a first priority perfected security interest in the applicable Generating Facility or Generating Facilities. The Financing Parties are intended third party beneficiaries of Buyer’s agreements in this Grant of Access Rights.

5. During the Term, Seller's access rights are preserved and Buyer shall not interfere with or permit any third party to interfere with such rights or access. The Access Rights granted hereunder shall be irrevocable during the Term of the Agreement, except upon expiration or earlier termination of the Agreement, in which case it shall only be revocable as it relates to the applicable Generating Facility or Generating Facilities. Seller shall have access to the Premises beyond the Term for the purpose of removing the applicable Generating Facility or Generating Facilities, for a reasonable period after the Term, but in no case later than one hundred eighty (180) calendar days.

6. Upon any rejection or other termination of the Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of any Financing Party made within ninety (90) days of such termination or rejection, Buyer shall execute a new grant of access rights in favor of the Financing Parties (or their designees) on substantially the same terms as this Grant of Access Rights.

7. Buyer will not take any action inconsistent with the foregoing.

Acknowledged and agreed by:

By:

By:

By:

By: _____

Name:

Title:

THE <INSERT JURISDICTION NAME>

By: _____

Name:

Title:

Exhibit B

Certain Agreements for the Benefit of the Financing Parties

<Insert any negotiated terms and conditions>

SAMPLE

Exhibit C – Early Termination

The Early Termination Fee with respect to each Generating Facility under the Agreement shall be calculated in accordance with the following:

<INSERT SITE NAME>

Early Termination Occurs in Year [of System Term]:	Column 1 Early Termination Fee where Buyer does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91 st day following**: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Buyer takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)*
1*			--
2			--
3			--
4			--
5			--
6		6 th Anniversary	
7		7 th Anniversary	
8		8 th Anniversary	
9		9 th Anniversary	
10		10 th Anniversary	
11		11 th Anniversary	
12		12 th Anniversary	
13		13 th Anniversary	
14		14 th Anniversary	
15		15 th Anniversary	
16		16 th Anniversary	
17		17 th Anniversary	
18		18 th Anniversary	
19		19 th Anniversary	
20		20 th Anniversary	

Exhibit D – Notice Information

<Insert appropriate notice contacts here>

Buyer:

Seller:

Financing Parties:

SAMPLE

Exhibit 1
Buyout Payment Form and Schedule

SAMPLE

Exhibit 2
Description of Applicable Generating Facilities

<insert R-REP Exhibit C relevant site specifications here>

SAMPLE

Exhibit 3
Site Descriptions and Specifications

<Insert R-REP Exhibit D Site Specifications Here>

SAMPLE

Exhibit 4
Technical and Warranty Documentation

<insert all system and component Technical and Warranty documents here>

SAMPLE

Exhibit 5

Engineering and Construction Requirements

**<Insert R-REP RFP Exhibit D. Technical Specifications and Participating Agency General Conditions
here>**

SAMPLE

Exhibit 6
Contract Price

The kWh Rate with respect to each applicable Generating Facility under the Agreement shall be in accordance with the following schedule(s):

<INSERT SITE NAME> Generating Facility:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	\$0.	11	\$0.
2	\$0.	12	\$0.
3	\$0.	13	\$0.
4	\$0.	14	\$0.
5	\$0.	15	\$0.
6	\$0.	16	\$0.
7	\$0.	17	\$0.
8	\$0.	18	\$0.
9	\$0.	19	\$0.
10	\$0.	20	\$0.

[*Calculated based on the year 1 kWh Rate multiplied by [X_] % inflation factor each year.]

<INSERT SITE NAME> Generating Facility:

Year of System Term	kWh Rate[*] (\$/kWh)	Year of System Term	\$/kWh Rate[*] (\$/kWh)
1	\$0.	11	\$0.
2	\$0.	12	\$0.
3	\$0.	13	\$0.
4	\$0.	14	\$0.
5	\$0.	15	\$0.
6	\$0.	16	\$0.

7	\$0.	17	\$0.
8	\$0.	18	\$0.
9	\$0.	19	\$0.
10	\$0.	20	\$0.

[*Calculated based on the year 1 kWh Rate multiplied by [_X_] % inflation factor each year.]

SAMPLE

Exhibit 7
Operations Forecasts, Scheduling Protocols, & Monitoring

OPERATIONS FORECASTS, SCHEDULING PROTOCOLS and MONITORING

1 Twenty Year Forecast

1.1 No later than ninety (90) days after the Commercial Operation Date of each applicable Generating Facility, Seller will provide a twenty year forecast of expected daily generation for each applicable Generating Facility.

1.2 Buyer may request modification to the Annual Operations Forecast at any time, and Seller shall use good faith efforts to accommodate Buyer's requested modifications.

1.3 Seller shall include planned Outages in its Annual Operations Forecast.

2 Outage Protocols

2.1 Seller is to notify Buyer of all planned or Forced Outages.

Outage information provided by Seller is to include at a minimum start and stop time of Outage, capacity out of service (kW), equipment out of service, and reason for Outage.

2.2 Planned Outages for Annual and Short Term Operational Maintenance

Notice for Planned Outages shall be provided by Seller to Buyer at least four (4) Business Days prior to the start of the requested Outage. Buyer and Seller shall work in good faith to schedule any Planned Outages at mutually convenient dates and times.

2.3 Forced Outages

"Forced Outages" are any unplanned reduction in the capability of a generating facility. Forced Outages shall be reported per DAS noticing or otherwise by Seller to Buyer within four (4) hours of such Outages. Notice by Seller to Buyer of a Forced Outage shall include the reason for the Outage (if known), expected duration of the Outage.

Within forty-eight (48) hours of a Forced Outage or two Business Days whichever is longer, a detailed email or other written report shall be provided by Seller to Buyer specifying the reason for the Outage, expected duration of such Outage, capacity reduction, and actions taken to mitigate such Outage.

3 Notices

All Schedules, Schedule changes, Forced Outages, and planned outages are to be submitted to Buyer by email to the following persons: [AGENCY CONTACT NAME, EMAIL, PHONE.]

3 Meters, Communications and Monitoring

3.1 Metering

Proposers shall install utility-grade revenue, electronic, bi-directional meter per this Agreement and Exhibit 5. The meter must meet all CSI rebate requirements and Local Utility requirements.

3.2 Data Acquisition System (DAS), Metrological Station Requirements and Monitoring:

3.2.1 The Seller shall provide a turnkey data acquisition and display system (DAS) that allows the Buyer to monitor, analyze and display historical and live solar electricity generation data on the Web. The DAS shall meet all of the requirements of the California Solar Initiative (CSI) program and include instrumentation that allows the measurement of:

- Instantaneous system output in kW
- Instantaneous irradiation in watts/square meter.
- Instantaneous ambient temperature in degrees Fahrenheit
- Instantaneous wind speed (meters/second)
- Daily and year-to-date system output in kWh

Data shall be provided in a format that easily facilitates graphing and analysis in third party database or spreadsheet programs.

3.2.2 The DAS system shall allow the Buyer to view current and historical data over the Internet, in 15-minute intervals. Proposers shall include web access to this data in 15-minute data format as well as provide hourly, monthly, and annual summaries for the duration of the PPA agreement. The Buyer should also have direct access to the DAS data logger to collect and review all data.

3.2.3 The Seller will download and archive monthly data files for backup purposes. Files are to be stored for a minimum of five years on a rolling basis following system acceptance. The Proposer will ensure that automatic communication between the PV system's DAS and designated Buyer-owned data systems is established and that downloads of the raw DAS data takes place to archive data throughout the useful life of the PV system on daily intervals.

3.2.4 For the life of the agreement, the actual kWh produced will be compared to the potential kWh on an hourly, daily and monthly basis given metered solar radiation and the expected degradation of the PV system over time. This information will be reviewed on a monthly basis.

3.2.5 Questions regarding observed system performance by the Buyer will be promptly responded to by the Seller including analysis of observed versus forecasted performance, root cause analysis, and other relevant information that may require on-site inspection by the Seller.

Exhibit 8
Expected Contract Quantity Form

<To be completed by Seller per Agreement>

Estimated Annual Production for the site, commencing on the Commercial Operation Date with respect to each Generating Facility under the Agreement shall be as follows:

Year of System Term	Estimated Production (kWh)	Year of System Term	Estimated Production (kWh)
1		11	
2		12	
3		13	
4		14	
5		15	
6		16	
7		17	
8		18	
9		19	
10		20	

Calendar Year 1 Monthly Production Estimate

Month	Estimated Production (kWh)	Month	Estimated Production (kWh)
January		July	
February		August	
March		September	
April		October	
May		November	
June		December	

Exhibit 9
Form of Attestation

FORM OF ATTESTATION

Environmental Attribute Attestation and Bill of Sale

[Name of Seller] ("Seller") hereby sells, transfers and delivers to the [Name of Public Agency] ("Buyer") the Environmental Attributes and Environmental Attributes Reporting Rights associated with the generation of the indicated energy for delivery to the grid (as such terms are defined in the Regional Power Purchase Agreement ("Agreement") dated [Date], between Buyer and Seller) arising from the generation for delivery to the grid of the energy by the Generating Facility described below:

Facility name and location: _____

Project Name: _____

EIA ID #: _____

CEC ID#: _____

ISO Meter ID#: _____

Fuel Type: _____

Capacity (MW): _____

Commercial Operation Date: _____

Dates	MWWhs generated	Dates MWWhs generated
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

In the amount of one Environmental Attribute for each megawatt hour generated; and Seller further attests, warrants and represents as follows:

1. To the best of its knowledge, the information provided herein is true and correct;
2. This transfer to Buyer is the one and only sale of the Environmental Attributes and associated Environmental Attributes Reporting Rights referenced herein;
3. The Facility generated and delivered to the grid the energy in the amount indicated as undifferentiated energy; and

(Check one)

_____ Seller owns the facility.

_____ To the best of Seller's knowledge, each of the Environmental Attributes associated with the generation of the indicated energy for delivery to the grid have been generated and sold by the Facility.

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

Contact Person: Name: _____ Phone: _____

WITNESS MY HAND,

Seller: _____

By: _____

Title: _____

Date: _____

SAMPLE

Exhibit 10
Insurance Requirements

SAMPLE

A. ENDORSEMENTS AND CONDITIONS APPLYING TO ALL PHASES INSURANCE

Without limiting the Seller's indemnification of the Buyer, the Seller shall provide and maintain at its own expense, during the term of this Agreement, or phase of the Agreement if coverage is phase-specific, or as may be further required herein, the following insurance coverage's and provisions:

1. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the Buyer. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.

2. **EVIDENCE OF COVERAGE:** Before commencing operations under this Agreement, Seller shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to Buyer, evidencing that all required insurance coverage is in effect. The Buyer reserves the rights to require the Seller to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices.

The Seller shall not receive a Notice to Proceed with the work under the Agreement until it has obtained all insurance required and such insurance has been approved by the Buyer. This approval of insurance shall neither relieve nor decrease the liability of the Seller.

3. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of the Agreement or phase of the agreement to which it applies. In addition, Insurance policies and coverage(s) written on a claims-made basis:

- Shall be maintained during the entire term of the Agreement or phase of the agreement to which it applies and until 5 years following the letter of termination of the Agreement/Phase of the Agreement and acceptance of all work provided under the Agreement.
- The retroactive date must be before the execution date of the contract or the beginning of contract work.
- If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of work.

4. **ADDITIONAL INSURED:** All insurance required herein with the exception of Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: Buyer or, its <Insert Buyer's Governing Authority Name>, the individual members thereof, and all Buyer's officers, agents, employees, volunteers, and

representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.

The additional insured condition described above shall apply to all public entities entering into this agreement, with the specific entity and its respective related parties substituted for the Buyer. In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

All private property owners granting "Rights of Entry" for construction of the Work shall be covered as insured's under the same coverage as provided the Buyer as respects their ownership of the property and the work to be done thereon.

5. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the Buyer. Acceptance of Contractor's insurance by Buyer shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
6. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit . Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.
7. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
 - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party)", or at minimum named as an "Additional Insured" on the other's policies.
 - Coverage shall be at least as broad as in the ISO Forms named above. Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured."
8. NOTICE OF CANCELLATION:

All coverage as required herein shall not be canceled or changed so as to no longer meet the specified Buyer insurance requirements without 30 days' prior written notice of such cancellation or change being delivered to the Buyer or their designated agent.

The Buyer acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self insurance on the part of the Seller. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement. Any self insurance shall be approved in writing by the Buyer upon satisfactory evidence of financial capacity. Seller's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions

The Buyer acknowledges that some insurance requirements contained in this Agreement may be fulfilled by a combination of primary and excess liability policies. However, this shall not in any way limit liabilities assumed by the Seller under this Agreement.

The Buyer reserves the right to withhold payments to the Seller in the event of material noncompliance with the insurance requirements outlined below.

B. DESIGN PHASE INSURANCE REQUIREMENTS

Insurance required during the design phase will include:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:
 - a. Each occurrence -\$2,000,000
 - b. General aggregate -\$2,000,000
 - c. Personal Injury -\$2,000,000
2. General liability coverage shall include:
 - a. Premises and Operations
 - b. Personal Injury liability
 - c. Severability of interest

3. General liability coverage shall include the following endorsement, a copy of which shall be provided to the Buyer:

The additional insured requirement described above applies to each Agreement, with the specific entity and its respective related parties substituted for the County of Alameda. In all cases, the additional insured endorsement shall be at least as broad as ISO Form CG 20 38 04 13.

4. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non owned and hired vehicles.

5. Workers' Compensation and Employer's Liability Insurance

- a. Statutory California Workers' Compensation coverage including broad form all states coverage.

- b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Professional Errors and Omissions Liability Insurance

- a. Coverage shall be in an amount of not less than two million dollars (\$2,000,000) per occurrence/aggregate.
- b. If coverage contains a deductible or self-retention, it shall not be greater than fifty thousand dollars (\$50,000) per occurrence/event.
- c. Coverage as required herein shall be maintained for a minimum of three years following termination or completion of this Agreement.

7. CLAIMS MADE COVERAGE

If coverage is written on a claims made basis, the Certificate of Insurance shall clearly state so. In addition to coverage requirements above, such policy shall provide that:

- a. Policy retroactive date coincides with or precedes the Consultant's start of work (including subsequent policies purchased as renewals or replacements).
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. CONSTRUCTION PHASE INSURANCE REQUIREMENTS

The following limits shall apply In the event that a single bidder is awarded multiple bid packets with simultaneous construction periods, the Buyer reserves the right to increase insurance limits after bid award but prior to commencement of construction to reflect the higher exposure.

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence -\$2,000,000
- b. General aggregate -\$4,000,000
- c. Products/Completed Operations aggregate ** - \$4,000,000
- d. Personal Injury -\$2,000,000

A minimum of 50% of each of the aggregate limits must remain available at all times unless coverage is project specific.

2. General liability coverage shall include:

- a. Premises and Operations

- b. **Products/Completed Operations with limits of four million dollars (\$4,000,000) per aggregate to be maintained for three (3) years following acceptance of the work by the Buyer.
 - c. Contractual Liability expressly including liability assumed under this Agreement. If the Seller is working within fifty (50) feet of a railroad or light rail operation, any exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossway shall be deleted, or a railroad protective policy provided.
 - d. Personal Injury liability
 - e. Owners' and Sellers' Protective liability
 - f. Severability of interest
 - g. Explosion, Collapse, and Underground Hazards (X, C and U)
 - h. Broad Form Property Damage liability
3. General liability coverage shall include the following endorsements, copies of which shall be provided to the Buyer:
- a. Contractual Liability Endorsement:

Insurance afforded by this policy shall apply to liability assumed by the insured under written contract with the Buyer.
 - b. X C & U (Explosion, Collapse and Underground) Endorsement:

Insurance afforded by this policy shall provide X, C and U Hazards coverage.
4. Automobile Liability Insurance
- For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non owned and hired vehicles.
5. Workers' Compensation and Employer's Liability Insurance
- a. Statutory California Workers' Compensation coverage including broad form all states coverage.
 - b. Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

6. Property Installation floater:

The property installation floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation and testing at the Entity's site. The coverage shall be in the amount of the value of the completed project and materials.

D. OPERATIONS AND MAINTENANCE PHASE INSURANCE REQUIREMENTS

Without limiting the Seller's indemnification of the Buyer, Seller, shall at its own expense, provide and maintain the following insurance coverage in full force and effect after the Commercial Operation Date:

1. Commercial General Liability Insurance - for bodily injury (including death) and property damage which provides limits as follows:

- a. Each occurrence -\$2,000,000
- b. General aggregate -\$4,000,000
- c. Personal Injury -\$2,000,000

2. General liability coverage shall include:

- Premises and Operations
- Personal Injury liability
- Severability of interest

3. Automobile Liability Insurance

For bodily injury (including death) and property damage which provides total limits of not less than one million dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles.

4. Workers' Compensation and Employer's Liability Insurance

- Statutory California Workers' Compensation coverage including broad form all-states coverage.
- Employer's Liability coverage for not less than one million dollars (\$1,000,000) per occurrence.

Exhibit 11 –

Cash Flow Tables Showing Value of Solar

SAMPLE