

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager
Michael Roberts, SMUD Principal Energy Contracts Specialist

SUBJECT: Aquamarine Solar Power Purchase Agreement Approval

DATE: January 9, 2020

RECOMMENDATION

Staff recommends the Board adopt a resolution that:

1. Approves the Power Purchase Agreement (PPA) with Aquamarine Westside, LLC for the purchase by VCE of a 50 MW share of the 250 MW Aquamarine Solar Project under development by Westlands Solar Park, LLC.
2. Authorize the Interim General Manager to execute the PPA substantially in the form attached and authorize to Interim General Manager, in consultation with General Counsel, to make minor changes to the PPA so long as the term and price are not changed.

BACKGROUND

On August 13, 2018, SMUD, on behalf of VCE, issued a solicitation for Long Term Renewable power supply. Responses, which were received on September 17, 2018, included proposals from 13 developers for 32 projects, of which 23 were unique (some developers bid variants of the same project).

The Board received multiple updates on the solicitation process throughout 2018 and 2019. The solicitation and evaluation of proposals were managed by SMUD and overseen by VCE staff. The VCE team that developed and negotiated the Power Purchase Agreement (PPA), included highly experienced SMUD staff, the VCE Interim General Manager, and VCE's regulatory counsel Kevin Fox of Keyes and Fox.

Pass/Fail Consideration

After compiling and consolidating the technical details from each response, Projects were evaluated for Pass/Fail criteria. The Board will recall that the solicitation for proposals made clear that projects, at a minimum, had to satisfy certain criteria to even be considered. Those criteria with effective pass/fail scoring included:

Table 1. Pass/Fail Criteria

Criteria	Pass/Fail Threshold
Siting	Projects cannot be proposed for land with a prime agricultural designation. Projects cannot be proposed for areas that are designated as Renewable Energy Transmission Initiative (“RETI”) Category 1 or 2. Category 1 lands are those identified where development is prohibited by law or policy. Category 2 lands are those where cultural or environmental conflicts would be highly likely and/or controversial.
Development Status	Projects must at least have filed a permit application with the relevant land use authority and received an acknowledgment of the filing from such authority. Projects must provide evidence of site control.
Out-Of-State Resources	Projects must be located within California.
Interconnection Status	Projects must already be in an interconnection queue and have requested full capacity deliverability for the project interconnection.

Preliminary Screening

The next step was to perform a preliminary screening that was used to reduce the project list to a limited number of projects that would then receive an economic evaluation and consideration for a short list. In the preliminary screening, projects were ranked. Ranking criteria included:

- Permit progress
- Status of Cultural/Environmental surveys
- Whether or not sensitive cultural or habitat resources were identified
- CEQA status
- Whether wildlife permits were needed and obtained
- Location of project (northern California preferred)
- Whether the project was local, regional or other
- Whether project could be online and delivering energy by April 1, 2021

Only the 9 highest ranked projects were selected to move on to the short list evaluation stage.

Short List Evaluation

Economic evaluations were performed on the 9 projects, where the levelized contract prices were compared to expected value from sales of the power component back to the CAISO and resource adequacy capacity value. The result of the economic evaluations was to determine an implicit renewable premium for each project, compared to VCE’s current renewable costs. The short-term Renewable Energy Certificate (REC) contracts in VCE’s portfolio have an average renewable premium of \$13.79/MWh.

Key factors in determining which projects to short list were:

- At least one project selected could deliver any significant energy in 2020.
- Whether total energy delivered from all selected projects will meet the legal requirement for significant energy under long term contract in 2021.
- Price (value)
- Selection of projects to supply at least the VCE minimum 42% renewable content in 2021 (and beyond).

Short List Selection

Two projects were short listed, a 72 MW solar project, and the 40 MW Aquamarine solar project. Neither of the projects are considered either Local or Regional projects by VCE's definition. They both were selected for the following key reasons:

- The two projects provided a renewable volume totaling at least 42% of VCE overall energy portfolio starting in 2021
- One of the two projects will begin deliveries in 2020 in time to meet the de minimis long-term contracting requirement in the 3rd RPS compliance period (2017 – 2020)
- Both projects had favorable pricing
- No other combination of projects provided enough energy in 2021 to satisfy the RPS minimum long-term contracting requirements which begin in 2021.

Remaining Selection Process

Following the short-list process, staff executed letters of intent, collected short list deposits and began PPA negotiations. This staff report discusses the first PPA negotiated with the Aquamarine project in the Westlands solar park. During the course of PPA negotiations, the original 40 MW project size was increased to 50 MW.

Staff anticipates that a second PPA (72 MW solar) will be ready for approval within two months.

WESTLANDS SOLAR PARK/AQUAMARINE PROJECT

Westlands solar park is a power generating complex located on 20,000 acres of "brownfield" land within the Westlands Water District in Kings County, CA. The project will be built on land that has already been retired, or is planned to be retired, from full agricultural use.

Westlands plans to phase in construction of potentially 2,700 MW of solar power including storage and transmission facilities. Aquamarine is a 250 MW solar generating facility and is included in the first phase of construction for Westlands. VCEA has negotiated the purchase of 50 MW of power from this project.

During discussions staff discovered a mutual interest between VCEA and Westlands regarding the contracting of additional capacity from subsequent construction phases of the Westlands Solar Park. VCEA executed a Letter of Intent for the initial 50 MW PPA from the Aquamarine

Project, 50 MW from the next 250 MW project (to be named later), and a 50MW option for additional solar power from additional phases.

For clarity, each tranche of power purchased from the Westlands solar park will be governed by its own PPA. The first PPA is a 50 MW portion of the first 250 MW phase of construction; the second 50 MW PPA would derive from the second phase of construction, and the option for a third 50 MW PPA would come from perhaps another phase of construction.

KEY PPA TERMS AND CONDITIONS

Price and Impact to VCE Budget

[\$Price Redacted]/MWh with 0% escalation. Specifically, the price is held flat, or levelized, across the 15 year term. This price can potentially be reduced by \$2.49/MWh to [\$Price Redacted]/MWh if VCE can establish and maintain certain credit support requirements. Forms of credit support generally are cash, a Letter of Credit in the amount of \$3.75 MM, or obtaining an investment-grade credit rating on VCE's long-term indebtedness.

We expect REC costs from Aquamarine, as a portion of the overall PPA cost, to be favorable to VCE's budget. For 2020, VCE paid an average of \$13.79/MWh for RECs alone. This PPA is structured as fixed price, versus VCE's short term renewable contracts, which are based on index power price plus a fixed REC premium. In addition to contributing savings on the average cost of RECs in the near term, a fixed price contract reduces the volatility in VCE's future power costs.

This project is expected to yield 134,684 MWh per year. Based on historical energy prices at the project's point of delivery, staff have estimated an implicit renewable premium of \$8.34/MWh for the project in 2021, compared to VCE's average short-term renewable cost in 2020 of \$13.79/MWh. This reduces VCE's annual renewable costs by approximately \$708,000. The Aquamarine project also provides Resource Adequacy (RA) capacity which has a value but is not included in the \$708,000 cost savings above. An estimate of the RA value is not provided as the CPUC is currently assessing the RA value that solar photovoltaic (PV) projects provide. In any case, any RA value will be in addition to the cost savings noted above.

Term

Pricing for the Aquamarine Project was offered for both 15 year and 20 year terms. Staff selected the 15 year term because of the more favorable pricing for the shorter term, and to provide some diversity in PPA term for those projects under short list consideration (other PPA negotiations underway will likely result in a 20 year PPA term.)

Expected Annual Energy Product/Portfolio Share of Renewable Provided

The expected annual energy production is 134,684 MWhs, which would supply 18.2% of VCEs annual energy retail needs. Table 2 below shows the anticipated Aquamarine project annual production.

Table 2. Incremental Portfolio Contribution from Long Term Renewable PPAs

	Project COD	PPA Capacity	2020	2021	2022
Short Listed Projects					
<i>Project 1</i>	7/1/2021	0 MWs	0	0	0
Aquamarine	10/1/2020	50 MWs	20,674	134,684	134,684
<i>Project 2 Phase 2</i>	7/1/2021	0 MWs	0	0	0
<i>Project 2 Option</i>	7/1/2022	0 MWs	0	0	0
Total Supply		50 MWs	20,674	134,684	134,684
VCEA Retail Load			706,123	740,117	739,992
RPS Minimum Requirements			33.0%	35.8%	38.5%
Incremental Contribution to Renewable Content			2.9%	18.2%	18.2%

Full Capacity Deliverability Status

The project has requested Full Capacity Deliverability Status (FCDS) from the CAISO, which means they have an interconnection agreement that ensures that once transmission upgrades (paid for by Westlands) are completed, the full output of the Project can be accommodated by the transmission system. Having FCDS also ensures that VCE can benefit from the Resource Adequacy Capacity allocated to the Project.

CONCLUSION

Based on results from the solicitation process and PPA negotiation, VCE and SMUD staff believe the price and terms of the PPA support VCE’s policy objectives, help meet regulatory requirements, and are competitive in the current market for utility scale solar PV in California.

REQUESTED ACTION

Adopt the resolution detailed above.

Attachments:

1. Attachment A - Aquamarine Power Purchase Agreement
2. Resolution

Attachment A
Aquamarine Power Purchase Agreement

WESTLANDS SOLAR PARK

POWER PURCHASE AGREEMENT

between

VALLEY CLEAN ENERGY ALLIANCE

(as “Buyer”)

and

AQUAMARINE WESTSIDE, LLC

(as “Seller”)

dated as of

JANUARY __, 2020

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Exhibit C	Description of Delivery Point and One-Line/Metering Diagram
Exhibit D	Form of Corporate Guaranty
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Exhibit F	Minimum Annual Energy Production
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Exhibit H	Expected Energy
Exhibit I	Milestone Schedule
Exhibit I-1	Form of Milestone Schedule Report
Exhibit J	Form of Commercial Operation Certificate
Exhibit K	Other Seller Facilities

POWER PURCHASE AGREEMENT

This POWER PURCHASE AGREEMENT (this “*Agreement*”) is entered this __ day of January, 2020 (the “*Effective Date*”), by and between VALLEY CLEAN ENERGY ALLIANCE, a California Joint Powers Authority (“*Buyer*”) and AQUAMARINE WESTSIDE, LLC, a Delaware limited liability company (“*Seller*”). Buyer and Seller are each individually referred to herein as a “*Party*” and collectively as the “*Parties*”.

WITNESSETH:

WHEREAS, Buyer is a Joint Powers Authority created and existing in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) that provides retail electricity service to customers within its service area;

WHEREAS, Seller and its affiliates are developing and will own and operate Westlands Solar Park, comprised of up to 2,700 MW-AC of solar photovoltaic systems, located on a Site in Kings County, California, including the 250 MW-AC Aquamarine project from which 50 MW-AC will be sold to Buyer by Seller; and

WHEREAS, Seller desires to sell and deliver, and Buyer desires to purchase and receive, all of the Energy, Green Attributes, and Capacity Rights (as each are defined below) from the Facility (as defined below), on the terms and conditions set forth herein;

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions.

Unless otherwise required by the context in which any term appears: (i) capitalized terms used in this Agreement have the meanings specified in this Article 1; (ii) the singular includes the plural and vice versa; (iii) references to “articles,” “sections,” “schedules,” “appendices” or exhibits” (if any) are to Articles, Sections, Schedules, Appendices or Exhibits hereof; (iv) all references to a particular entity or pricing index include a reference to such entity’s or pricing index’s successors and permitted assigns; (v) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (vii) references to this Agreement include a reference to all appendices, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (viii) the masculine includes the feminine and neuter and vice versa; (ix) the words “include” and “including” or similar words are not words of limitation and shall be deemed to be followed by the words “without limitation”; (x) all references to dollars are U.S. dollars, and all amounts due, and payments made, under this Agreement, shall be paid in U.S. dollars; and (xi) “or” is not necessarily exclusive. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed

against one Party on the ground that such Party is the author of this Agreement or any part hereof.

“Affiliate” means, with respect to any Person each Person that directly or indirectly, controls or is controlled by or is under common control with such designated Person.

“After-Tax Basis” means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the **“Base Payment”**) supplemented by a further payment (the **“Additional Payment”**) to that Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all federal, state and local income taxes required to be paid by such Person in respect to the receipt or accrual of the Base Payment and the Additional Payment (taking into account the net present value of any reduction in such income taxes resulting from tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount of the Base Payment that was to have been received by such Person. Such calculations shall be made on the basis of the amounts of the highest generally applicable federal, state and local income tax applicable to a corporation for all relevant periods and shall take into account the deductibility of state and local income taxes for federal income tax purposes.

“A.M. Best” means A.M. Best Company, Inc.

“Applicable Law” means, with respect to any Person or the Facility, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and Permits, directives and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Person or the Facility (as the case may be).

“Available Capacity” means, for any given point in time, the maximum instantaneous generation Capacity of the Facility at the Delivery Point (expressed in MW).

“Available Contract Capacity” means, for each Settlement Interval in which there is a curtailment of the Facility during a Curtailment Period, Buyer’s Allocation of the Available Capacity that has not been curtailed and is available to generate Product. For example, if the Facility is curtailed during a Curtailment Period such that the Available Capacity is reduced to 125 MW, and Buyer’s Allocation is 20.0%, then Available Contract Capacity would be 25 MW.

“Available Energy” means Buyer’s Allocation of Energy that Seller would have generated and delivered to the Delivery Point from the Facility, but for (i) a Buyer Curtailment Order, or (ii) a suspension of Seller’s obligation to make Energy available due to a Buyer Event of Default pursuant to Section 3.4(a), in either case from equipment that would otherwise have been mechanically and electrically available for generation of Energy. The amount of Available Energy shall be determined by Seller using the best information available at the time including weather conditions or physical limitations and any other factors relevant to the determination. Seller shall be responsible for collecting and archiving Site insolation in order to determine the Available Energy from the Facility.

“Back-up Meter” means a CAISO approved revenue quality meter installed by Seller pursuant to Section 4.2(d) that is capable of recording Energy delivered to the Delivery Point.

“Bankruptcy Code” means the United States Bankruptcy Code (11 U.S.C. § 101 et seq.), as amended, and any successor statute.

“Bid” has the meaning set forth in the CAISO Tariff.

“Business Day” means any day other than a Saturday or Sunday or any other day on which banks in the State of California are permitted or required to remain closed.

“Buyer Curtailment Order” means a telephonic or automated instruction (it being acknowledged that Buyer shall endeavor to promptly confirm any such telephonic instructions in writing), which is issued by Buyer, in its sole discretion, for a reason other than those enumerated in the definition of Curtailment Period, directing that Seller: (1) reduce generation of Buyer’s Allocation of Energy from the Facility by an amount, in whole MW increments, and for the period of time set forth in such order; or (2) bid economically so that if the CAISO Locational Marginal Price (as defined in the CAISO Tariff) is below a threshold, Buyer’s Allocation of Energy is curtailed and is not delivered to the Delivery Point on Buyer’s behalf. For avoidance of doubt, Buyer’s communication to Seller to curtail a Facility for reasons enumerated in the definition of Curtailment Period shall not constitute a Buyer Curtailment Order.

“Buyer’s Allocation” means the allocation equal to the Contract Capacity divided by the Capacity (for example, if the Capacity is 250 MW, Buyer’s Allocation is equal to 50/250 or 20.0%); *provided, however*, that during any Settlement Interval in which a portion of the Capacity is curtailed, Buyer’s Allocation will be equal to the Available Contract Capacity for such Settlement Interval *less* the curtailed Capacity pursuant to a Buyer Curtailment Order, *divided by* the Available Capacity that has not been curtailed and is available to generate Product for such Settlement Interval. The Parties acknowledge and agree that in such instances, to the extent there is no curtailment due to a Buyer Curtailment Order, Seller may allocate an additional portion of the Spare Capacity to Buyer so long as the Available Contract Capacity does not exceed the Contract Capacity at any time (for example, if the Facility is curtailed during a Curtailment Period such that the Available Capacity is reduced to 125 MW, and Buyer’s Available Contract Capacity would be reduced to 25 MW, Seller could provide Buyer with additional Capacity (and related Energy) of up to 25 MW).

“CAISO” means the California Independent System Operator Corporation.

“CAISO Penalties” means any fees, liabilities, assessments, sanctions, penalties or similar charges assessed, or otherwise billed to a Party, by the CAISO.

“CAISO Settlement Price” means the Locational Marginal Price (as defined in the CAISO Tariff) at the Delivery Point for each Settlement Interval (as defined in the CAISO Tariff).

“CAISO Tariff” means the CAISO Operating Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended, supplemented or replaced (in whole or in part) from time to time; provided if there is a conflict between the CAISO Operating Agreement and Tariff, and the BPM, the CAISO Operating Agreement and Tariff will control.

“California Public Records Act” means California Government Code Section 6250 *et seq.*, as amended or supplemented from time to time.

“California Renewables Portfolio Standard” means the renewable energy program and policies established and codified in California Public Utilities Code Sections 399.11, *et seq.* and California Public Resources Code Sections 25740 *et seq.*, as implemented by the CPUC and CEC, as such program and policies may be amended or supplemented from time to time.

“Capacity” means the maximum instantaneous electric generating capacity of the Facility, as measured at the Delivery Point (expressed in MW-AC) when operated in compliance with the Interconnection Agreements and consistent with the manufacturer’s recommended power factor and operating parameters, and as further defined in **Exhibits B and B-1**.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future Resource Adequacy or reserve requirements, associated with the electric generation capability and Capacity of the Facility. Capacity Rights shall be deemed to include all Resource Adequacy benefits, if any, associated with the Facility and its Capacity. Capacity Rights are measured in MW and shall exclude Energy, Green Attributes, and any other tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.

“CEC” means the California Energy Commission.

“CEC Certification and Verification” means that the CEC has certified or pre-certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility qualifies as generation from an ERR.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Cluster 8 Project” means a project controlled by an Affiliate of Seller that has an interconnection queue position within the CAISO Cluster 8 application filing window.

“Cluster 9 Project” means a project controlled by an Affiliate of Seller that has an interconnection queue position within the CAISO Cluster 9 application filing window.

“Commercial Operation” means the status of the Facility upon Seller’s satisfaction of all of the conditions set forth in Section 2.6(a).

“Commercial Operation Certificate” is defined in Section 2.6(a) and shall be in the form attached hereto as **Exhibit J**.

“Commercial Operation Date” means, subject to Section 2.6(a), the date on which Commercial Operation has commenced.

“Compliance Showings” means Buyer’s compliance with the Resource Adequacy obligations of the CPUC for an applicable Showing Month.

“Contract Capacity” means Capacity of 50 MW-AC, which Seller shall make available to deliver Energy to Buyer during the Delivery Term.

“Contract Price” is set forth in **Exhibit A**.

“Contract Year” means a twelve (12) calendar-month period, with the first Contract Year commencing at 00:00 am PPT on the first day of the first full month following the Commercial Operation Date and each new Contract Year beginning on the anniversary date thereof.

“Corporate Guaranty” means a guaranty provided by a Qualified Guarantor and substantially in the form of **Exhibit D**.

“Costs” means, with respect to the non-defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses (including costs incurred in connection with transmission services that would otherwise not have been incurred hereunder) reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement and all reasonable attorneys’ fees and expenses incurred by the non-defaulting Party in connection with the termination of this Agreement.

“CPUC” means the California Public Utilities Commission.

“Credit Rating” means, with respect to a Person, on any date of determination, (a) the ratings assigned by Moody’s, S&P or Fitch with respect to such Person’s long-term unsecured, senior indebtedness not supported by third party credit enhancement, or (b) if such Person does not have such a rating, then the rating assigned to such Person by Moody’s, S&P or Fitch as its corporate credit rating or issuer rating.

“Curtailed Period” means the period of time during which there is any reduction in Energy deliveries to the Delivery Point as a result of any of the following:

(a) The CAISO or other Governmental Authority orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for any reason;

(b) The Transmission Provider, or other Governmental Authority having similar authority or performing similar functions, orders, directs, alerts or provides notice

to a Party to curtail Energy deliveries for any reason;

(c) Scheduled or unscheduled maintenance or construction on the CAISO, Transmission Provider, or other Governmental Authority's transmission or distribution facilities that prevents Buyer from receiving Energy at, or Seller from delivering Energy to, the Delivery Point;

(d) A curtailment by a third party (*i.e.*, an entity other than Seller) pursuant to the Interconnection Agreements (or a curtailment by Seller pursuant to the Interconnection Agreements) solely in the event of an Emergency Condition as defined therein;

(e) Such reduction in Energy deliveries is the result of any of the following: (i) a Planned Outage or Forced Outage, (ii) an outage not constituting a Planned Outage or a Forced Outage undertaken to construct, install, maintain, repair, replace, remove or inspect any of its equipment or facilities or in connection with a condition likely to result in significant damage to Seller's equipment or if Seller otherwise reasonably deems such curtailment necessary to protect life or property, (iii) because the interconnection between the Facility and Transmission Provider's Transmission System is otherwise disconnected, suspended or interrupted, in whole or in part, pursuant to the Interconnection Agreements, or (iv) a Force Majeure Event that prevents either Party from delivering or receiving the Product;

(f) Seller, or Seller's market designee, has received a notice from CAISO pursuant to CAISO Operating Procedure No. 2390 (or its successor) having the effect of requiring a reduction during the same time period that Seller, or Seller's market designee submitted a Self-Schedule and/or an Energy Supply Bid (each as defined in the CAISO Tariff) that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Facility for such time period.

"Daily Delay Damages" shall equal twenty-five thousand dollars (\$25,000) per Day.

"Day" or "day" means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time (PPT) on any calendar day and ending at 00:00 hours PPT on the next calendar day.

"Debt Service Coverage Ratio" shall mean net operating income from all sources, including draws from reserves, divided by total debt obligations due within one year (including interest, principal, sinking-fund and lease payments).

"Delivery Point" means the pricing node (*i.e.*, **"PNode"**), more specifically described in **Exhibit C**, where Seller's Interconnection Facilities connect to the Transmission Provider's Transmission System.

"Delivery Term" means the period beginning at 00:00 am PPT on the first day of the first full month following the Commercial Operation Date and continuing through the end of the fifteenth (15th) anniversary thereof.

“Downgrade Event” occurs if either (i) the lowest of the Credit Ratings of the Seller Guarantor or Buyer (as applicable): (A) is below “BBB-” with respect to S&P or (B) is below “Baa3” with respect to Moody’s or (ii) if Seller Guarantor or Buyer (as applicable), ceases to have a Credit Rating, by either Moody’s or S&P.

“Electrical Losses” means all losses between the Facility and the Delivery Point, including any transmission or transformation losses between any of the Facility’s Meters and the Delivery Point.

“Eligible Intermittent Resource Protocol” or **“EIRP”** means the Eligible Intermittent Resource Protocol, as may be amended from time to time, as set forth in the CAISO Tariff.

“Eligible Renewable Energy Resource” or **“ERR”** has the meaning set forth in California Public Utilities Code Section 399.12, as may be amended or supplemented from time to time.

“Emergency Condition” means a condition or situation:

(a) In the judgment of the Party making the claim, is imminently likely to endanger life or property, or is necessary to protect persons, or third parties’ property from damage or interference caused by the Facility or improperly operating protective devices;

(b) That, in the case of Seller, is imminently likely (as determined in a non-discriminatory manner) is to cause a material adverse impact on or damage to the security or operation of Seller’s Interconnection Facilities or the Facility;

(c) That will result in the Buyer being unable to meet specific FERC or NERC standards; or

(d) That is an abnormal system condition that requires automatic or immediate manual action to prevent or limit the failure of transmission/distribution facilities or generation supply that could adversely affect the reliability of the bulk electric or interconnecting utility systems.

For avoidance of doubt, the following are not Emergency Conditions: (i) Buyer’s ability to purchase energy or Green Attributes at a lower price; or (ii) Buyer’s inability to use or resell Energy or other generation.

“Energy” means the as-available, net electric energy output generated or discharged by the Facility, which shall exclude station use, auxiliary loads or other electric energy consumed by the Facility and shall be in the form of three (3)-phase, sixty (60) Hertz, alternating current.

“Expected Energy” means the Energy expected to be delivered to the Delivery Point for each Contract Year as specified in **Exhibit H**.

“Excused Energy” means Buyer’s Allocation of Energy, expressed in MWh, that would have been produced by the Facility and made available at the Delivery Point, absent: (i) a Curtailment Period, except for a Curtailment Period that results from a Forced Outage or Planned Outage, (ii) a Buyer Curtailment Order, or (iii) a period of Seller suspension due to a Buyer Event of Default pursuant to Section 3.4(b)(ii). For avoidance of doubt, Energy that Seller would have produced and delivered but for a Forced Outage or Planned Outage shall not be counted as Excused Energy. The amount of Excused Energy shall be determined by Seller using the best information available at the time including weather conditions or physical limitations and any other factors relevant to the determination. Seller shall be responsible for collecting and archiving Site insolation in order to determine the Excused Energy for the Facility.

“Facility” means Seller’s 250 MW-AC Aquamarine project, located in Kings County, California, together with any and all additions, replacements or modifications thereto, together with other electrical infrastructure, including metering, Seller Interconnection Facilities, SCADA System, and a step-up transformer(s), with a maximum generating Capacity for the Facility at the Delivery Point of 250 MW-AC, as more particularly described in **Exhibits B and B-1**.

“Facility Construction” means the start of construction for the Facility, as demonstrated by Seller’s initiation of physical activities at the Site, including the movement of soil, at a sufficient level to reasonably demonstrate that Seller is preparing for the construction of the Facility.

“Facility Operator” means Seller or an Affiliate of Seller that operates the Facility.

“FERC” means the Federal Energy Regulatory Commission.

“Force Majeure Event” means any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, strike or lockout of a national scope, act of the public enemy, war, insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by governmental, military, or lawfully established civilian authorities that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the Effective Date, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; provided, nothing in clause (iv) shall be construed so as to require a Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure Event shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from

performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure Event does not include any of the following: (1) any requirement to meet an Applicable Law or any change (whether voluntary or mandatory) in any Applicable Law that may affect the value of the Product; (2) events arising from the failure by Seller to operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost of a Party to perform under this Agreement (except as expressly provided for otherwise herein); (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller's ability to sell any Product at a price in excess of those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service, except due to Force Majeure; (7) failure of third parties to provide goods or services essential to a Party's performance, except due to Force Majeure; (8) Facility or equipment failure of any kind, except due to Force Majeure; or (9) any changes in the financial condition of Buyer, Seller, a Lender, or any subcontractor or supplier impacting the affected Party's ability to perform its obligations under this Agreement.

"Forced Outage" means an unplanned reduction, interruption or suspension of the Facility's ability to generate or deliver Energy to the Delivery Point that is not the result of a Force Majeure Event or a Planned Outage.

"Forward Certificate Transfer" has the meaning set forth in the WREGIS Operating Rules.

"Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff.

"GEP Damages" has the meaning set forth in Section 5.5(a).

"Generator Operator" means an operator that meets the requirements of Generator Operator as defined by NERC in its Statement of Compliance Registry Criteria (Revision 6.0), as amended or in a successor document.

"Governmental Authority" means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township or county, and any entity or body 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. For purposes of this Agreement, the term Government Authority shall include FERC, NERC (if applicable), WECC, CAISO, CPUC and CEC.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy from the Facility and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (Nox), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄),

nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment tax credits, production tax credits associated with the ownership, construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a tax obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

"Guaranteed Commercial Operation Date" has the meaning set forth in Section 2.5(e).

"Guaranteed Construction Start Date" has the meaning set forth in Section 2.5(d).

"Guaranteed Contract Capacity Date" has the meaning set forth in Section 2.5(f).

"Interconnection Agreements" means all (a) Large Generator Interconnection Agreements, (b) Distribution Service Agreements, (c) Transmission Service Agreements, (d) Participating Generator Agreements, and (e) Metering Service Agreements (as each are defined in the CAISO Tariff) necessary for Seller to operate the Facility and delivery Energy to the Delivery Point in compliance with this Agreement.

"Interconnection Point" means the point of first point of interconnection of the Facility with the Transmission Provider's Transmission System, as more fully described on **Exhibits B and B-1**.

"Interim Deliverability Status" or "IDS" means an interim designation allowing an Interconnection Customer that has requested Full Capacity Deliverability Status to obtain non-zero Net Qualifying Capacity, as determined annually by the CAISO pursuant to the provisions of the CAISO Tariff and the applicable Business Practice Manual, pending the in-service date of all the required Network Upgrades required for its requested Full Capacity Deliverability Status.

“Investment Grade” means a Credit Rating of at least “Baa3” with respect to Moody’s and at least “BBB-” with respect to S&P.

“Lender” means any and all Persons or successors in interest thereof, other than an Affiliate of Seller, (a) lending money or extending credit (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Facility; (ii) for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility; (iv) for any capital improvement or replacement related to the Facility; or (v) in connection with the financing of a portfolio of projects that includes the Facility; (b) participating (directly or indirectly) as a Tax Equity Investor; or (c) a lessor under a lease finance arrangement of the Facility.

“Lender Consent” means a consent substantially in the form of **Exhibit E**, with such modifications as may be reasonably requested by Lenders, subject to Buyer’s reasonable approval.

“Letter of Credit” means one or more irrevocable, non-transferable standby letters of credit issued by a Qualified Institution and substantially in the form of **Exhibit G**.

“Losses” means, with respect to the non-defaulting Party, an amount equal to the present value of the economic loss to it (if any), exclusive of Costs, resulting from termination of this Agreement, determined in a commercially reasonable manner, which economic loss (if any) shall be the loss (if any) to such Party represented by the difference (if any) between the present value of the payments required to be made during the remaining Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. The non-defaulting Party’s Losses shall be zero (\$0) if such Party receives an economic benefit due to the termination of this Agreement. If the non-defaulting Party is the Seller, then Losses shall exclude any loss of the PTC, or other federal or state tax credits, grants, or benefits related to the Facility or generation therefrom.

“Meter” means the revenue quality meters, data processing gateways or remote intelligence gateways, telemetering equipment and data acquisition services that are dedicated to the Facility and are sufficient for monitoring, recording and reporting, in real time, all Energy from the Facility, as required and specified in the CAISO Tariff.

“Milestone Schedule” means Seller’s schedule to develop the Facility, as set forth in **Exhibit I**.

“Minimum Annual Energy Production” means for each Contract Year the quantity of Energy specified in **Exhibit F**.

“Moody’s” means Moody’s Investor Service, Inc.

“**MW**” means a megawatt.

“**MWh**” means a megawatt hour.

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

“**NERC Reliability Standards**” means standards and rules that are adopted by NERC or WECC and approved by the applicable Governmental Authorities.

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

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

“**Pacific Prevailing Time**” or “**PPT**” means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

“**Performance Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Periods shall overlap, so that if the first Performance Period is comprised of Contract Years 1 and 2, the second Performance Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; provided however that a new Performance Period shall begin following any Performance Period in which there is a Shortfall Amount. Thus, for example, if there is a Shortfall Amount for the Performance Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“**Permits**” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority in order to develop, construct, operate, maintain, improve, refurbish and retire the Facility or to forecast or deliver the Product produced by the Facility to Buyer at the Delivery Point.

“**Person**” means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental entity, limited liability company or any other entity of whatever nature.

“**Planned Outage**” means an interruption of all or a portion of the Facility’s capability to generate or deliver Energy to the Delivery Point that is scheduled in the Outage Schedule delivered to Buyer pursuant to Section 2.9(d)(ii) and is required for inspection, preventive maintenance or corrective maintenance of the Facility.

“**Prime Rate**” means the interest rate (sometimes referred to as the “base rate”) for large commercial loans to creditworthy entities announced from time to time by Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic average of such rates), in either case determined as of the date the

obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

“Product” means (i) Buyer’s Allocation of all of the Energy produced by the Facility and delivered to the Delivery Point, (ii) all of the Green Attributes and Renewable Energy Credits associated with the Energy purchased by Buyer, and (iii) all of the Capacity Rights, as well as any ancillary services associated with the Contract Capacity.

“Prudent Operating Practices” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the solar electric generation industry that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Applicable Law, reliability, safety, environmental protection and standards of economy and expedition.

“Qualified Guarantor” means the Seller-affiliated entity that has maintained a senior unsecured long-term debt rating that meets at least two of the following: “BBB-” or better by S&P; “BBB-” or better by Fitch; or “Baa3” or better by Moody’s.

“Qualified Institution” means a major U.S. commercial bank or a foreign bank with a U.S. branch office with a Credit Rating of at least “A-” by S&P and “A3” by Moody’s (without a “credit watch”, “negative outlook” or other rating decline alert if its’ Credit Rating is “A-” by S&P or “A3” by Moody’s), and having assets of at least ten billion dollars (\$10,000,000,000.00).

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

“Qualifying Credit Support” means financial and credit conditions that Buyer may maintain in accordance with Section 5.4 in order to qualify for the corresponding Contract Price as set forth in **Exhibit A**.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Applicable Law.

“Replacement RA” means Resource Adequacy benefits, if any, equivalent to those that would have been provided by the Facility with respect to the NQC associated with Buyer’s Allocation of Capacity Rights for the applicable month. Replacement RA shall not be provided from any generating unit that utilizes coal or coal materials as a source of fuel.

“Resource Adequacy” or “RA” means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.08-01-025, R.09-10-032, R.10-04-012, R.11-10-023, R.14-10-010, and R.17-09-020 or by any successor proceeding, and the Resource Adequacy supply

obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff, taking into account any CPUC or CAISO process to establish or determine NQC.

“Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff.

“SCADA System” means the automated system that meters and collects: (a) availability and power generation from the Facility; (b) solar irradiance, temperature and pressure from the Meteorological Station; and, (c) other operational parameters describing the state of the Facility.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator” as set forth in the CAISO Tariff, as amended from time to time.

“Seller’s Interconnection Facilities” means all of the interconnection facilities, control and protective devices, distribution facilities, metering facilities, and other equipment and facilities, whether or not the facilities, devices and equipment are owned by Seller, required to connect the Facility with the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System located up to, and on Seller’s side of, the Delivery Point, including any modification, addition or upgrades to such facilities.

“Showing Month” means the calendar month of the Delivery Term that is the subject of the related Compliance Showing.

“Site” means the real property located in Kings County, California on which the Facility is located, as more fully described on **Exhibits B and B-1**.

“Site Control” means that Seller has the right to utilize the Site for the construction and operation of the Facility during the Term pursuant to option(s), lease(s), easement(s) or other legal instrument(s), or any combination thereof.

“Spare Capacity” means any Available Capacity from the Facility that has not otherwise been committed by Seller to any third party under a power sales agreement.

“S&P” means Standard and Poor’s Ratings Group (a division of McGraw Hill Inc.).

“Supply Plan” has the meaning set forth in the CAISO Tariff.

“Tax Equity Investor” means an equity investor in the Facility that is not an Affiliate of Seller, and whose investment in the Facility is intended to be consistent with the “Safe Harbor” for solar transactions under Revenue Procedure 2007-65 and Announcement 2009-69.

“Termination Payment” means an amount calculated in a manner consistent with Section 3.4(c)(ii).

“Transmission Provider” means Pacific Gas & Electric Company, or its successor, in its capacity as owner of the facilities used for the transmission or distribution of electric energy at or from the Interconnection Point.

“Transmission Provider’s Interconnection Facilities” means all facilities and equipment owned by the Transmission Provider and controlled or operated by CAISO, required to connect the Transmission Provider’s Transmission System with the Facility up to, and on the Transmission Provider’s side of, the Interconnection Point.

“Transmission Provider’s Transmission System” means the facilities owned or operated by the Transmission Provider, and controlled by CAISO, for the transmission of electric energy from the Interconnection Point.

“WECC” means the Western Electricity Coordinating Council.

“WREGIS” means the Western Renewable Energy Generating Information System or any successor program that may be implemented to track and record compliance with the California Renewable Portfolio Standard.

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements dated December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

ARTICLE 2 SALE AND PURCHASE OF ENERGY

2.1 Purchase and Sale of Energy.

(a) At all times during the Delivery Term, Seller shall sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, Buyer’s Allocation of the Energy generated by the Facility.

(b) Notwithstanding the foregoing:

(i) Seller’s obligation to sell and deliver Buyer’s Allocation of Energy to Buyer at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Buyer Curtailment Order, (C) a Curtailment Period, provided such Curtailment Period is not attributable to Seller’s breach of its obligations under this Agreement or the Interconnection Agreements, or (D) a period of Seller suspension pursuant to Section 3.4(b)(ii) due to a Buyer Event of Default.

(ii) Buyer's obligation to accept Buyer's Allocation of Energy at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Buyer Curtailment Order, (C) a Curtailment Period, provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement, or (D) a period of Buyer suspension pursuant to Section 3.4(b)(ii) due to a Seller Event of Default.

(iii) Buyer's obligation to purchase Buyer's Allocation of Energy from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Curtailment Period, provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement, or (C) a period of Buyer suspension pursuant to Section 3.4(b)(ii) due to a Seller Event of Default.

(c) During the time period, if any, beginning on the day the Facility is first energized and operated in parallel with the Transmission Provider's Transmission System and delivers metered Energy to the Delivery Point and up to the Commercial Operation Date, Seller may sell and deliver to Buyer and Buyer shall purchase and accept Buyer's Allocation of such Energy at no net cost to Buyer, meaning that Seller shall be responsible for paying all charges and fees associated with the scheduling and delivery of such Energy deliveries and Seller shall receive the CAISO Settlement Price (whether positive or negative) with respect to such Energy deliveries.

2.2 Contract Price.

(a) During the Delivery Term, Buyer shall pay Seller the Contract Price (as set forth in **Exhibit A**) for: (i) each MWh of Buyer's Allocation of Energy that Seller delivers to the Delivery Point from the Facility (which deliveries shall be adjusted to reflect Electrical Losses in accordance with Section 4.2(a)), and (ii) each MWh of Available Energy that Seller would have generated and delivered to the Delivery Point from the Facility but for a Buyer Curtailment Order. The Contract Price is intended to compensate Seller for all Product and shall become applicable on the Commercial Operation Date.

(b) Excess Energy. During the Delivery Term, the Contract Price for Buyer's Allocation of Energy, if any, that is delivered in excess of the Contract Capacity during any Settlement Interval (as defined in the CAISO Tariff) ("Excess Energy") shall be zero dollars (\$0). If the CAISO Settlement Price is negative for a Settlement Interval during which Excess Energy is delivered, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the CAISO Settlement Price, and (ii) the quantity of Excess Energy.

(c) Transfer Taxes. In addition to the amounts otherwise payable by Buyer in accordance with this Section 2.2, Buyer shall pay (and shall indemnify and hold Seller harmless on an After-Tax Basis from and against) all sales, use, excise, ad valorem, transfer and other similar taxes arising out of or with respect to the purchase or sale or use of Product ("Transfer Taxes"), but excluding all taxes based on or measured by net income, that are imposed by any taxing authority arising out of or with respect to the purchase or sale of Product (regardless of whether such Transfer Taxes are imposed on Buyer or Seller), together with any interest, penalties or additions to tax payable with respect to such Transfer Taxes. Seller shall be responsible for any taxes on generation of solar energy, taxes on Seller's income from Facility operations, property taxes or special assessments that may be levied upon the Facility, and state or local sales taxes applicable

to the construction, maintenance, repair or operation of the Facility. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

2.3 Dedication of Product to Buyer.

Except as otherwise provided for herein, Seller shall not assign, transfer, convey, encumber, sell, or otherwise dispose of all or any portion of the Product to any person other than Buyer during the Term. During the Term, Seller shall not deliver, or attempt to schedule or deliver, energy to the Delivery Point to satisfy its obligations under this Agreement that was not generated by or attributable to the Facility or the facilities identified on **Exhibit K** attached hereto, which include Cluster 8 Projects, Cluster 9 Projects, and adjacent projects with the same Interconnection Point to be developed by Seller or an affiliate thereof.

2.4 Purchase and Sale of Green Attributes; Tax Credits.

(a) Buyer shall be entitled to all Green Attributes resulting from the generation of Energy purchased by Buyer pursuant to this Agreement. The consideration for all such Green Attributes is included within the Contract Price. Buyer shall not be entitled to any Renewable Energy Credits or Green Attributes from the generation of Energy that Buyer, for any reason, does not purchase under this Agreement.

(b) Title to the Green Attributes shall pass from Seller to Buyer free and clear of all liens, security interests, claims and encumbrances immediately upon the generation of the associated Energy at the Facility that gives rise to such Green Attributes. Seller shall not report under § 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Green Attributes purchased by Buyer hereunder belong to any person other than Buyer.

(c) At all times during the Delivery Term, Seller shall, at its sole cost, cause the Facility to be registered with WREGIS; implement and maintain all necessary generation information communications required by WREGIS Operating Rules; and report generation information to WREGIS pursuant to WREGIS-approved meters that are dedicated to the Facility and only the Facility. Buyer has established a general account number with WREGIS (WREGIS Account Holder ID 1408). Within thirty (30) Business Days following the commencement of the Delivery Term, Seller shall, at its sole cost: (i) transfer to Buyer's WREGIS account any and all WREGIS Certificates associated with Renewable Energy Credits corresponding to that Energy generated by the Facility and purchased by Buyer, and (ii) pursuant to Section 15.5 of the WREGIS Operating Rules, register a Forward Certificate Transfer to Buyer's WREGIS account for the percentage of WREGIS Certificates reflecting Buyer's Allocation of the Renewable Energy Credits generated by the Facility during the Delivery Term, which Forward Certificate Transfer shall be effective for the remainder of the Delivery Term. Buyer shall comply with all WREGIS notice, reporting and other requirements with respect to Green Attributes it purchases from Seller and the Forward Certificate Transfer; *provided*, that Seller shall provide promptly to Buyer that Facility data and information reasonably necessary in order for Buyer to comply with such WREGIS requirements. Upon termination or expiration of this Agreement, Seller shall rescind the Forward Certificate Transfer and Buyer shall promptly assign and transfer back to Seller any Green Attributes existing

in Buyer's WREGIS account not associated with Energy purchased and paid for by Buyer.

(d) Seller shall cooperate reasonably with Buyer, at Buyer's expense:

(i) In order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts, including any rights associated with any renewable energy information or tracking system other than WREGIS that may be established with regard to monitoring, tracking, certifying, or trading such Green Attributes; and

(ii) In any registration by Buyer of the Facility in the renewable portfolio standard or equivalent program in states other than California and other non-California programs in which Buyer may wish to register or maintain registration of the Facility by providing copies of all such information as Buyer reasonably requests for such registration.

(e) Seller shall be entitled to all production or investment tax credits that are or will be generated by the Facility associated with the Energy purchased by Buyer.

2.5 New Generation Facility.

(a) Construction and Operation of the Facility. Seller shall: (i) undertake the design and construct the Facility in order to meet its obligations as contemplated herein; (ii) pay all fees, costs, and charges associated with interconnecting the Facility with the Transmission Provider's Transmission System; (iii) acquire and maintain all Permits and other approvals from Governmental Authorities necessary to construct, operate, and maintain the Facility throughout the Term; and (iv) complete, update, and maintain all environmental impact and plant and wildlife impact studies and mitigation necessary to construct, operate, and maintain the Facility, including all impact studies and mitigation required under the California Environmental Quality Act.

(b) Maximum Capacity. Seller shall not increase the Contract Capacity beyond 50 MW-AC as measured at the Delivery Point without Buyer's prior written consent, which may be withheld in Buyer's sole and absolute discretion.

(c) Milestone Schedule Reporting. Seller shall use commercially reasonable efforts to meet the Milestone Schedule and to avoid or minimize any delays in meeting such schedule. Within ten (10) Days after the end of each month after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer a monthly written report of its progress toward meeting the Milestone Schedule in a form substantially similar to **Attachment A** of **Exhibit I**. Seller shall advise Buyer as soon as reasonably practicable of any problems or issues of which Seller is aware that may impact Seller's ability to meet the Milestone Schedule.

(d) Guaranteed Construction Start Date. Seller shall use commercially reasonable efforts to initiate Facility Construction no later than May 31, 2020 (the "Guaranteed Construction Start Date"). If Seller has not initiated Facility Construction on or prior to the Guaranteed Construction Date, after giving effect to all Permitted Extensions, then Seller shall pay to Buyer liquidated damages equal to Daily Delay Damages for each day until such time as Facility Construction is initiated. Seller shall pay Daily Delay Damages to Buyer in advance, on a monthly basis, for each full month during which any Daily Delay Damages will be due. A prorated amount shall be returned to Seller if Seller initiates Facility Construction during a month for which Daily

Delay Damages were paid in advance. In the event that Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date, Buyer shall return any previously paid Daily Delay Damages resulting from Seller's failure to initiate Facility Construction on or prior to the Guaranteed Construction Date.

(e) Guaranteed Commercial Operation Date. Seller shall have demonstrated Commercial Operation no later than June 1, 2021 (the "Guaranteed Commercial Operation Date"). If Commercial Operation has not occurred on or prior to the Guaranteed Commercial Operation Date, after giving effect to all Permitted Extensions, then Seller shall pay to Buyer liquidated damages equal to Daily Delay Damages for each day until such time as Commercial Operation is achieved. Seller shall pay Daily Delay Damages to Buyer in advance, on a monthly basis, for each full month during which any Daily Delay Damages will be due. A prorated amount shall be returned to Seller if Commercial Operation is achieved during a month for which Daily Delay Damages were paid in advance.

(f) Guaranteed Contract Capacity Date. Seller shall have demonstrated Commercial Operation of the full Contract Capacity of the Facility no later than October 30, 2021 (the "Guaranteed Contract Capacity Date"). Seller shall demonstrate Commercial Operation of the full Contract Capacity of the Facility by satisfying the conditions precedent in Section 2.6(a)(ii)-(vi) with respect to the full Contract Capacity. If Seller fails to demonstrate Commercial Operation of the full Contract Capacity on or prior to the Guaranteed Contract Capacity Date, after giving effect to all Permitted Extensions, then Seller shall pay to Buyer liquidated damages equal to one hundred thousand dollars (\$100,000) for each MW, or fraction thereof, of Contract Capacity that fails to reach Commercial Operation by the Guaranteed Contract Capacity Date (the "Contract Capacity Damages").

(g) Permitted Extensions. If Seller complies with Section 2.5(g)(i), the Guaranteed Construction Start Date, the Guaranteed Commercial Operation Date, and the Guaranteed Contract Capacity Date, as applicable, may each be extended on a day-for-day basis: (i) for a time period no longer than one-hundred eighty (180) days as a result of a Force Majeure Event or due to a delay caused by transmission provider (e.g., the CAISO), transmission owner, or Buyer through no fault of Seller; and (ii) for a time period no longer than three-hundred and sixty (360) days for a delay due to action or inaction by a Government Authority, through no fault of Seller, that prevents Seller from obtaining Permits or Government Approvals required for the operation of the Facility (together (i) and (ii) shall be considered "Permitted Extensions"). Any Permitted Extensions allowed pursuant to (i) and (ii) shall run concurrently such that total day-for-day extensions shall be no longer than three-hundred and sixty (360) days on a cumulative basis; provided that such Permitted Extensions shall only be granted so long as Seller has used commercially reasonable efforts (including but not limited to Seller's timely filing of required documents and payment of all applicable fees) to overcome the cause of such Permitted Extension.

(i) In order to secure a Permitted Extension, Seller shall provide Buyer written notice within ten (10) Business Days of Seller becoming aware of the facts or circumstances giving rise to the Permitted Extension. Such notice must clearly identify the reason for the Permitted Extension being claimed, including the extent and anticipated period of delay. In order to secure a Permitted Extension, Seller shall provide Buyer written notice within ten (10) Days of Seller becoming aware of the facts or circumstances giving rise to the Permitted Extension. Such notice

must clearly identify the reason for the Permitted Extension being claimed, including the extent and anticipated period of delay to the Guaranteed Construction Start Date, the Guaranteed Commercial Operation Date, or the Guaranteed Contract Capacity Date, as applicable.

(h) Liquidated Damages. Each Party agrees and acknowledges that the damages Buyer would incur due to Seller's failure to initiate Facility Construction by the Guaranteed Construction Start Date, or Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date, or Seller's failure to install the full Contract Capacity by the Guaranteed Contract Capacity Date would be difficult or impossible to determine, or obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore the Parties agree that Daily Delay Damages and Contract Capacity Damages are an appropriate approximation of such damages. Buyer shall have the right to set off any Daily Delay Damages and Contract Capacity Damages against payments due to Seller.

2.6 Commercial Operation.

(a) Commercial Operation Date. The Commercial Operation Date shall be a date no sooner than January 1, 2020 that is selected by Seller; provided that on or prior to the Commercial Operation Date, Seller shall have completed all the following conditions precedent:

(i) Seller has provided to Buyer a certificate signed by an officer of Seller in the form attached hereto as **Exhibit J** ("Commercial Operation Certificate"), certifying that all requirements of this Section 2.6(a) have been completed;

(ii) Seller has obtained Site Control necessary to operate the Facility in accordance with this Agreement and has provided evidence of such Site Control to Buyer;

(iii) Seller has successfully completed commissioning of the Facility's equipment in accordance with applicable manufacturers' specifications;

(iv) Seller has successfully completed all testing required by Prudent Operating Practices or any requirement of law necessary to operate the Facility's Equipment;

(v) Seller has satisfied all Interconnection Agreement requirements necessary to deliver Energy to the Delivery Point, such Interconnection Agreements are in full force and effect, and the CAISO has authorized Energy deliveries from the Facility to the Delivery Point;

(vi) Seller has obtained all applicable Permits and approvals required to be obtained from any Governmental Authority to operate the Facility in compliance with Applicable Law and this Agreement, and such Permits and approvals are in full force and effect;

(vii) Seller has installed and commissioned Facility Capacity sufficient for Buyer's Allocation of the Capacity to equal at least ninety-five percent (95%) of the Contract Capacity;

(viii) Seller has satisfied the Insurance Obligations in Section 6.2, and Seller has provided evidence of such insurance to Buyer; and

(ix) Seller has delivered to Buyer the Operating Security.

(b) Seller shall provide notice of expected Commercial Operation to Buyer in writing no less than thirty (30) days in advance of such date. Seller shall provide the Commercial Operation Certificate and all documentation required in Section 2.6(a) to Buyer when Seller believes it has met the conditions for achieving Commercial Operation. Buyer shall have five (5) Business Days to provide Seller with written notice acknowledging or disputing that Commercial Operation has been achieved. In the event Buyer disputes that Commercial Operation has been achieved, Buyer's written notice shall state the basis for such dispute in reasonable detail and the matter shall be subject to the dispute resolution procedures in Section 8.16. Buyer's failure to respond in writing within five (5) days of Seller's delivery of the Commercial Operation Certificate shall be deemed notice of acceptance that Commercial Operation has been achieved. Upon Buyer's written acknowledgement, the Commercial Operation Date shall be the date of Seller's delivery to Buyer of the Commercial Operation Certificate, or the date upon which outstanding issues related to the satisfaction of the conditions in Section 2.6(a) have been resolved.

2.7 Title; Risk of Loss.

Seller shall hold all rights, title and interest to all Product which Seller has conveyed to Buyer hereunder. Title to and risk of loss with respect to any Energy purchased by and delivered to Buyer by Seller in accordance with this Agreement shall pass from Seller to Buyer at the Delivery Point, and such Energy shall be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any other Person at the time of Seller's delivery. Until title passes, Seller shall be deemed in exclusive control of the same and shall be responsible for any damage or injury caused thereby. After title to Product passes to Buyer, as between the Parties, Buyer shall be deemed in exclusive control of such Product and shall be responsible for any damage or injury caused thereby. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive incentive or other tax benefits, or qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Product, shall be effective regardless of whether the Seller is eligible for, or receives, incentive tax credits or any other tax benefits.

2.8 Transmission; CAISO Payments and Charges; Curtailment.

(a) Seller's Transmission Service Obligations. Prior to the Commercial Operation Date and at all times during the Delivery Term:

(i) Seller shall deliver all Energy to the Delivery Point, and Seller shall arrange and pay for any and all facilities and transmission services (and any regulatory approvals required for the foregoing) that are necessary for Seller to deliver Energy to Buyer at the Delivery Point, including all of Seller's Interconnection Facilities and Transmission Provider's Interconnection Facilities.

(ii) Except as agreed otherwise in this Agreement, including in Section 2.8(b) and (c) and Section 7.3 hereof, Seller shall bear all risks, fees, costs, and charges associated with

or imposed on transmission of Energy to the Delivery Point, including, but not limited to, any Electrical Losses, outages or curtailment of Energy deliveries, CAISO costs, CAISO Penalties, congestion, scheduling deviation, energy imbalance, and neutrality allocations associated with or imposed on transmission of Energy to the Delivery Point.

(iii) Seller shall comply with all contractual, metering and applicable interconnection requirements, including those set forth in the Interconnection Agreements, Transmission Provider's applicable tariffs, the CAISO Tariff, and implementing CAISO standards and requirements, so as to be able to deliver Energy to the Delivery Point.

(b) CAISO Payments and Charges. Buyer shall be entitled to all CAISO payments, and shall be responsible for CAISO charges associated with Buyer's Allocation of Energy, except that Seller shall: (1) be entitled to any CAISO revenues generated as a result of any five minute interval where the Uninstructed Imbalance Energy quantity is negative; and (2) be responsible for (A) any administrative charges, penalties, or fees assessed by the CAISO to the Facility solely in its capacity as a generator in the CAISO market (including the Forecast Fee(s) and Grid Management Charge(s) as defined in the CASIO Tariff), (B) any costs, charges and penalties assessed by the CAISO resulting from any five minute interval where the Uninstructed Imbalance Energy quantity is negative; (C) any CAISO charges, penalties, or fees related to Seller's failure to comply with a Dispatch Down Instruction (as defined in the CAISO Tariff) or a Buyer Curtailment Order, as provided in Section 2.8 (c)(iii); and (D) any CAISO charges due to Seller's failure to comply with the CAISO Tariff, except for those charges Buyer has agreed to pay in this Agreement.

(c) Curtailment. Seller shall fully or partially curtail deliveries of Energy to Buyer during, and to the extent required by, a Curtailment Period or a Buyer Curtailment Order.

(i) Curtailment Periods. During any Curtailment Period, Seller shall curtail the generation or delivery of Energy from the Facility as directed by CAISO, the Transmission Provider, or a Governmental Authority, or as such reductions or curtailments are communicated to Seller by Buyer at the direction of CAISO, the Transmission Provider, or a Governmental Authority. If Seller delivers Energy that is not compliant with a direction to curtail generation or delivery of Energy during a Curtailment Period, Buyer shall not be required to pay Seller for Seller's non-compliant Energy deliveries. To the extent an event arises that causes Seller to curtail Energy deliveries to Buyer at the Delivery Point, Seller shall use commercially reasonable efforts to minimize the extent, amount and duration of any such curtailments.

(ii) Buyer Curtailment Orders. Buyer shall have the right to order Seller to reduce generation or delivery of Buyer's Allocation of Energy from the Facility pursuant to a Buyer Curtailment Order; provided: (i) Buyer shall give Seller (and Seller's SC, if applicable) not less than thirty (30) minutes' notice prior to the requested curtailment; (ii) such Buyer Curtailment Order does not violate the manufacturer's operating limits of the Facility's equipment in which case Seller may refuse to implement such curtailment in such time frame without any liability to Buyer; provided, Seller must continue to curtail Energy in a manner that is consistent with such operating limits; (iii) Buyer shall pay Seller for all Available Energy not delivered to Buyer due to a Buyer Curtailment Order in accordance with Section 2.2(a); and (iv) Buyer shall assume all liability, be responsible for, and hold harmless Seller, for any and all CAISO Penalties, other

penalties, costs or charges incurred by Seller due to a Buyer Curtailment Order. Seller shall use commercially reasonable efforts to design and construct the Facility so that it has the ability to respond to a dispatch control signal in order to facilitate Buyer Curtailment Orders. If Seller delivers Energy that is not compliant with a Buyer Curtailment Order, Buyer shall not be required to pay Seller for Seller's non-compliant Energy deliveries. Seller shall, within one hundred and eighty (180) days of the expected Commercial Operation Date, provide Buyer with the operating limits for the Facility's equipment.

(iii) Seller Failure to Curtail. Notwithstanding the foregoing, if Seller fails to curtail deliveries of Energy during a Curtailment Period, or if Seller fails to curtail deliveries of Buyer's Allocation of Energy in accordance with a Buyer Curtailment Order, Seller shall assume all liability, be responsible for, and hold harmless Buyer, for any and all CAISO Penalties, other penalties, costs or charges incurred by Buyer due to Seller's failure to curtail, including payment for any negative CAISO Settlement Price associated with Energy deliveries that are not compliant with a Curtailment Order or Buyer Curtailment Order. In the event any such penalties, costs or charges are incurred by Buyer due to Seller's failure to curtail, Buyer shall provide Seller with a written invoice and supporting documentation with respect to any amounts due, and Seller shall pay such amounts within thirty (30) days of receipt of the invoice. Any disputes with respect to such amounts shall be resolved in accordance with Section 8.16 hereof.

2.9 Scheduling; Forecasting; EIRP; Outage Notification.

(a) Scheduling Coordinator. During the Delivery Term, Seller, at its sole cost, shall act as or select a Scheduling Coordinator for the Facility. In that regard, Buyer and Seller agree to the following:

(i) Designation as Scheduling Coordinator. When Seller designates a Scheduling Coordinator, then Seller shall give Buyer notice of such designation at least ten (10) Business Days before Seller's SC assumes Scheduling Coordinator duties hereunder, and Buyer shall be entitled to rely on such designation until it is revoked or a new Seller's SC is appointed by Seller upon similar notice. Seller shall be fully responsible for all acts and omissions of Seller's SC and shall indemnify Buyer for all CAISO Penalties, costs, charges and liabilities incurred by the Buyer.

(ii) Seller's Responsibilities as Scheduling Coordinator. As soon as it is authorized to act as the Facility's Scheduling Coordinator, Seller (or Seller's SC) shall comply with all obligations under the CAISO Tariff and shall conduct all scheduling and bid submissions in full compliance with the terms and conditions of this Agreement and the CAISO's protocol and scheduling practices, including the requirements of EIRP, if applicable (the "Scheduling Procedures"). Upon Buyer's request, Seller shall, within five (5) Business Days of such request, provide to Buyer any supporting documentation necessary for Buyer to audit and verify matters related to Seller's or Seller's SC's bids of the Facility into the CAISO market. Except as provided herein or to the extent attributable to Buyer's acts or omissions, Seller shall be responsible for the payment of all charges associated with its scheduling activities, including all charges assessed by the CAISO (including CAISO Penalties) with respect to Seller's scheduling of Energy.

(iii) Buyer shall have the right from time to time during the Term, at Buyer's sole cost and expense, to enter into contracts with solar forecast service providers for the provision of forecasts respecting the Facility. In such event, Buyer shall provide Seller reasonable advance written notice thereof with the date of commencement of such service; provided, if requested by Seller, such solar forecaster selected by Buyer shall execute a confidentiality agreement in form and substance reasonably satisfactory to Seller.

(b) Forecast Procedures. Seller shall, at its sole cost, and at all times during the Term:

(i) Provide Buyer with information in a manner and time frame that allows Buyer to comply, with the CAISO's forecasting and associated data collection requirements as set forth in the CAISO Tariff (including, as applicable, Appendix Q thereof);

(ii) Provide to Buyer:

(A) Annual Forecast of Buyer's Allocation of Energy Production. By December 1 of each calendar year during the Term, Seller shall provide to Buyer a non-binding forecast of Buyer's Allocation of the hourly Energy production for an average day in each month of the follow calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Buyer's Allocation of Energy Production. Ten (10) Business Days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of Buyer's Allocation of the hourly Energy production for each day of the following month in a form reasonably acceptable to Buyer.

(C) Daily Forecast of Buyer's Allocation of Energy Production. During the Delivery Term, Seller shall provide to Buyer a day-ahead forecast of Buyer's Allocation of hourly Energy production for each day no later than as required by WECC, which at a minimum shall be no more than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. Seller shall notify Buyer of any changes in Buyer's Allocation of hourly Energy production of one (1) MWh or more, whether due to Forced Outage, Force Majeure Event, or other cause within thirty (30) minutes after obtaining knowledge of such event. Such notices shall contain information regarding the beginning date and time of the event resulting in the change in Buyer's Allocation of hourly Energy production, the expected end date and time of such event, and the expected Available Contract Capacity in MW during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage.

(iii) If any Governmental Authority imposes forecasting requirements associated with the Product, Seller shall comply, and provide Buyer with information in a manner and time frame that allows Buyer to comply with such forecasting requirements ((i), (ii) above and this subsection (iii), the "Forecast Procedures").

(c) Each Party shall perform its respective scheduling and forecasting obligations in compliance with all applicable: (i) operating policies, criteria, rules, guidelines, tariffs and

protocols of the CAISO, (ii) WECC scheduling practices, and (iii) Prudent Operating Practices. Seller shall assume all liability and be responsible for any and all CAISO Penalties (or other penalties, costs or charges) incurred by Buyer due to Seller's failure to comply with the Forecasting Procedures or Scheduling Procedures or Seller's failure to comply with its obligations set forth in Section 2.9(d). Buyer shall assume all liability and be responsible for any and all CAISO Penalties (or other penalties, costs or charges) incurred by Seller due to Buyer's failure to comply with the Scheduling Procedures. Any invoice submitted by either Buyer or Seller related to CAISO Penalties shall include the related CAISO invoice and a written statement explaining in reasonable detail the calculation of the amount due. Any disputes with respect to such amounts shall be resolved in accordance with Section 8.16.

(d) Outage Notification.

(i) Seller shall comply with the CAISO Tariff regarding notifying CAISO with respect to, and securing any necessary CAISO approvals for, all Facility outages, including Forced Outages and Planned Outages, and Seller shall comply with the CAISO Tariff regarding all CAISO reporting requirements with regard to outages through use of the CAISO OMS (as defined in the CAISO Tariff) electronic-outage reporting system (or a successor reporting system). Seller shall conform the timing and extent of all Planned Outages with the outage schedule provided to CAISO. Seller shall be responsible for securing CAISO approval for changes in its outage schedules if CAISO disapproves Seller's proposed schedules or if there is any cancellation of previously approved outages. Seller shall promptly notify Buyer of all Forced Outages and Planned Outages and provide Buyer with a copy of any communications with CAISO with respect to such outages.

(ii) No later than (A) thirty (30) days prior to the anticipated Commercial Operation Date, and (B) at least at least sixty (60) days before July 1 of each calendar year throughout the Term, Seller shall submit to Buyer, Seller's schedule of proposed Planned Outages ("Outage Schedule") for the subsequent twelve (12) month period, and Seller shall provide the following information for each proposed Planned Outage:

- (1) Start date and time;
- (2) End date and time;
- (3) Available Capacity of the Facility during the Planned Outage; and
- (4) Purpose for the Planned Outage.

(iii) Seller shall not schedule Planned Outages during the months of June to September, unless (1) such Planned Outage is required to avoid damage to the Facility, (2) such Planned Outage is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (3) such Planned Outage is required in accordance with Prudent Operating Practices, or (4) the Parties agree otherwise in writing.

(iv) Within thirty (30) days after Buyer's receipt of a proposed Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Operating Practices, use commercially reasonable efforts to accommodate Buyer's requests regarding the timing of any Planned Outage. If a condition occurs at the Facility that causes Seller to revise its Planned Outages, Seller shall provide prompt

notice to Buyer, which notice shall be provided within five (5) Business Days of Seller's becoming aware of such condition or revision (including an estimate of the length of such Planned Outage).

2.10 Capacity Rights.

(a) Buyer shall be entitled to Buyer's Allocation of all Capacity Rights associated with the Facility during the Delivery Term. The consideration for all such Capacity Rights is included within the Contract Price. Seller shall be responsible for obtaining FCDS or IDS for the Facility no later than October 30, 2021. Subject to Section 2.10(e), for any month after October 30, 2021 in which Seller has failed to obtain or maintain FCDS or IDS for the Contract Capacity, or has otherwise failed to perform its obligations under this Section 2.10, including the delivery obligations under Section 2.10(d), the applicable Contract Price shall be reduced by or \$3.00/MWh; *provided* that, for the avoidance of doubt, the Parties acknowledge and agree that the foregoing price reduction shall be Buyer's sole remedy in the event Seller fails to obtain or maintain FCDS or IDS or otherwise fails to perform its obligations under this Section 2.10. During the Delivery Term, Seller shall not sell or attempt to sell Buyer's Allocation of the Facility's Capacity Rights to any other Person, and Seller shall not report to any person or entity that Buyer's Allocation of the Facility's Capacity Rights belong to anyone other than Buyer.

(b) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the NQC associated with the Buyer's Allocation of the Facility's Capacity Rights to Buyer; and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including: (A) registering the Facility with the CAISO so that the NQC associated with Buyer's Allocation of the Facility's Capacity Rights are able to be recognized and counted for Resource Adequacy purposes; (B) assisting Buyer in making such annual submissions to the CAISO associated with establishing the correct quantity representing the NQC associated with Buyer's Allocation of the Facility's Capacity Rights; (C) coordinating with Buyer on the submission to the CAISO of the monthly Supply Plan submissions (or corrections), as required by the CAISO Tariff; and (D) providing the CAISO all necessary information for annual and other outage planning.

(c) Seller shall deliver such additional documents, instruments, submissions and information as may be requested by Buyer in connection with Buyer's Allocation of the Facility's Capacity Rights; *provided*, that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that materially adversely affects, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(d) At all times during the Term, Seller shall install such meters and power electronics as are necessary so that Buyer's Allocation of the Facility's Capacity Rights may be delivered to Buyer. For Seller to obtain the Contract Price corresponding to having delivered Buyer's Allocation of the Facility's Capacity Rights to Buyer, Seller shall (i) have obtained FCDS for Facility Capacity sufficient for Buyer's Allocation of the Facility's Capacity Rights to equal the Contract Capacity, and (ii) have delivered Capacity Rights to Buyer for the corresponding Showing Month of the Delivery Term. The total amount of Capacity Rights identified and confirmed for each day of such Showing Month shall equal the then applicable NQC of the

Facility. Seller shall deliver the Capacity Rights by submitting the Facility and its NQC to the CAISO in Seller's Supply Plan. The Capacity Rights shall be deemed delivered and received when the CIRA Tool shows the Supply Plan accepted for the NQC from the Facility by CAISO or Seller complies with Buyer's instruction to withhold all or part of the NQC from Seller's Supply Plan for any Showing Month during the Delivery Term but Seller otherwise delivers the amount of NQC that Buyer does not direct Seller to withhold. Seller has failed to deliver the Capacity Rights if (i) Buyer has elected to submit the NQC from the Facility in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool and are rejected by CAISO, or (ii) Seller fails to submit in its Supply Plan the volume of NQC for any Showing Month in such amount as instructed by Buyer for the applicable Showing Month. Seller will not have failed to deliver the Capacity Rights if Buyer fails to submit or chooses not to submit the Facility and the NQC in its Resource Adequacy Plan with the CPUC or CAISO

(e) Notwithstanding anything herein to the contrary, Seller shall have no obligation to deliver Capacity Rights pursuant to this Section 2.10, and Seller shall not be subject to any Contract Price reduction pursuant to Section 2.10(a), in the event of changes to Applicable Law that result in Buyer no longer being subject to RA procurement requirements under the CAISO Tariff and Applicable Laws.

2.11 Sales for Resale.

All Energy delivered to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall provide Seller with any documentation reasonably requested by Seller to evidence that the deliveries of Energy hereunder are sales for resale.

ARTICLE 3 TERM; TERMINATION; DEFAULTS

3.1 Term.

The "Term" of this Agreement shall commence on the Effective Date and continue until 23:59 pm PPT on the date that is fifteen (15) years after the first day of the Delivery Term, unless sooner terminated in accordance with the terms hereof. The Term may be renewed or extended by mutual consent of the Parties, upon terms and conditions and for a price upon which the Parties mutually agree in connection with such extension or renewal.

3.2 Regulatory Approvals; Certifications; Qualifications.

(a) Except as specifically provided for herein, each Party shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement.

(b) Seller shall file an application for CEC pre-Certification and Verification for the Facility within sixty (60) days following the Effective Date. Seller shall, at its sole expense, take all steps necessary to ensure that during the Delivery Term: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource, and in that regard, Seller shall submit an

application to the CEC for final CEC Certification and Verification within ten (10) Business Days after the Commercial Operation Date; (ii) the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with Portfolio Content Category 1 and meet the criteria of California Public Utilities Code Section 399.16(b)(1), and as such, Seller shall ensure that in all cases the Renewable Energy Credits and Energy from the Facility are bundled according to the applicable CEC RPS Eligibility Guidebook; and (iii) the Facility is maintained and operated in a manner so as to preserve such certification and qualification.

(c) Seller shall, at its sole expense, make any filings and submit any reports necessary for the Facility to maintain and comply with CEC, ERR and California Renewables Portfolio Standard certifications and qualifications during the Delivery Term and shall promptly provide Buyer with copies of any such filings or reports. Buyer shall cooperate with Seller by providing promptly to Seller such data and information necessary, if any, in order for Seller to prepare and submit such filings and reports. In the event Seller fails to make such filings or submit such reports necessary to maintain such CEC, ERR and California Renewables Portfolio Standard certifications and qualifications (and such failure is not caused by Buyer's actions or inactions), Buyer, on prior notice to Seller and at Seller's expense, may take any and all actions deemed necessary by Buyer, on behalf of Seller and as Seller's agent, to maintain such CEC, ERR and California Renewables Portfolio Standard certifications and qualifications, including executing all necessary California regulatory agency documentation in order to accomplish the foregoing.

(d) To the extent the Facility is eligible to participate in the EIRP prior to the Commercial Operation Date, Seller shall, at its sole cost, promptly undertake such actions as may be necessary to ensure the Facility participates in EIRP at the earliest date possible. Seller shall provide Buyer immediate oral notice of its receipt from CAISO of any notice or certification from CAISO regarding the Facility's participation in EIRP and shall provide Buyer with a written copy of the notice from CAISO certifying the Facility as eligible to participate in the EIRP within one (1) Business Day of Seller's receipt of such notice of EIRP certification. At all times following EIRP certification, Seller shall, at its sole cost, participate in and comply with EIRP as directed by Buyer and shall comply with all additional protocols issued by the CAISO relating to EIRP resources during all hours of the Delivery Term. Seller as Scheduling Coordinator (or Seller's SC) shall facilitate communication between Seller and CAISO and provide other administrative materials to CAISO as necessary to assist Seller's participation in and compliance with EIRP and any additional protocols. Seller shall, at its own expense, comply with, and satisfy the certification requirements of EIRP.

(e) Throughout the Term, Seller shall, at its sole cost, to the extent required by NERC, WECC or FERC, cause the Facility Operator to register with NERC as the Generator Operator of the Facility and in which case Seller shall: (i) cause the Facility Operator to be responsible for complying with all NERC Reliability Standards applicable to a Generator Operator; and, (ii) be liable for all penalties assessed by NERC, FERC or WECC for violations of the NERC Reliability Standards applicable to a Generator Operator.

(f) Notwithstanding any provision of this Agreement, Seller acknowledges that Buyer has no obligation to register with NERC as a Generator Operator or any other applicable NERC

registration category with respect to the Facility, as a result of this Agreement, or to comply with any NERC Reliability Standards or requirements thereunder applicable to the Facility.

3.3 [Reserved].

3.4 Defaults; Remedies; Termination Payment.

(a) Default. Each of the following shall constitute an “Event of Default” hereunder:

(i) A Party has made a representation or warranty herein that is false or incorrect in a material respect that has a material adverse effect on the other Party (the non-defaulting Party), and the non-defaulting Party provides to other Party notice of the same, and: (A) such misrepresentation or breach of warranty is not remedied within twenty (20) Business Days after notice is received by the defaulting Party; or (B) if such inaccuracy is not capable of being remedied, but the non-defaulting Party’s damages resulting from such inaccuracy can be reasonably ascertained, then if payment of such damages is not made within ten (10) Business Days after a notice of such damages is provided by the non-defaulting Party to the defaulting Party;

(ii) A Party fails to pay any undisputed amount due hereunder, where such failure is not cured within ten (10) Days after written notice from the other Party of such failure to pay;

(iii) A Party has (a) filed or otherwise commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets, (b) failed, or admitted in writing its inability generally, to pay its debts as such debts become due, (c) made a general assignment for the benefit of creditors, which excludes collateral assignment to Lenders pursuant to Section 8.2(b)(i), (d) been adjudicated bankrupt or has filed a petition or an answer seeking an arrangement with creditors, (e) taken advantage of any insolvency law or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (f) become subject to an order, judgment or decree for relief, entered in an involuntary case, without the application, approval or consent of such Party by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, for a substantial part of any of its assets and such order, judgment or decree shall continue unstayed and in effect for any period of sixty (60) consecutive Days, (g) failed to remove or stay an involuntary petition in bankruptcy filed against it within sixty (60) Days of the filing thereof, or (h) become subject to an order for relief under the provisions of the United States Bankruptcy Act, 11 U.S.C. § 301;

(iv) Seller fails to maintain Site Control, if such default has not been cured by Seller within thirty (30) Days after receiving written notice from Buyer; provided, however, that, in the case of any such default that is not reasonably capable of being cured within the thirty (30) Day cure period, Seller shall have up to an additional sixty (60) Days if it commences to cure the default within such initial thirty (30) Day cure period and it diligently and continuously pursues such cure;

(v) Seller fails to post or maintain Development Security or Operating Security in compliance with Section 3.6 and such default is not cured within ten (10) Business Days after notice from Buyer;

(vi) Seller fails to achieve Commercial Operation of Facility Capacity sufficient for Buyer's Allocation of Capacity to equal at least ninety-five (95%) of the Contract Capacity on or before the date that is one hundred and twenty (120) Days after the Guaranteed Commercial Operation Date, after giving effect to all Permitted Extensions, and such failure is not cured within five (5) Business Days after notice;

(vii) Seller fails to obtain CEC Certification and Verification within ninety (90) Days of the Commercial Operation Date or Seller fails to maintain such status thereafter through the end of the Term, or the Facility fails to qualify as an ERR and any Energy from the Facility sold to Buyer fails to qualify as eligible renewable energy for purposes of the California Renewables Portfolio Standard, and such failure is not cured within ten (10) Business Days after notice;

(viii) Except as otherwise provided herein, during the Term, Seller assigns, transfers, conveys, encumbers, sells, or otherwise disposes of all or any portion of the Product that is to be sold and delivered to Buyer under this Agreement to any person other than Buyer, or Seller delivers, or attempts to schedule or deliver, energy to the Delivery Point to satisfy its obligations under this Agreement that was not generated by or attributable to the Facility;

(ix) [Reserved];

(x) Seller fails to deliver Buyer's Allocation of Energy together with Excused Energy during a Performance Period in a quantity greater than seventy percent (70%) of the total Minimum Annual Energy Production corresponding to the two (2) Contract Years of the Performance Period; provided, however, that no Event of Default shall occur if, (i) within ten (10) Business Days of receipt of Buyer's notice of default hereunder, Seller proposes a reasonably-detailed remedial action plan to cure such default, and (ii) Seller delivers Buyer's Allocation of Energy together with Excused Energy in a quantity greater than seventy percent (70%) of the total Minimum Annual Energy Production corresponding to the two (2) Contract Years of the next Performance Period;

(xi) Seller has not sold or delivered Buyer's Allocation of Energy from the Facility to Buyer for a period of twelve (12) consecutive months after the Commercial Operation Date, except due to during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Buyer Curtailment Order, (C) a Curtailment Period, provided such Curtailment Period is not attributable to Seller's breach of its obligations under this Agreement or the Interconnection Agreements, or (D) a period of Seller suspension due to a Buyer Event of Default pursuant to Section 3.4(b)(ii); or

(xii) Any other default in performance or observance by a Party of any agreement, undertaking, covenant or other obligation contained in this Agreement that has a material adverse effect on the other Party if such default has not been cured by the defaulting Party within thirty (30) Days after receiving written notice from the non-defaulting Party setting forth,

in reasonable detail, the nature of such default and its impact on the non-defaulting Party; provided, however, that, in the case of any such default that is not reasonably capable of being cured within the thirty (30) Day cure period, the defaulting Party shall have up to an additional sixty (60) Days if it commences to cure the default within such initial thirty (30) Day cure period and it diligently and continuously pursues such cure.

(b) Remedies. Upon the occurrence of, and during the continuation of, an Event of Default by a Party, the non-defaulting Party shall have the right but not the obligation to:

(i) Subject to Section 8.8, pursue all remedies given under this Agreement or now or hereafter existing at law, in equity or otherwise;

(ii) Suspend performance of its obligations and duties hereunder immediately upon delivering written notice to the defaulting Party of its intent to exercise its suspension rights; and

(iii) Terminate this Agreement by notice to the other Party, designating a Day no less than thirty (30) Days after such notice, as an early termination date (the "Early Termination Date") to accelerate all amounts then owing between the Parties and to liquidate and terminate this Agreement.

(c) Termination Payment.

(i) As soon as practicable after the declaration of an Early Termination Date, notice shall be given by the non-defaulting Party to the defaulting Party of the amount of the Termination Payment, which shall in no event exceed \$3,750,000. The non-defaulting Party shall calculate the Termination Payment in a commercially reasonable manner as of the Early Termination Date. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment, if any, shall be made by the Party owing the Termination Payment within five (5) Business Days after such notice is effective and shall bear interest at the Prime Rate from the due date until paid.

(ii) "Termination Payment" means an amount equal to the sum of all Losses (if any) and all Costs (if any) incurred by the non-defaulting Party as a result of the termination of this Agreement, plus all amounts then currently due from the defaulting Party to the non-defaulting Party under this Agreement, minus all amounts due to the defaulting Party under this Agreement, so that all such amounts shall be netted to a single liquidated amount payable by the defaulting Party to the non-defaulting Party.

(iii) If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Payment, in whole or in part, the defaulting party shall, within ten (10) Business Days of receipt of the non-defaulting Party's calculation of the Termination Payment, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be resolved in accordance with Section 8.16. Notwithstanding any provision of this Agreement, Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize

any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

3.5 Specific Performance; Injunctive Relief.

Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

3.6 Seller's Financial Support Obligations.

(a) Development Security. Seller shall provide to Buyer as security for the performance of Seller's obligations hereunder, a combination of (a) a Letter of Credit from a Qualified Institution reasonably acceptable to Buyer, (b) a cash deposit, or (c) Corporate Guaranty, collectively in an amount equal to three million dollars (\$3,000,000) (the "Development Security"). Seller shall post the Development Security within ten (10) Business Days after the Effective Date. Buyer shall have the right to draw upon the Development Security, at Buyer's sole discretion, in the event Seller fails to make any payments due and owing under this Agreement or to reimbursement Buyer for costs or damages, including Daily Delay Damages and Contract Capacity Damages, that Buyer has incurred as a result of Seller's failure to perform its obligations under this Agreement. Within five (5) Business Days following any draw by Buyer on the Development Security, Seller shall replenish the amount drawn such that the Development Security is restored to the full amount. Buyer shall release the Development Security, less amounts drawn, if any, to Seller upon the earlier of (i) the termination of this Agreement in accordance with its terms; or (ii) the tenth (10th) Business Day after Seller posts the Operating Security pursuant to Section 3.6(b). Upon the consent of Buyer, with respect to cash held as Development Security, Seller may elect to apply and maintain the unused portion of the Development Security, if any, as a portion of Operating Security pursuant to Section 3.6(b).

(b) Operating Security. As a condition of Buyer's continuing obligation under this Agreement, Seller shall provide to Buyer as security for the performance of Seller's obligations during the Delivery Term, a combination of (a) a Letter of Credit from a Qualified Institution reasonably acceptable to Buyer, or (b) a cash deposit, or (c) Corporate Guaranty, collectively in an amount equal to three million, seven hundred and fifty thousand dollars (\$3,750,000.00) (the "Operating Security"). Seller shall post the Operating Security on or prior to the Commercial Operation Date and maintain the Operating Security until the end of the Term. Buyer shall have the right to draw upon the Operating Security, at Buyer's sole discretion, in the event Seller fails to make any payments owing under this Agreement or to reimburse Buyer for costs or damages that Buyer has incurred as a result of Seller's failure to perform under this Agreement. Within five (5) Business Days following any draw by Buyer on the Operating Security, Seller shall replenish the amount drawn such that the Operating Security is restored to the full amount. Buyer shall release the Operating Security, less amounts drawn, if any, to Seller upon the earlier of (i) termination of this Agreement in accordance with its terms; and (ii) on the tenth (10th) Business Day after the expiration of the Term.

(c) With respect to any Letter of Credit posted hereunder, on or before the date that is thirty (30) days prior to the expiration date of any Letter of Credit, Seller shall cause the Letter of Credit to be renewed or replaced with another Letter of Credit in an equal amount. Buyer shall have the right to draw on a Letter of Credit, at Buyer's sole discretion if (A) such Letter of Credit has not been renewed or replaced at least thirty (30) days prior to the date of its expiration or (B) the issuer is no longer a Qualified Institution and Seller has not caused a replacement Letter of Credit to be issued for the benefit of Buyer within ten (10) Business Days of such issuer no longer qualifying as a Qualified Institution; provided that if Buyer draws upon any Letter of Credit for the foregoing reasons and Seller subsequently posts a replacement Letter of Credit or extends or renews a Letter of Credit (in the case of (A) above), the proceeds of Buyer's drawing shall be returned to Seller.

(d) With respect to any Corporate Guaranty posted hereunder, on or before the date that is five (5) Business Days following a downgrade in Credit Rating that results in the Seller-affiliated entity that has posted a Corporate Guaranty no longer qualifying as a Qualifying Guarantor, Seller shall cause the Corporate Guaranty to be replaced with a combination of (a) a Letter of Credit from a Qualified Institution reasonably acceptable to Buyer, or (b) a cash deposit in an equal amount sufficient to maintain Development Security or Operating Security in compliance with Section 3.6.

ARTICLE 4 BILLING AND PAYMENT; METERING AND MEASUREMENT

4.1 Billing; Payment.

(a) Billing and payment for Product sold to and purchased by Buyer under this Agreement and any other amounts due and payable hereunder, including Buyer's payments for Available Energy, if any, shall be as follows:

(i) Commencing on the Effective Date and continuing throughout the Term, Seller shall, consistent with Section 4.2, calculate: (A) the amount of Buyer's Allocation of Energy delivered at the Delivery Point from recordings produced by the Meter(s) for the Facility on or near the last Day of each calendar month through last Day of the final Contract Year; and (B) the amount of Available Energy, if any, for each calendar month through the last Day of the final Contract Year.

(ii) Seller shall use commercially reasonable efforts to deliver to Buyer, not later than the twentieth (20th) Day of each calendar month during the Term and for the first calendar month following the expiration thereof, an invoice showing (A) the amount of Buyer's Allocation of Energy delivered by Seller at the Delivery Point (which deliveries shall be adjusted to reflect Electrical Losses to the Delivery Point in accordance with Section 4.2(a)) during the preceding calendar month of the Term, and Seller's computation of the amount due Seller in respect thereof; (B) the amount, if any, of Available Energy during the preceding calendar month of the Delivery Term, and Seller's computation of the amount due Seller in respect thereof; and (C) any other amounts owed by one Party to the other Party pursuant to this Agreement; provided, however, that prior to the beginning of the Delivery Term, Seller's invoices shall include the CAISO Settlement Price for Buyer's Allocation of delivered Energy and Seller's invoices shall not include Available Energy amounts. Seller shall deliver an invoice to Buyer each month during the Term; provided

that prior to the Delivery Term, Seller shall only delivery an invoice to Seller for months in which an Energy delivery has occurred. Buyer Seller shall cooperate reasonably with any Buyer request to modify the format, or level of detail, of Seller invoices pursuant to this Agreement.

(iii) Buyer shall pay to Seller the undisputed amount of each invoice within thirty (30) Days after receipt of each invoice (unless such Day is not a Business Day, in which case such payment shall be due on the next succeeding Business Day). To the extent Seller owes Buyer any amounts hereunder, Buyer may set-off such amounts from Buyer's payments to Seller. Buyer shall make payment by wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time.

(b) Except as provided in Section 4.1(e), within one (1) year after receipt of any invoice, either Party may provide written notice to the other Party of any alleged error therein, and the Parties shall meet, by telephone conference call or otherwise, within ten (10) Business Days of the other Party's receipt of such notice, for the purpose of attempting to resolve the dispute. If the Parties are unable to resolve the dispute within thirty (30) Days after such initial meeting, then either Party may proceed to seek any remedy that may be available to such Party at law or in equity.

(c) Except as otherwise provided in this Agreement, all payments hereunder shall be made without set-off or deduction. Any payment not made by the date required by this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received at an annual rate equal to the Prime Rate then in effect plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law ("Late Payment Rate"). If, as a result of a dispute settled in favor of Buyer, a refund is owed to Buyer, then the amount of the overpayment shall bear interest from the date on which such payment was made by Buyer through and including the date that the overpayment is refunded by Seller at an annual rate equal to the Late Payment Rate.

(d) Statements or invoices shall be sent to Buyer by mail, facsimile, or E-mail to:

Valley Clean Energy Alliance
604 2nd Street, Davis, California 95616 Attn: Director, Finance and Operations
Telephone: 530-446-2752
Facsimile:
E-mail: Alisa.Lembke@valleycleanenergy.org

Statements or invoices shall be sent to Seller by mail or facsimile to:

Aquamarine Westside, LLC
C/O CIM Group, LLC
4700 Wilshire Blvd
Attn: Alex Martinez
Telephone: [#]
Facsimile: [#]
E-mail: [address]

with a CC to:

Aquamarine Westside, LLC

C/O

Address:

Attn:

Telephone: [#]

Facsimile: [#]

E-mail: [address]

Either Party may change the address or facsimile number by providing written notice to the other Party.

(e) If Seller or Buyer determines that a calculation of delivered Product or CAISO Penalties is incorrect as a result of inaccurate Meters, the correction of data by the CAISO in MRI-S, or a recalculation of CAISO Penalties or other amounts owing between the Parties, Seller or Buyer, as the case may be, shall promptly re-compute the delivered Product, CAISO Penalties, or other amounts for the period of the inaccuracy based upon an adjustment of inaccurate Meter readings, correction of data or recalculation of CAISO Penalties in accordance with the CAISO Tariff and any payment affected by the adjustment or correction. Any amount due from Buyer to Seller, or Seller to Buyer, as the case may be, will be made as an adjustment to the next monthly payment statement that is calculated after Seller's or Buyer's re-computation using corrected measurements. If the re-computation results in a net amount owed to Buyer after applying any amounts owing to Seller as shown on the next monthly payment statement, any such amount owing to Buyer shall, at Buyer's discretion, be netted against amounts owed to Seller in any subsequent monthly payment invoice or be separately invoiced to Seller, in which case Seller must pay the amount owing to Buyer within twenty (20) days after receipt of that invoice. Buyer or Seller may make payment adjustments arising from a recalculation of CAISO Penalties or as a result of inaccurate Meters after the end of a Contract Year. Adjustment payments for Meter inaccuracy will not bear interest.

4.2 Metering Equipment.

(a) During the Delivery Term, Seller shall: (i) provide and maintain, at its cost, all metering and recording equipment necessary to meet all applicable WREGIS, CEC and CPUC requirements to permit an accurate determination of the quantities of Green Attributes generated by the Facility; (ii) provide and maintain, at its cost, Meter(s) and associated measuring and recording equipment necessary to meet all applicable CAISO requirements to permit an accurate determination of the quantities of Energy delivered to the Delivery Point under this Agreement; (iii) measure all deliveries of Energy through Seller's CAISO revenue Meter(s) assigned to the Facility on the low or high side (at Seller's discretion) of the Facility's final step up transformer located closest to the Delivery Point; (iv) utilize Meter(s) at the Facility on both the low and/or high side (at Seller's discretion) of the final step up transformer and/or at the POI to account for Electrical Losses to the Delivery Point; (v) ensure that Meter(s), and any Back Up Meter(s), shall be adjusted to reflect Seller's deliveries of Energy at the Delivery Point using a formula reasonably acceptable to Buyer to account for Electrical Losses associated with transmission of Energy to the

Delivery Point; and, (vi) exercise reasonable care in the maintenance and operation of any such Meter(s) and Back Up Meter(s) so as to assure to the maximum extent reasonably practicable an accurate determination of the quantities of Energy delivered to Buyer at the Delivery Point under this Agreement. A metering diagram is attached as **Exhibit C**.

(b) During the Term, all Energy from the Facility must be delivered through Meter(s) and Back-Up Meter(s), as applicable, and must be measured by the Meter(s) or Back-Up Meter(s) to be eligible for payment under this Agreement. Seller shall bear all costs relating to Meter(s) installed to measure the delivery of Energy, except for Back-Up Meter(s) installed at the direction of Buyer, which costs to purchase, install and maintain such Back-Up Meter(s) installed at the direction of Buyer shall be borne by Buyer. Seller hereby agrees to obtain and provide all Meter data, including all inspection, testing and calibration data and reports, to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Facility and all related inspection, testing and calibration data and reports. Seller shall grant Buyer the right to access and retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) application and/or directly from the Meter(s) at the Site; provided, any such access to the Site be in a manner consistent with the access provisions of Section 5.6. If the CAISO adjusts any CAISO Meter data related to a specific time period, Seller agrees that it shall, pursuant to Section 4.1(e), submit revised monthly invoices related to such time period in order to reconcile past invoices to conform fully with such CAISO Meter data adjustments. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which it receives from the CAISO such binding adjustment to the Meter data.

(c) Seller shall test and calibrate the Meter(s), as necessary, but in no event shall the period between testing and calibration dates be greater than twelve (12) months. Seller shall bear the cost for any Meter check or recertification of the Meter(s); provided, Buyer shall reimburse Seller the costs associated with recertification of a Back-up Meter installed at the direction of Buyer. Seller shall replace Meter and Back-Up Meter batteries at least once every thirty-six (36) months, or such shorter period as may be recommended by the Meter or Back-Up Meter manufacturer. Notwithstanding the foregoing, if a Meter or Back-Up Meter battery fails, Seller shall replace such battery within three (3) days after becoming aware of its failure. Seller shall use certified test and calibration technicians to perform any work associated with Meter(s) and Back-Up Meter(s), and Seller shall provide Buyer certified results of tests and calibrations within thirty (30) days after completion.

(d) Buyer is permitted, but not obligated, to request, at Buyer's sole cost and expense, that Seller furnish and install one or more Back-Up Meters at mutually agreed locations. All such Back-Up Meters shall be CAISO approved and the readings from each such Back-Up Meter shall be adjusted to reflect Seller's Energy deliveries at the Delivery Point, taking into account Electrical Losses.

(e) All of the Meters and Back-Up Meters shall be locked or sealed, and the lock or seal shall be broken only for purposes of testing, calibration, or adjustment. If any Meter or Back-Up Meter is found to be defective or inaccurate, it shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of zero error by the Seller at the expense of the Party owning such defective or inaccurate device. Each Party grants the other Party the right to request additional tests of such Party's Meter(s) or Back-Up Meter(s), as applicable, with

reasonable prior notice and at reasonable time in order verify the accuracy of such Meter(s) or Back-Up Meter(s) and the Party owning such Meter or Back-Up Meter shall perform such additional tests; provided, such inspections and verifications shall be at the requesting Party's sole expense and shall not occur more than two (2) times each Contract Year for each Meter or Back-Up Meter during the Term; provided that if a test of a Meter or Back-Up Meter determines that the Meter or Back-Up Meter is inaccurate by more than one half percent (0.5%), the Party owning the Meter or Back-Up Meter shall pay for such test and such test shall not count towards the two test per Contract Year for each Meter or Back-Up Meter limit described above.

(f) If a Meter or Back-Up Meter fails to register, or if the measurement made by a Meter or Back-Up Meter is found upon testing to be inaccurate by more than one half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Meter or Back-Up Meter for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(i) In the event that a Meter is found to be defective or inaccurate, the Parties shall use readings from a Back-Up Meter, if installed, to determine the amount of such inaccuracy; provided, however, that such Back-Up Meter has been tested and maintained in accordance with the provisions of this Agreement. If there is no Back-Up Meter, or such Back-Up Meter is also found to be inaccurate by more than one half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Energy from the Facility to the Delivery Point during periods of similar operating conditions when the Meter was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(ii) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shortest of (A) the last one-half of the period from the last previous test of the Meter to the test that found the Meter to be defective or inaccurate, (B) the last one-half of the period from the last previous test of the Back-Up Meter to the test that found the Back-Up Meter to be defective or inaccurate, or (C) the one hundred eighty (180) days.

(g) Notwithstanding any provisions set forth in this Section 4.2, to the extent there is an inconsistency between this Agreement and the provisions of the CAISO Tariff or Metering Services Agreement, the CAISO Tariff or Metering Services Agreement shall control.

4.3 Maintenance; Records.

During the Term, Seller shall provide Buyer reports indicating the amount of Buyer's Allocation of Energy delivered to Buyer at the Delivery Point from recordings produced by the Meter(s) for the Facility. Seller shall provide reports on a frequency, and in a format, as reasonably requested by Buyer. Buyer shall have the right to be present whenever Seller reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the Meter(s), Back-Up Meter(s), or any of Seller's equipment used in measuring or checking the measurement of the amount of Energy delivered to the Delivery Point during the Term; provided, any such access to the Site be in a manner consistent with the access provisions of Section 5.6. Seller shall give at least two (2) Business Days' notice to Buyer in advance of taking any such actions. The records from the measuring equipment shall remain the property of Seller, but, upon request, Seller shall submit to Buyer its records and charts,

together with calculations therefrom, for inspection, verification and copying, subject to return within ten (10) Days after receipt thereof. Seller agrees to retain such records for a period no less than two (2) years.

4.4 *Electronic Communications.*

During the Delivery Term, Seller shall provide Buyer, at Seller's sole expense, the instantaneous net MW flow updated every minute via file transfer protocol which represents the quasi real time electronic Meter data from the Facility. During the Delivery Term, Seller shall use commercially reasonable efforts to transmit to Buyer, on a real time basis, any other operational data from the Facility that Seller receives or possesses. During the Delivery Term, Seller, at its own expense, shall: (a) install and maintain at least one (1) stand-alone meteorological station (the "Meteorological Station") at the Site to monitor and report meteorological data; (b) install and maintain additional Meteorological Stations at the Facility, if any, required pursuant to the CAISO Tariff; (c) provide meteorological data to Buyer on the same basis on which Seller receives the data within its SCADA System (e.g., if Seller receives the data in five (5) minute intervals, Buyer shall also receive the data in five (5) minute intervals); and (d) install such equipment for the communication of such meteorological data to Buyer as required by the CAISO Tariff (Appendix Q) or as the Parties may agree.

ARTICLE 5 REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 *Seller's Representations and Warranties.*

- (a) Seller represents and warrants as follows:
 - (i) Seller is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware, and authorized to conduct business in the State of California;
 - (ii) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;
 - (iii) Seller has taken all action required by Applicable Law and its documents of formation in order to approve, execute and deliver this Agreement;
 - (iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein, and the fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of, or a default under, any provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Seller, or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of

indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) Seller has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, or receiverships pending or being contemplated by Seller, or to its knowledge threatened against Seller;

(vii) There are no actions or proceedings pending or, to Seller's knowledge, threatened, and there are no judgments, rulings or orders issued by any court or other Governmental Authority, that would materially adversely affect Seller's ability to perform its obligations under this Agreement;

(viii) This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity; and

(ix) Seller has procured or will procure prior to the commencement of the Delivery Term all real property rights required for the operation of the Facility at the Site and the performance of any obligations of Seller hereunder, and the terms of each are for periods of no less than the Term.

5.2 Buyer's Representations and Warranties.

(a) Buyer represents and warrants as follows:

(i) Buyer is a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) and as such is duly organized, validly existing and in good standing under the laws of the State of California and authorized to conduct business in California;

(ii) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

(iii) Buyer has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;

(iv) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of Buyer or any contractual limitation, restriction or

outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

(v) Buyer has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;

(vi) There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by Buyer, or to its knowledge threatened against Buyer;

(vii) There are no actions or proceedings pending or, to Buyer's knowledge, threatened, and there are no judgments, rulings or orders issued by any court or other governmental body that would materially adversely affect Buyer's ability to perform its obligations under this Agreement; and

(viii) This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

5.3 Seller's Covenants.

(a) Seller covenants that:

(i) At all times during the Term, the Facility shall be operated and maintained in accordance with this Agreement, Prudent Operating Practices, and Applicable Laws;

(ii) From the Effective Date through the expiration or termination of this Agreement, Seller shall comply with this Agreement and the CAISO Tariff;

(iii) Except for assignments authorized in accordance with Section 8.2, Seller shall at all times own and operate the Facility;

(iv) Seller shall obtain, maintain, and remain in compliance with all Permits, Interconnection Agreements, and transmission and distribution rights necessary to operate the Facility and to deliver Product to Buyer, including Energy from the Facility to the Delivery Point;

(v) Seller shall maintain Site Control required for the operation of the Facility at the Site and the performance of any obligations of Seller hereunder;

(vi) Seller shall cause its employees to comply with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable California statutes and regulations affecting job safety; and

(vii) Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies

or tribunals, including, without limitation employment discrimination laws and prevailing wage laws.

5.4 Buyer's Financial Security.

Buyer shall not be required to post financial security during the Term. During the Delivery Term, the Contract Price shall be determined based on whether Buyer has provided Qualifying Credit Support. In the event, on or before December 31, 2020, Buyer either (i) obtain an investment-grade credit rating on its long-term, unsecured indebtedness with either Moody's or S&P; or (ii) posts financial security in the amount of \$3,750,000 in the form of a Letter of Credit from a Qualified Institution, a cash deposit, or a combination thereof, then from such date forward for so long as Buyer maintains such credit-rating or credit support, Buyer shall pay "Contract Price B" as set forth in **Exhibit A**. At all other times, Buyer shall pay "Contract Price A" as set forth in **Exhibit B**.

5.5 Guaranteed Energy Production.

(a) Guaranteed Energy Production.

(i) During each Performance Period, Seller shall deliver to Buyer an amount of Buyer's Allocation of Energy together with Excused Energy no less than eight-five percent (85%) of the sum of the Minimum Annual Energy Production corresponding to the two (2) Contract Years of the Performance Period (the "Guaranteed Energy Production").

(ii) In the event Seller's deliveries of Buyer's Allocation of Energy together with Excused Energy are less than eight-five percent (85%) of the sum of the Minimum Annual Energy Production corresponding to the two (2) Contract Years of the Performance Period (the difference a "Shortfall Amount"), Buyer shall be entitled to receive liquidated damages in the amount of the Shortfall Amount multiplied by \$17/MWh (the "**GEP Damages**").

(iii) Within thirty (30) Days of the end of each Contract Year, Seller shall provide to Buyer Seller's calculation of Buyer's Allocation of Energy delivered to the Delivery Point together with Excused Energy during the preceding Contract Year. Buyer shall have thirty (30) days following receipt of such calculation to dispute the calculation therein, after which time the calculation shall be binding on the Parties. Any disputes regarding such calculation shall be resolved pursuant to Section 8.16.

(iv) Within sixty (60) Days of the end of each Performance Period, Buyer shall provide notice to Seller if Seller failed to satisfy the Guaranteed Energy Production along with Buyer's calculation of the GEP Damages; provided, however, that Buyer's failure to provide such notice shall not constitute as a waiver of Buyer's rights to collect GEP Damages.

(v) The Parties agree and acknowledge that the damages sustained by Buyer associated with Seller's failure to satisfy the Guaranteed Energy Production would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive, and therefore agree that the GEP Damages are a reasonable approximation of such damages. Buyer shall have the right to set off any GEP Damages against payments due to Seller.

5.6 Access Rights.

Upon reasonable prior notice and subject to compliance with the prudent safety requirements of Seller, and Applicable Law relating to workplace health and safety, Seller shall provide Buyer and its authorized agents, employees, contractors and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment; and, (b) for other reasonable purposes at the reasonable request of Buyer; *provided*, such access shall take place during normal business hours and Buyer shall observe all applicable safety rules made known to Buyer's employees, contractors and authorized agents and shall indemnify Seller for the actions of its employees, contractors and authorized agents for harm or liabilities caused by Buyer, its employees, contractors or authorized agents during such Site visits. Buyer shall indemnify and release Seller against and from any and all liabilities resulting from actions or omissions in connection with Buyer's visits to the Site, except to the extent that such damages are caused or exacerbated by the intentional or negligent act or omission of Seller or Seller's contractors.

5.7 Facility Images.

Buyer shall not, without the prior consent of Seller (such consent not unreasonably withheld, conditioned or delayed) use any images from or of the Facility for promotional purposes.

ARTICLE 6 INDEMNIFICATION AND INSURANCE

6.1 Indemnity.

(a) Subject to Section 8.8 (waiver of certain damages), each Party hereby agrees to indemnify, defend and hold harmless the other Party, its Affiliates, directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liabilities and associated costs and expenses (including reasonable attorney's fees) arising from property damage, bodily injuries or death suffered by any Person (including, without limitation, employees of Buyer or Seller) related to, arising from, or connected to the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of the indemnifying party hereunder, or any of its officers, agents, employees, or subcontractors of any tier, except to the extent caused by the negligence or willful misconduct of party seeking indemnification hereunder, or its officers, agents, employees, or subcontractors of any tier.

(b) The indemnitor's liability to the indemnitee shall be reduced proportionately to the extent that an act or omission of the indemnitee may have contributed to the loss, injury, property damage, charges, fees or liability. Further, no indemnitee shall be indemnified hereunder for its loss, liability, injury and damage resulting from its sole negligence, fraud or willful misconduct. The indemnitor, upon the other Party's request, shall defend any suit asserting a claim covered by this indemnity and shall pay all costs, subject to the proportionality standard set forth above in the event of the indemnitee's contributory negligence, including reasonable legal fees, that may be incurred by the other Party in enforcing this indemnity; provided, that the indemnitor shall be entitled, at its option, to assume and control the defense with reasonable input from the indemnitee and any settlement of such suit shall first be submitted to the indemnitee for prior approval. If

indemnitee fails to approve a settlement proposed by indemnitor, indemnitor may settle such claim on its behalf only, without relinquishing any rights of indemnitee. If the indemnitee fails to approve any such settlement, indemnitor's liability to the indemnitee will be capped at a level equal to the proposed settlement amount, plus attorney fees and expenses incurred by the indemnitee prior to the indemnitee's rejection of the proposed settlement. Each indemnity set forth in this Section 6.1 is a continuing obligation, separate and independent of the other obligations of each Party and survives the expiration or termination hereof. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

6.2 Insurance.

(a) Seller, at its own cost and expense, shall maintain and keep in full force and effect from the date ninety (90) days after the Effective Date through the later of the date of expiration or termination of the Agreement, the following insurance coverage (collectively, the "Insurance Obligations"):

(i) Workers' Compensation Insurance for statutory obligations imposed by applicable state laws, and Employer's Liability Insurance with a minimum limit of one million dollars (\$1,000,000) for disease and injury to employees;

(ii) Commercial General Liability Insurance, including premises and operations, bodily injury, broad form property damage, products/completed operations, contractual liability and independent contractor protective liability all with minimum combined single limit liability of one million dollars (\$1,000,000);

(iii) Business Automobile Liability Insurance covering bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired automobiles in the performance of the Agreement;

(iv) Umbrella/Excess Liability Insurance, written on an "occurrence," not a "claims-made" basis, providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Automobile Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than ten million dollars (\$10,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 6.2 can be provided by any combination of Seller's primary and excess liability policies; and

(v) Such insurance against loss or damage as is prudently carried by businesses operating facilities in the nature of the Facility.

(b) All insurance policies required to be obtained hereunder shall provide insurance for occurrences from the date ninety (90) days after the Effective Date through the expiration or termination of the Agreement. All insurance coverage, required by this Agreement, other than self-insurance, shall be issued by an insurer with an A.M. Best's rating of not less than "A-" or such other insurer as is reasonably acceptable to both Parties. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including Seller's defense and indemnity obligations.

(c) All insurance policies shall include provisions or endorsements stating any cancellation or non-renewal of the insurance required by this Section 6.2 without thirty days (30) days prior written notice and cancellation for non-payment of premium shall be effective at least ten (10) days after the insurer provides notice of such cancellation to Buyer.

(d) The insurance required above shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Applicable Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The Commercial General Liability and Umbrella/Excess Liability insurance required above shall name Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, ownership or operation of the Facility.

(e) Within ninety (90) days of the Effective Date, and within three (3) days after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to Buyer. All deductibles, co-insurance and self-insured retentions applicable to the insurance above shall be paid by Seller. Buyer's receipt of certificates that do not comply with the requirements stated herein, or Seller's failure to provide certificates, shall not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 6.2 and shall not constitute a waiver of any of the requirements in this Section 6.2.

(f) Self-Insurance.

(i) Seller may self-insure the Insurance Obligations to the extent Seller or an Affiliate of Seller (as applicable, the "Self-Insurer"), maintains a self-insurance program under which Seller is insured; provided that, the Self-Insurer's Credit Rating is rated at Investment Grade, or better, by S&P. Seller shall provide Buyer with no less than one hundred twenty (120) days prior written notice of its intent to self-insure the Insurance Obligations.

(ii) For any period of time that the Self-Insurer is unrated by S&P or the Self-Insurer's Credit Rating is rated at less than Investment Grade by S&P, Seller shall comply with the insurance obligations applicable to it under this Section 6.2.

(iii) In the event that Seller self-insures in accordance with this Section 6.2(f), it shall not be required to comply with the insurance requirements set forth in Sections 6.2(a)-6.2(e).

(iv) The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including Seller's defense and indemnity obligations.

(v) Seller shall furnish to Buyer a letter of self-insurance in the event that Seller intends to self-insure in accordance with this Section 6.2(f). Seller's failure to provide the letter

of self-insurance shall not limit or relieve Seller of the duties and responsibility of maintaining insurance or self-insurance in compliance with the requirements in this Section 6.2 and shall not constitute a waiver of any of the requirements in this Section 6.2 by Buyer.

ARTICLE 7 GOVERNMENT APPROVALS

7.1 *Government Approvals – Seller’s Obligation.*

Seller shall secure and maintain, at no cost to Buyer, all Permits (including environmental permits), easements, rights-of-way, releases and other approvals necessary for the construction, engineering, operation and maintenance of the Facility and the performance by Seller of its obligations hereunder.

7.2 *Government Approvals – Buyer’s Obligation.*

Buyer shall secure and maintain, at no cost to Seller, all government approvals, permits, licenses, easements, rights of way, releases and other approvals necessary for the performance by Buyer of its obligations hereunder.

7.3 *Changes In Law.*

(a) If Seller reasonably demonstrates that a change in Applicable Law occurring after the Effective Date has increased or would reasonably be expected to increase Seller’s cost to comply with Seller’s obligations under Sections 2.10, 3.2, or 7.3 of this Agreement (such Seller-incurred costs, the “Compliance Expenditures”), then the Parties agree that the maximum aggregate amount of Compliance Expenditures Seller shall be required to bear during the Delivery Term shall be capped at five hundred thousand dollars (\$500,000) in aggregate (“Compliance Expenditure Cap”). Any actions required for Seller to comply with its obligations set forth in this Section 7.3(a), the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

(b) Seller shall promptly provide Buyer with written notice of any Compliance Expenditures incurred or expected to be incurred by Seller that Seller reasonably believes should be counted against the Compliance Expenditure Cap, and the Parties shall maintain a running balance of such cost. If Seller reasonably anticipates the need to incur Compliance Expenditures in excess of the Compliance Expenditure Cap, Seller shall promptly notify Buyer of such Compliance Expenditures. Buyer shall have thirty (30) Days from the receipt of such Notice to evaluate such Notice (during which time period Seller is not obligated to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap) and shall, within such time, either (1) agree to reimburse Seller for the Compliance Expenditure amount that exceeds the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Expenditures”), or (2) waive Seller’s obligation to take the identified Compliance Actions. If Buyer does not respond to a Notice given by Seller under this Section 3.3(b) within thirty (30) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term. If Buyer agrees to reimburse Seller for the Accepted Compliance Expenditures, then Seller shall take

such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's Compliance Expenditures that exceed the Compliance Expenditure Cap within thirty (30) days from the time that Buyer receives an invoice and documentation of such costs from Seller. Notwithstanding anything herein to the contrary, in the event the identified Compliance Actions are required by Applicable Law and would result in Compliance Expenditures above the Compliance Expenditure Cap, Seller shall be entitled to set off Compliance Expenditures above the Compliance Expenditure Cap against any amount that Seller shall owe to Buyer. In the event Seller reasonably determines that Seller will not owe Buyer sufficient amounts over a subsequent twelve (12) month period for Seller to offset the full amount owed to Buyer pursuant to this Section 7.3(b), Seller may issue a request for payment of the full amount owed to Seller, and Buyer shall reimburse Seller for such amount within thirty (30) Days of receipt of Seller's Notice described above. If Buyer fails to make timely payment of such amount, Seller shall be entitled to pursue remedies as provided in Section 3.4(b).

ARTICLE 8 MISCELLANEOUS

8.1 *Confidential Information.*

(a) The Parties have and will develop certain information, processes, know-how, techniques and procedures concerning the Facility that they consider confidential and proprietary (together with the terms and conditions of this Agreement, the "Confidential Information"); provided that in order for such information, processes, know-how, techniques and procedures to be considered "Confidential Information," the Party disclosing such information must: (i) if disclosure is in writing or other tangible electronic storage medium, clearly mark such item as "Confidential" or "Proprietary" or (ii) if the disclosure is oral or visual, the disclosing Party must, within three (3) Business Days thereafter, follow up with a disclosure complying with the requirements of clause (i) above. Notwithstanding the confidential and proprietary nature of such Confidential Information, the Parties (each, the "Disclosing Party") may make such Confidential Information available to the other (each, a "Receiving Party") subject to the provisions of this Section 8.1.

(b) Upon receiving or learning of Confidential Information, the Receiving Party shall:

(i) Treat such Confidential Information as confidential and use reasonable care not to divulge such Confidential Information to any third party except as required by Applicable Law, subject to the restrictions set forth below;

(ii) Restrict access to such Confidential Information to only those officers, directors, members, shareholders, affiliates, employees, contractors, subcontractors, suppliers, vendors, and advisors and prospective or actual Lenders or investors (and their officers, directors, employee and advisors) whose access is reasonably necessary for the development, construction, operation or maintenance, financing or sale of all or a portion of the Facility and for the purposes of the negotiation or implementation of this Agreement, and who shall be bound by the terms of this Section 8.1;

(iii) Use such Confidential Information solely for the purpose of developing the Facility and for the purposes set forth in this Section 8.1; and

(iv) Upon the receipt of a written request from the Disclosing Party following termination of this Agreement, except due to breach by the Disclosing Party, destroy or return any such Confidential Information in written or other tangible form and any copies thereof.

(c) The restrictions of this Section 8.1 do not apply to:

(i) Release of this Agreement to any Governmental Authority required for obtaining any approval or making any necessary filing; provided, that each Party agrees to cooperate in good faith with the other to maintain the confidentiality of the provisions of this Agreement by requesting confidential treatment with all filings to the extent appropriate and permitted by Applicable Law;

(ii) Information which is, or becomes, publicly known or available other than through the action of the Receiving Party in violation of this Agreement;

(iii) Information which is in the possession of the Receiving Party prior to receipt from the Disclosing Party or which is independently developed by the Receiving Party; provided, that the Person or Persons developing such information have not had access to any Confidential Information;

(iv) Information which is received from a third party which is not known (after due inquiry) by the Receiving Party to be prohibited from disclosing such information pursuant to a contractual, fiduciary or legal obligation; and

(v) Information which is, in the reasonable written opinion of counsel of the Receiving Party, required to be disclosed pursuant to Applicable Law (including the California Public Records Act); provided, however, that the Receiving Party, prior to such disclosure, shall provide reasonable advance notice to the Disclosing Party of the time and scope of the intended disclosure in order to provide the Disclosing Party an opportunity to obtain a protective order or otherwise seek to prevent, limit the scope of, or impose conditions upon such disclosure.

(d) Notwithstanding the foregoing, Seller may disclose Confidential Information to the Lenders and any other financial institutions expressing an interest in providing equity or debt financing or refinancing or credit support to Seller or investing in or purchasing all or a portion of the Facility, and the agent or trustee or officers, directors, employees or advisors of any of them. Any such disclosed information will be subject to the obligations concerning confidentiality set forth in this Agreement. Seller shall be responsible for any breach of this Section 8.1 by the Lenders or such other financial institutions.

(e) Notwithstanding the foregoing, Seller or Buyer may disclose Confidential Information to WREGIS, CAISO or other Governmental Authorities for purposes of regulatory compliance or ensuring that Buyer receives the benefit of, or credit for, Green Attributes, Capacity Rights, Renewable Energy Credits, and to downstream purchasers of Product; *provided* the form and content of such disclosure is subject to Seller's approval, which approval may not be unreasonably withheld, conditioned or delayed; and provided, further, that Buyer may disclose to

the foregoing Governmental Authorities, without Seller's approval: (i) the Facility's name, location, interconnection characteristics, size, monthly resource forecast and historical generation, expected Commercial Operation Date, and (ii) any Confidential Information necessary (A) to schedule Energy, (B) for the generation of an e-tag or successor mechanism, or (C) export Energy out of California to obtain the benefit of any commercial advantage provided to solar energy generators by state or federal legislation favoring renewable or non-carbon generation. Any such disclosed information will be subject to the obligations concerning confidentiality set forth in this Agreement.

(f) The Parties shall cooperate with respect to the issuance of any press or publicity release or otherwise release, distribute or disseminate any information, with the intent that such information will be published (other than information that is, in the reasonable written opinion of counsel to the Disclosing Party, required to be distributed or disseminated pursuant to Applicable Law), *provided* that the Disclosing Party has given notice to, and an opportunity to prevent disclosure by, the other Party as provided in Section 8.1(c)(v)), concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed. This provision shall not prevent the Parties from releasing information which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Facility or as are necessary in order to fulfill such Party's obligations under this Agreement.

(g) The obligations of the Parties under this Section 8.1 shall remain in full force and effect for three (3) years following the expiration or termination of this Agreement.

8.2 Successors and Assigns; Assignment.

(a) This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns.

(b) Except as provided otherwise herein, neither Party may assign or transfer by this Agreement, whether voluntarily or by operation of law, and including with respect to any change in control, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned.

(c) Notwithstanding anything herein to the contrary, Seller may assign this Agreement without Buyer's consent as follows:

(i) Seller may assign this Agreement to any Lenders or Tax Equity Investors providing debt or tax equity financing, as collateral security for obligations under applicable financing documents entered into with such Lenders; and

(ii) Seller may assign this Agreement to a Seller Affiliate that owns and controls a comparable Cluster 9 Project capable of performing Seller's obligations hereunder; *provided*, that to the extent such Seller-Affiliate is not able to satisfy Seller's obligations with respect to RA benefits hereunder, Seller shall continue to be obligated to provide such RA benefits or arrange Replacement RA to be provided to Buyer. In the event of a Seller assignment as contemplated above, Seller shall arrange for any required amendment or re-issuance of the Development

Security or Operating Security to reflect such assignment and the Parties shall cooperate as reasonably required to effect such arrangements and to make any conforming amendments to this Agreement and Exhibits hereto and any related documents and instruments.

(b) Buyer may assign this Agreement to a financing entity that will pre-pay all of Buyer's payment obligations under this Agreement with Seller's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned; *provided* that Seller reasonably determines that the terms and conditions of such pre-payment arrangements are satisfactory and do not adversely affect Seller or its arrangements with Lenders in any material respect.

8.3 Lender Rights.

(a) Seller, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this Agreement to one or more Lenders providing debt for the purposes of financing the Facility and Seller's Interconnection Facilities.

(b) Promptly after making such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed.

(c) After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

(d) Upon Seller's written request, Buyer shall execute a consent to assignment to Lenders in a form substantially similar to the Lender Consent. Buyer shall, as reasonably requested by Seller and at Seller's expense (not to exceed a maximum amount of \$30,000), execute and deliver normal, reasonable and customary certificates, opinions and other documents (including estoppel certificates related to a tax equity financing) and to provide such other normal and customary representations or warranties (all in a form reasonably acceptable to Buyer), as may be necessary to assist Seller in consummating any debt or tax equity financing or refinancing of the Facility or any part thereof; *provided*, that Buyer shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that materially adversely affects, or could reasonably be expected to have or result in a material adverse effect on, any of Buyer's rights, benefits, risks and/or obligations under this Agreement.

8.4 Notices.

Each notice, request, demand, statement or routine communication required or permitted under this Agreement, or any notice or communication that either Party may desire to deliver to the other, shall be in writing, and shall be considered delivered: (a) when received by the other Party if sent by certified U.S. mail or reputable overnight courier addressed to the other Party at its address indicated below; or (b) when electronic confirmation is received by the sending Party's facsimile machine if sent by facsimile addressed to the other Party at its facsimile number indicated below.

Either Party may designate another address for itself in a written notice to the other Party in accordance with this Section 8.4.

If to Seller: Aquamarine Westside, LLC
c/o CIM Group, LLC
4700 Wilshire Blvd
Los Angeles, CA 90010
Attn: Alex Martinez and Jennifer Gandin
Telephone: 323.556.9675
Email: amartinez@cingroup.com

With copies of all notices relating to Events of Default, termination (see Section 3.4(b)(iii)) and other legal notices by overnight mail to:

Aquamarine Westside, LLC
c/o CIM Group, LLC
4700 Wilshire Blvd
Los Angeles, CA 90010
Attn: Jennifer Gandin

With a Copy to:

Aquamarine Westside, LLC
c/o CIM Group, LLC
4700 Wilshire Blvd
Los Angeles, CA 90010
Attn: Legal/General Counsel

Dentons US LLP
601 S. Figueroa Street
Suite 2500
Los Angeles, CA 90017
Attn: Carl R. Steen, Esq.
Telephone: 213.892.5143
Email: carl.steen@dentons.com

If to Buyer: Valley Clean Energy Alliance
604 2nd Street, Davis, California 95616
Attn: Mitch Sears, Interim General Manager
Telephone: (530) 446-2750

With a copy to:

Keyes & Fox LLP
1580 N Lincoln Street, Suite 880, Denver, CO 80203
Attn: Kevin T. Fox, Esq.

Telephone: 510.381.3052
Email: kfox@keyesfox.com

With copies of all notices relating to Events of Default, termination (see Section 3.4(b)(iii)) and other legal notices by overnight mail to:

Best, Best & Kreiger
500 Capitol Mall, Suite 1700, Sacramento, CA 95814
Attn: Harriet Steiner
Telephone: (916) 551-2821

8.5 Force Majeure.

(a) The performance of any obligation required hereunder shall be excused to the extent required by, and during the continuation of, any Force Majeure Event suffered by the Party whose performance is hindered in respect thereof, and the time for performance of any obligation that has been delayed due to the occurrence of a Force Majeure Event shall be extended, as required to overcome the effects of such Force Majeure Event. The Party experiencing the delay or hindrance shall orally notify the other Party as soon as reasonably practicable following the Force Majeure Event, and shall notify the other Party in writing of the occurrence of such Force Majeure Event, including the nature, cause, date and time of commencement of such event, and extent and anticipated period of delay, within fourteen (14) Days after the commencement of the Force Majeure Event; provided, that the failure of the Party experiencing the delay or hindrance to notify the other Party within such fourteen (14) Day period shall preclude such Party from claiming a Force Majeure Event hereunder for any Days prior to its notice. By way of example, if a Party first notifies the other Party of a Force Majeure Event thirty (30) Days after the commencement of such event, the claiming Party will only have its performance excused by reason of such Force Majeure Event for periods after its notice (i.e., on and after day thirty (30)). Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to overcome or otherwise to mitigate, in all material respects, the effects of any Force Majeure Event suffered by either of them and to resume performance hereunder as soon as practicable under the circumstances.

(b) If Seller is unable to deliver, or Buyer is unable to receive, Buyer's Allocation of Energy due to a Force Majeure Event, then Buyer shall have no obligation to pay Seller for Buyer's Allocation of Energy not delivered or received by reason thereof. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure. In no event shall any delay or failure of performance caused by any conditions or Force Majeure Event extend this Agreement beyond its stated Term.

(c) Either Party shall have the absolute and unconditional right, but not the obligation, to terminate this Agreement upon thirty (30) Days written notice to the other Party if: (i) a Force Majeure Event occurs that diminishes the Energy generating capacity of the Facility such that Seller is unable to deliver to Buyer at least fifty percent (50%) of the Expected Energy for a period of eighteen (18) consecutive months; or (ii) the Facility is damaged as a result of a Force Majeure

Event and thereby rendered inoperable and an independent engineer that is mutually acceptable to the Parties determines that the Facility cannot be repaired or replaced within a period of time not to exceed twenty four (24) months following the date of the occurrence of the Force Majeure event; or (iii) if a Force Majeure Event prevents the other Party from performing its material obligations under this Agreement for a period of twelve (12) consecutive months or longer.

(d) A Party's exercise of its termination right pursuant to Section 8.5(c) shall be "no-fault" and no Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, each Party shall pay the other Party for any and all amounts hereunder that may be owing, including for any outstanding payments due in the ordinary course that occurred prior to the termination, and Buyer shall return Seller's Operating Security (less any amounts drawn by Buyer pursuant to this Agreement) within five (5) Business Days of such termination.

8.6 Amendments.

This Agreement shall not be modified nor amended unless such modification or amendment shall be in writing and signed by authorized representatives of both Parties.

8.7 Waivers.

Failure to enforce any right or obligation by any Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter nor to any other matter. Any waiver by any Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing. Such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

8.8 Waiver of Certain Damages.

Notwithstanding any other provision of this Agreement, except to the extent indemnification payments are made pursuant to this Agreement as a result of an indemnified entity's obligation to pay special, indirect, incidental, punitive or consequential damages to a third party (excluding either Party's Affiliates, officers, directors, shareholders or members) as a result of actions included in the protection afforded by the indemnification provisions hereof, and except with respect to the liquidated damages provided for in Sections 2.5(d), 2.5(e), 2.5(f) and 5.5(a), neither Buyer nor Seller (nor any of their Affiliates, contractors, consultants, officers, directors, shareholders, members or employees) shall be liable for special, indirect, incidental, punitive or consequential damages under, arising out of, due to, or in connection with its performance or non-performance of this Agreement or any of its obligations herein, whether based on contract, tort (including, without limitation, negligence), strict liability, warranty, indemnity or otherwise.

8.9 No Recourse to Members

Seller hereby acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) pursuant to an agreement executed by the Cities of Davis and Woodland, and the County of Yolo (the "Joint Power Agreement"), that Buyer is a public entity separate from its members,

and that under the Joint Powers Agreement the members have no liability for any obligations or liabilities of Buyer. Buyer hereby acknowledges and agrees that Seller is an entity separate from its members and, except as expressly provided for herein, Seller's members have no liability for any obligations or liabilities of Seller. The Parties shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and the Parties agree that they shall have no rights against, and shall not make any claim, take any actions or assert any remedies against, any of Buyer's or Seller's members, any cities or counties participating in Buyer's community choice aggregation program, or any of Buyer's retail customers in connection with this Agreement.

8.10 Survival.

Notwithstanding any provisions herein to the contrary, the obligations set forth in Sections 2.2(c), 4.1, 4.3, 6.1, 8.1, 8.4, 8.8, 8.9, and 8.12 through 8.16 shall survive (in full force) the expiration or termination of this Agreement.

8.11 Severability.

If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void, all other terms of the Agreement shall remain in effect, provided that the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any Applicable Law and the original intent of the Parties.

8.12 Standard of Review.

(a) Each Party represents and warrants to the other that it is an "eligible commercial entity" and an "eligible contract participant" within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively. This Agreement constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the Parties intend to be physically settled and is excluded from the term "swap" as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

(b) Absent the agreement of both Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (c) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1, 554 U.S. 527 (2008), and NRG Power Marketing LLC v. Maine Public Utility Commission, 558 U.S. 527 (2010) (the "Mobile-Sierra" doctrine).

(c) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by Applicable Law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly

or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by Applicable Law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in Applicable Law or market conditions that may occur. In the event it were to be determined that Applicable Law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (c) shall not apply, provided that, consistent with the foregoing subsection (b), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (b).

8.13 *Governing Law.*

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law.

8.14 *Consent to Jurisdiction.*

Subject to Section 8.15, each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Superior Court of Sacramento County, California for the purposes of any suit, action or other proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof (and agrees not to commence any suit, action or proceeding relating thereto except in such court). Each of the Parties further agrees that service of any process, summons, notice or document hand delivered or sent by U.S. registered mail to such Party’s respective address set forth in Section 8.4 will be effective service of process for any suit, action or proceeding in any such court with respect to any matters to which it has submitted to jurisdiction as set forth in the immediately preceding sentence. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement, the transactions contemplated hereby, any provision hereof or the breach, performance, enforcement or validity or invalidity of this Agreement or any provision hereof in the Superior Court of Sacramento County, California and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding the foregoing, each Party agrees that a final judgment (i.e., judgment after any appeals that may be duly made) in any suit, action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment in any jurisdiction or in any other manner provided in law or in equity.

8.15 *Waiver of Trial by Jury.*

EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY

JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

8.16 *Disputes.*

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a "Dispute"), the Parties shall attempt in the first instance to resolve such Dispute through friendly consultations between the Parties. If such consultations do not result in a resolution of the Dispute within thirty (30) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within thirty (30) days after such referral to the senior management of the Parties, then either Party may pursue any or all of its remedies available under law or equity. The Parties agree to attempt to resolve all Disputes promptly, equitably and in a good faith manner, provided, however, that failure to resolve a Dispute shall not, standing alone, constitute a breach of this Agreement. Notwithstanding the existence of a Dispute, each Party shall fulfill its obligations in accordance with the terms hereof. Any undisputed payment due or payable by one Party to the other shall not be withheld on account of the occurrence or continuance of any legal proceedings or the existence of a Dispute.

8.17 *No Third-Party Beneficiaries.*

Except as set forth in a Lender Consent or the indemnification provisions hereof that expressly accrue to the benefit of third parties, this Agreement is intended solely for the benefit of the Parties hereto and nothing contained herein shall be construed to create any duty to, or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Agreement.

8.18 *No Agency.*

This Agreement is not intended, and shall not be construed, to create any association, joint venture or partnership between the Parties or to impose any such obligation or liability upon either Party. Except for the agency Seller grants Buyer in Section 3.2(c), neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

8.19 *Cooperation.*

The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

8.20 Further Assurances.

Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 8.20.

8.21 Captions; Construction.

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the content or scope of this Agreement. Any term and provision of this Agreement shall be construed simply according to its fair meaning and not strictly for or against any Party.

8.22 Entire Agreement.

This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

8.23 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

8.24 Forward Contract.

The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a “forward contract” Code and that Buyer and Seller are each “forward contract merchants” within the meaning of the United States Bankruptcy Code (11 U.S.C. § 101 (2000)).

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURES APPEAR ON FOLLOWING PAGE]***

IN WITNESS WHEREOF, representatives of the Parties have executed this Agreement on the date set forth below, causing this Agreement to be effective as of the Effective Date:

Aquamarine Westside, LLC

Valley Clean Energy Alliance

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

DRAFT

EXHIBIT A

CONTRACT PRICE

The Contract Price for all Product shall be:

Contract Price A: /MWh; or

Contract Price B: /MWh (following Buyer's provision of
Financial Security as set forth in Section 5.4).

DRAFT

EXHIBIT B

DESCRIPTION OF FACILITY

1. Facility name:

Aquamarine Solar

2. Facility location:

The Facility is located just south of the intersection of South Avenal Cutoff & 25th Avenue in Kings County, in the State of California

3. Technology type:

Solar photovoltaic

4. Interconnection Point of Facility:

The Facility's Interconnection Point shall be Gates 230 kV, which is the point of first interconnection of the Facility with the CAISO Controlled Grid

5. Service territory of the Facility:

Pacific Gas & Electric Company

6. Description of Facility equipment:

[full description of equipment that will be used]

7. Description of Site:

The Aquamarine solar project is located along 25th avenue south of Avenal Cutoff Road in Kings County, CA. The site will encompass between 1,825-2,000 acres of drainage impaired farm ground that pursuant to approved CUP 17-04 in Kings County, CA using the address 24999 Laurel Avenue, Stratford, CA.

8. Maps:

The Facility is identified in the following map:

**EXHIBIT B-1
FACILITY SITE PLAN**

The Facility will be located at the Site as show on the map below:

Located in the County of Kings, California



EXHIBIT C

DESCRIPTION OF INTERCONNECTION POINT, DELIVERY POINT, AND ONE-LINE/METERING DIAGRAM

The Facility is connecting to the Gates 230kv PG&E Substation in Fresno County, CA a representation of the single line diagram from the interconnection agreement is included here:



EXHIBIT D

FORM OF CORPORATE GUARANTY

GUARANTY

This Guaranty (this “*Guaranty*”), dated as of _____, ____ (the “*Effective Date*”), is made by [_____] (“*Guarantor*”), in favor of VALLEY CLEAN ENERGY ALLIANCE (“*Counterparty*”).

RECITALS

WHEREAS, Counterparty and Guarantor’s subsidiary Aquamarine Westside, LLC (“*Obligor*”) have entered into that certain Power Purchase Agreement dated as of November __, 2019 (the “*Agreement*”); and

WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

1. Guaranty. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “*Guaranteed Obligations*”). This Guaranty shall constitute a guarantee of payment and not merely of collection. The liability of Guarantor under this Guaranty shall be primary to the Guarantor and unconditional subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed five million six hundred twenty-five thousand dollars (\$5,625,000), exclusive of Counterparty’s costs of collection and enforcement under Section 1(b) (the “*Maximum Recovery Amount*”). This Guaranty is a continuing guaranty of payment and shall apply to all Obligations whenever arising.

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty. In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages, except to the extent such damages are allowed under the Agreement.

2. Demands and Payment.

(a) If Obligor fails to pay any Guaranteed Obligation to Counterparty when such Obligation is due and owing under the Agreement, Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Guaranteed Obligation pursuant to this Guaranty (a "**Payment Demand**").

(b) Guarantor's obligation hereunder to pay any particular Guaranteed Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Guaranteed Obligation(s) covered by such demand, the specific date(s) upon which such Guaranteed Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Guaranteed Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Guaranteed Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Guaranteed Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Guaranteed Obligation(s) specified in that Payment Demand within three (3) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Colorado or the State of New York.

3. Representations and Warranties. Guarantor represents and warrants that:

(a) it is a [_____] duly organized and validly existing under the laws of the State of [_____] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. No Counterclaims or Setoffs; Deferral of Defenses. The obligations of the Guarantor to the Counterparty hereunder shall not be subject to any counter-claim, set-off, withholding, or deduction unless required by applicable law, and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor other than the satisfaction of the Guaranteed Obligations. A separate action or actions may be brought against

the Guarantor whether or not any action is brought against the Obligor under the Agreement and whether or not the Obligor is joined in any such action or actions. Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor, any lack of power or authority of Obligor to enter into and/or perform the Agreement, and other defenses expressly waived by in this Guaranty; *provided* that the Guarantor shall not exercise any such defenses until after payment has been made pursuant to Section 2.

5. Amendments. Guarantor agrees that the Counterparty and the Obligor may modify, amend and supplement the Agreement and that the Counterparty may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, waive, exercise or refrain from exercising any rights against the Obligor, or subordinate any obligation or liability of the Obligor to the Counterparty, including any security therefor, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Counterparty. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty; *provided*, however, that an amendment to this Guaranty extending the termination date of this Guaranty may be executed solely by Guarantor.

6. Waivers and Consents. Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Guarantor hereby expressly waives diligence, presentment, protest, notice, acceleration, dishonor and acceptance of this Guaranty and demand concerning the liabilities of Guarantor, and any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof or to subrogate to any claims the Counterparty may have against the Obligor or the Obligor may have against the Counterparty.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. Reinstatement. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. Termination. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all of the Guaranteed Obligations have been fully discharged; (ii) the satisfaction of all obligations of the Obligor under the Agreement; (iii) the Guarantor or Obligor causes this Guaranty to be replaced with one or a combination of cash, a fully effective letter of credit and/or another fully effective guaranty otherwise meeting the requirements of Section 3.6 of the Agreement, or (iv) the fifteenth (15th) anniversary of the first day of the first month following the Commercial Operation Date under the Agreement; provided that no such termination shall affect Guarantor's liability with respect to any Obligations arising under this Agreement prior to the time such termination is effective, which Obligations shall remain subject to this Guaranty.

9. Notices. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

To Guarantor:

To Counterparty:

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. Miscellaneous.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the laws of the State of California.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor; provided that the Counterparty may, without prior notice to Guarantor or Obligor, make such an assignment, in conjunction with the grant or enforcement of a security interest or if otherwise required to do so under the terms of a mortgage or indenture to which Counterparty is or becomes a party.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) EACH OF COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

***[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -
SIGNATURES APPEAR ON FOLLOWING PAGE]***

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20___, but it is effective as of the Effective Date

[Guarantor]

By: _____
Name: _____
Title: _____

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EXHIBIT E

**FORM OF LENDER CONSENT
(FINANCING)**

**FORM OF CONSENT AND AGREEMENT
POWER PURCHASE AGREEMENT**

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20[], is executed by and between Valley Clean Energy Alliance, a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 *et seq.*) (the "Contracting Party"), and [NAME OF COLLATERAL AGENT], as collateral agent (in such capacity, together with its successors and permitted assigns, the "Collateral Agent") for various financial institutions named from time to time as Lenders under the Credit Agreement (as defined below) and any other parties (or any of their agents) who hold any other secured indebtedness permitted to be incurred under the Credit Agreement (the Collateral Agent and all such parties collectively, the "Secured Parties").

A. Aquamarine Westside, LLC, a limited liability company organized and existing under the laws of Delaware (the "Facility Owner") owns, operates and maintains a 250 MW-AC solar energy generating facility located in Kings County, CA, from which 50 MW-AC will be sold to Valley Clean Energy Alliance (the "Facility").

B. The Contracting Party and the Facility Owner have entered into the agreement specified in Schedule I hereto (as further amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Assigned Agreement").

C. The Borrower, the Facility Owner, the other affiliates of the Borrower as Guarantors, various financial institutions named therein from time to time as Lenders, [____], as the Administrative Agent and Collateral Agent, [____], as Lead Arrangers, have entered into a Credit Agreement, dated as of [____] (as amended, modified or supplemented from time to time, the "Credit Agreement"), providing for the extension of the credit facilities described therein.

D. As security for the payment and performance by the Facility Owner of its obligations under the Credit Agreement and the other Financing Documents (as defined below) and for other obligations owing to the Secured Parties, the Facility Owner has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Collateral Agent pursuant to the [Security Agreement], dated as of [____] between the Facility Owner and the Collateral Agent (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the "Security Agreement", and, together with the Credit Agreement and any other financing documents relating thereto, the "Financing Documents").

E. It is a requirement under the Credit Agreement that the Facility Owner cause the Contracting Party to execute and deliver this Consent.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. Additional Definitions. Any capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Assigned Agreement.

2. Consent to Assignment. Subject to the terms and conditions below, the Contracting Party hereby acknowledges and consents to the pledge and assignment of all right, title and interest of the Facility Owner in, to and under the Assigned Agreement by the Facility Owner to the Collateral Agent pursuant to the Security Agreement.

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

"Permitted Transferee" means any person or entity who is at least as creditworthy as the Facility Owner on the Effective Date (as defined in the Assigned Agreement) and has, or contracts with an operator that has, at least three (3) years of experience either owning or operating solar energy generating facilities. Collateral Agent may from time to time, following the occurrence of a Financing Default, notify Contracting Party in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's rights under the Financing Documents, and Contracting Party shall, within thirty (30) Business Days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee"

(together with a written statement of the reason(s) for any negative determination) it being understood that if Contracting Party shall fail to so respond within such thirty (30) Business Day period such proposed transferee shall be deemed to be a “Permitted Transferee”.

4. Right to Cure.

(a) From and after the date hereof and unless and until the Contracting Party shall have received written notice from the Collateral Agent that the lien of the Security Agreement has been released in full, Contracting Party shall, concurrently with the delivery of any notice of an Event of Default under the Assigned Agreement to Facility Owner (a “Default Notice”), provide a copy of such Default Notice to the Collateral Agent pursuant to Section 10 of this Consent.

(b) The Collateral Agent shall have the right, but not the obligation, following Contracting Party’s issuance of a Default Notice to the Facility Owner under the Assigned Agreement to pay all sums due under the Assigned Agreement by the Facility Owner and to perform any other act, duty or obligation required of the Facility Owner thereunder as described in Section 4(d) below; provided, that no such payment or performance shall be construed as an assumption by the Collateral Agent or any other Secured Party of any covenants, agreements or obligations of the Facility Owner under or in respect of the Assigned Agreement.

(c) The Contracting Party agrees that it will not terminate the Assigned Agreement without first giving the Collateral Agent notice and opportunity to cure as provided in Sections 4(a) and 4(d).

(d) If the Collateral Agent elects to exercise its right to cure as herein provided, it shall provide written notice to Contracting Party prior to the end of any cure period as set forth in the Assigned Agreement. If the Default Notice is issued because of a payment default by Facility Owner, the Collateral Agent shall have a period of thirty (30) days after receipt by it of notice from the Contracting Party referred to in Section 4(a) in which to cure the payment default specified in such Default Notice, or if such Termination Event is an event other than a failure to pay amounts due and owing by the Facility Owner (a “Non-monetary Event”) the Collateral Agent shall have such longer period as is required to cure such default, not to exceed ninety (90) days, so long as the Collateral Agent has commenced and is diligently pursuing appropriate action to cure such default; provided, however, that (i) if possession of the Facility is necessary to cure such Non-monetary Event and the Collateral Agent has commenced foreclosure proceedings, the Collateral Agent will be allowed a reasonable time to complete such proceedings, and (ii) if the Collateral Agent is prohibited from curing any such Non-monetary Event by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving the Facility Owner, then the time periods specified herein for curing the Non-monetary Event shall be extended for the period of such prohibition (but in no event longer than 180 days).

(e) Any curing of or attempt to cure any default shall not be construed as an assumption by the Collateral Agent or the other Secured Parties of any covenants, agreements or obligations of the Facility Owner under or in respect of the Assigned Agreement, provided, however, if Collateral Agent, directly or indirectly, takes possession of, or title to the Facility (including

possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Collateral Agent must assume all of Facility Owner's obligations arising under the Assigned Agreement.

5. Replacement Agreements. Notwithstanding any provision in the Assigned Agreement to the contrary, in the event the Assigned Agreement is rejected or otherwise terminated as a result of any bankruptcy, insolvency, reorganization or similar proceedings affecting the Facility Owner, and if Collateral Agent or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Collateral Agent must itself or must cause its designee to promptly enter into a new agreement with Contracting Party for the remainder of the originally scheduled term of the Assigned Agreement, effective as of the date of such rejection or termination, with the same covenants, agreements, terms, provisions and limitations as are contained in the Assigned Agreement, subject to the Collateral Agent or its designee curing all outstanding monetary defaults under the Assigned Agreement and all other non-monetary defaults under the Assigned Agreement which are reasonably susceptible of being cured.

6. Substitute Owner. The Contracting Party acknowledges that in connection with the exercise of possessory remedies following a default under the Financing Documents, the Collateral Agent must cause any purchaser at any foreclosure sale or any assignee or transferee under any instrument of assignment or transfer in lieu of foreclosure to assume all of the interests, rights and obligations of the Facility Owner thereafter arising under the Assigned Agreement as a condition of the sale or transfer; provided, however, that prior to such assumption, if the Contracting Party advises the Collateral Agent that the Contracting Party will require that one or more outstanding defaults under the Assigned Agreement be cured in order to avoid the exercise by the Contracting Party of its right to terminate the Assigned Agreement pursuant to Section 4(c) above, then Collateral Agent, at its option and in its sole discretion, may elect to either: (i) cause such defaults to be cured, in which case, the Assigned Agreement will be assumed by the purchaser, or (ii) not cause such defaults to be cured, in which case, the Assigned Agreement will not be assumed by the purchaser. In case of an assumption of the Assigned Agreement, the assuming party shall be a Permitted Transferee and shall agree in writing to be bound by and to assume the terms and conditions of the Assigned Agreement and any and all obligations to the Contracting Party arising or accruing thereunder from and after the date of such assumption, and, the Contracting Party shall continue to perform its obligations under the Assigned Agreement in favor of the assuming party as if such party had thereafter been named as the "Seller" under the Assigned Agreement.

7. Representations and Warranties.

(a) Facility Owner and Collateral Agent each recognizes and acknowledges that Contracting Party makes no representation or warranty, express or implied, that Facility Owner has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement.

(b) The Contracting Party represents that on the date it provided this Consent that:

(i) No Amendments. [Except as described in Schedule I hereto,] there are no amendments, modifications or supplements (whether by waiver, consent or otherwise) to the Assigned Agreement, either oral or written.

(ii) No Previous Assignments. The Contracting Party affirms that it has no notice of any assignment relating to the right, title and interest of the Facility Owner in, to and under the Assigned Agreement other than the pledge and assignment to the Collateral Agent referred to in Section 1 above.

(iii) No Termination Event: No Disputes. After giving effect to the pledge and assignment referred to in Section 2, and after giving effect to the consent to such pledge and assignment by the Contracting Party, to the knowledge of the Contracting Party: (A) there exists no default or event or condition (a "Termination Event") that would entitle either the Facility Owner or the Contracting Party to terminate the Assigned Agreement or suspend the performance of its obligations under the Assigned Agreement; (B) [except as set forth on Schedule II hereto,] there are no unresolved disputes between the parties under the Assigned Agreement; (C) all amounts due under the Assigned Agreement as of the date hereof have been paid in full[, except as set forth on Schedule II hereto]; and (D) the Assigned Agreement is in full force and effect.

8. Reserved.

9. Payments. The Contracting Party shall make all payments due to the Facility Owner under the Assigned Agreement directly into the account specified on Schedule III hereto, or to such other person or account as shall be specified from time to time by the Collateral Agent to the Contracting Party in writing. All parties hereto agree that each payment by the Contracting Party as specified in the preceding sentence of amounts due to the Facility Owner from the Contracting Party under the Assigned Agreement shall satisfy the Contracting Party's corresponding payment obligation under the Assigned Agreement.

10. Notices. Notice to any party hereto shall be in writing, sent to the respective addresses below, and shall be deemed to be delivered on the earlier of: (a) the date of personal delivery, (b) if sent postage prepaid, registered or certified mail, return receipt requested, or sent by express courier, in each case addressed to such party at the address indicated below (or at such other address as such party may have theretofore specified by written notice delivered in accordance herewith), upon delivery or refusal to accept delivery, or (c) if transmitted by facsimile, the date when sent and facsimile confirmation is received; provided that any facsimile communication shall be followed promptly by a hard copy original thereof by express courier:

The Collateral Agent: [NAME OF COLLATERAL AGENT]

[]
Attn: []
Telephone No.: []
Facsimile No.: []

The Contracting Party:

[]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Consent as of the date first written above.

VALLEY CLEAN ENERGY ALLIANCE

By: _____
Name:
Title:

[NAME OF COLLATERAL AGENT]
as Collateral Agent

By: _____
Name:
Title:

Acknowledged:
[Seller's corporate entity]

By: _____
Name:
Title:

Assigned Agreement

DRAFT

Disputes and Amounts Due and Unpaid under the Assigned Agreement
(Section 7(b)(iii))

DRAFT

Payment Instructions
(Section 9)

All payments due to the Facility Owner pursuant to the Assigned Agreement shall be made to

[INSERT REVENUE ACCOUNT INFORMATION].

DRAFT

EXHIBIT F

MINIMUM ANNUAL ENERGY PRODUCTION

Contract Year	Minimum Annual Energy Production (MWh)
1	112,000
2	111,440
3	110,883
4	110,328
5	109,777
6	109,228
7	108,682
8	108,138
9	107,598
10	107,060
11	106,524
12	105,992
13	105,462
14	104,934
15	104,410

Quantities to be prorated for any partial Contract Year.

EXHIBIT G

LETTER OF CREDIT *[Under review]*

[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT

[DATE OF ISSUANCE]

[BENEFICIARY] (“Beneficiary”)

[Address]

Attention: [Contact Person]

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. _____

Ladies and Gentlemen:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. _____ (the “Letter of Credit”) for the account of Valley Clean Energy Alliance (“Account Parties”), effective immediately and expiring on the date determined as specified in numbered paragraphs 5 and 6 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain *[describe the underlying agreement which requires this LC]*.

1. Stated Amount. The maximum amount available for drawing by you under this Letter of Credit shall be *[written dollar amount]* United States Dollars (US\$*[dollar amount]*) (such maximum amount referred to as the “Stated Amount”).

2. Drawings. A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at *[bank address]* (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “Draw Certificate”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “Draft”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: _____ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 9 below). In the event of a presentation by facsimile transmission, you shall contact us at *[INSERT PHONE NUMBER]* and the original of such documents shall be sent to us by overnight mail.

3. Time and Method for Payment. We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, [_____] time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to us after 12:00 noon, [_____] time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

4. Non-Conforming Demands. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand.

5. Cancellation. This Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any).

6. Initial Period and Automatic Rollover. The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 9*) that we elect not to consider this Letter of Credit extended for any such additional one year period.

7. Business Day. As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of [New York], and inter-bank payments can be effected on the Fedwire system.

8. Governing Law. THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AND, EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, TO THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND IN THE EVENT OF ANY CONFLICT, THE LAWS OF THE STATE OF NEW YORK WILL CONTROL, WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

9. **Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

10. **Irrevocability.** This Letter of Credit is irrevocable.

11. **Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to or to which this Letter of Credit relates, except for the ISP98 and *Attachment A*, *Attachment B* and *Attachment C* hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

* * *

SINCERELY,
[ISSUING BANK]

By: _____

Title: _____

Address: _____

ATTACHMENT A

FORM OF DRAW CERTIFICATE

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows:

- (1) The undersigned is the _____ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of _____ U.S. dollars (US\$ _____), which amount, when aggregated together with any additional amount that has not been drawn under the Letter of Credit, is not in excess of the Stated Amount (as in effect of the date hereof).
- (3) The conditions for a drawing by Beneficiary pursuant to [*describe the draw conditions from the underlying agreement*].
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: _____

Title: _____

Date: _____

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

ATTACHMENT B

DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO.

Date:

PAY TO: [BENEFICIARY]

U.S.\$ _____

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO. _____.

[BENEFICIARY]

By: _____

Title: _____

Date: _____

ATTACHMENT C

CANCELLATION CERTIFICATE

Irrevocable Letter of Credit No. _____

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. _____ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of [PROJECT ENTITY], an affiliate of the Account Parties, under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: _____

Title: _____

Date: _____

EXHIBIT H
EXPECTED ENERGY

Contract Year	Expected Annual Generation (MWh)
1	139,250
2	138,554
3	137,860
4	137,172
5	136,486
6	135,803
7	135,124
8	134,449
9	133,777
10	133,108
11	132,442
12	131,780
13	131,121
14	130,465
15	129,813

Quantities to be prorated for any partial Contract Year.

EXHIBIT I

MILESTONE SCHEDULE

1	11/30/2018	Execute Interconnection Agreement (Completed)
2	12/31/2019	Procure Major Equipment
3	12/31/2019	Obtain Federal, State, and Local Discretionary Permits
4	12/31/2019	Expected Construction Start Date
5	5/31/2020	Guaranteed Construction Start Date
7	11/30/2020	Expected Commercial Operation Date
8	6/1/2021	Guaranteed Commercial Operation Date

ATTACHMENT A
FORM OF MILESTONE SCHEDULE REPORT

Within ten (10) Days after the end of each month following the Effective Date until the Commercial Operation Date, Seller shall provide Buyer a monthly written report of its progress toward meeting the Milestone Schedule in **Exhibit I** (the "Milestone Schedule Report"). Each Milestone Schedule Report must include the following items:

1. Summary of activities during the previous calendar month.
2. Forecast of activities scheduled for the current calendar month.
3. Bar chart schedule showing progress on achieving each of the Milestones in **Exhibit I**.
4. An explanation of the reasons for any missed Milestone and a detailed description of Seller's corrective actions to achieve the missed Milestone and all subsequent Milestones by the Guaranteed Commercial Operation Date.
5. List of issues that could potentially impact Seller's ability to achieve the Milestones.
6. Progress and schedule of all agreements, contracts, Permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
7. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

EXHIBIT J

FORM OF COMMERCIAL OPERATION CERTIFICATE

This certification ("Certification") is delivered to Valley Clean Energy Alliance ("Buyer") by _____, an officer of Westlands Solar Park Holdings, LLC ("Seller") who is duly authorized to execute this Certification. Capitalized terms that are not defined in this Certification are defined in the Agreement to which this Certification is a part. Seller hereby certifies and represents to Buyer the following:

- (i) Seller has obtained Site Control necessary to operate the Facility in accordance with this Agreement and has provided evidence of such Site Control to Buyer;
- (ii) Seller has successfully completed commissioning of the Facility in accordance with applicable manufacturers' specifications;
- (iii) Seller has successfully completed all testing required by Prudent Operating Practices or any requirement of law necessary to operate the Facility;
- (iv) Seller has satisfied all Interconnection Agreement requirements necessary to deliver Energy to the Delivery Point, such Interconnection Agreements are in full force and effect, and the CAISO has authorized Energy deliveries from the Facility to the Delivery Point;
- (v) Seller has obtained all applicable Permits and approvals required to be obtained from any Governmental Authority to operate the Facility in compliance with Applicable Law and this Agreement, and such Permits and approvals are in full force and effect;
- (vi) Seller has installed and commissioned at least ninety-five percent (95%) of the Contract Capacity for the Facility;
- (vii) Seller has satisfied the Insurance Obligations in Section 6.2 of the Agreement, and Seller has provided evidence of such insurance to Buyer; and
- (viii) Seller has delivered to Buyer the Operating Security.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Certificate on behalf of the Company as of the ___ day of _____ 20__.

By:

Name:

Title:

EXHIBIT K

SELLER'S OTHER FACILITIES

Seller's other facilities consist of:

- Cluster 8 Projects,
- Cluster 9 Projects, and
- Projects adjacent to Cluster 8 Projects and Cluster 9 Projects with the same Interconnection Point that are developed by Seller or an affiliate thereof.

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VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020-___

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE)
APPROVING ENTERING INTO A POWER PURCHASE AGREEMENT WITH AQUAMARINE
WESTSIDE, LLC AND AUTHORIZING INTERIM GENERAL MANAGER IN CONSULTATION WITH
LEGAL COUNSEL TO FINALIZE AND EXECUTE THE POWER PURCHASE AGREEMENT**

WHEREAS, the Valley Clean Energy Alliance (“VCE”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), the City of Woodland and the City of Winters (“Cities”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs;

WHEREAS, on August 13, 2018, Sacramento Municipal Unified District (“SMUD”), on behalf of VCE, issued a solicitation for Long Term Renewable power supply;

WHEREAS, after compiling and consolidating the technical details from each response received and evaluating for consideration, VCE Staff executed letters of intent, collected short list deposits, and began negotiating power purchase agreements (“PPA”) for two (2) projects;

WHEREAS, Westlands Solar Park (“Westlands”) is a power generating complex located on 20,000 acres of “brownfield” land within the Westlands Water District in Kings County, California with Westlands planning to phase in construction of potentially 2,700 megawatts (“MW”) of solar power including storage and transmission facilities;

WHEREAS, Aquamarine is a 250 MW solar generating facility and is included in the first phase of construction for Westlands; and,

WHEREAS, a PPA was negotiated with Aquamarine Westside, LLC for VCE to procure power from a fifty (50) MW share of the two hundred fifty (250) MW Aquamarine Solar Project being developed by Westlands.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Power Purchase Agreement (PPA) with Aquamarine Westside, LLC for the procurement of power by Valley Clean Energy Alliance of a fifty (50) megawatt (MW) share of the two hundred fifty (250) MW Aquamarine Solar Project under development by Westlands Solar Park, LLC is hereby approved.
2. The Interim General Manager is authorized to execute the PPA substantially in the form attached hereto on behalf of VCE. The Interim General Manager, in consultation with legal counsel is authorized to approve minor changes to the PPA so long as the term and price are not changed.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Don Saylor, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment A: Power Purchase Agreement with Aquamarine Westside, LLC

Attachment A

Power Purchase Agreement with Aquamarine Westside, LLC