

*Clean Coalition Proposed Model PPA*

**SMALL RENEWABLE GENERATOR  
POWER PURCHASE AGREEMENT  
BETWEEN \_\_\_\_\_ AND  
\_\_\_\_\_**

\_\_\_\_\_, a \_\_\_\_\_ (State) Corporation (“Buyer”), and \_\_\_\_\_ (“Seller”) hereby enter into this Power Purchase Agreement (“Agreement”) made and effective as of the Execution Date. Seller and Buyer are sometimes referred to in this Agreement jointly as “Parties” or individually as “Party.” In consideration of the mutual promises and obligations stated in this Agreement and its appendices, the Parties agree as follows:

1. DOCUMENTS INCLUDED

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

Appendix A – Definitions

Appendix B – Description of the Facility

Appendix C – Time of Delivery (“TOD”) Periods and Factors

2. SELLER’S GENERATING FACILITY; PURCHASE PRICES; PAYMENT

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

2.1.1. The Facility is located at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

2.1.2. The Facility is named \_\_\_\_\_.

2.1.3. Type of Facility. The Facility is a(n) (check one):

- Baseload Facility
  
- As-Available Facility

- 2.1.4. The Facility’s primary fuel is \_\_\_\_\_ [i.e. biogas, hydro, etc.].
- 2.1.5. The Facility has a Nameplate of \_\_\_\_ kilowatts (“kW”), at unity power factor at 60 degrees Fahrenheit at sea level and has a primary voltage level of \_\_\_\_\_ kilovolts (“kV”). Seller shall not modify the Facility to increase the Nameplate without the prior written consent of Buyer. The Nameplate will be net of any Station Use, or in the case of solar it will be net of any inverter losses. The Nameplate will not exceed \_\_\_\_\_ kW.
- 2.1.6. The Facility is connected to the Buyer electric system at \_\_\_\_\_ kV.
- 2.1.7. A description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the Facility and loads with Buyer’s electric distribution or transmission system, is attached and incorporated herein as Appendix B.
- 2.1.8. The name and address Buyer uses to locate the electric service account(s) and premises used to interconnect the Facility with Buyer’s distribution systems is:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2.1.9. Delivery Point. The Delivery Point is at the point of interconnection with the \_\_\_\_\_ (state grid operator) Grid.

2.2. Commercial Operation.

2.2.1. If not already capable of delivering Product on the Execution Date, the Facility’s expected Commercial Operation Date, as defined in Appendix A, is \_\_\_\_\_. The time period to attain Commercial Operation shall be twelve (12) months and shall begin upon the Parties’ execution of the Interconnection Agreement. Subject to the terms of the Agreement, the Commercial Operation Date may be extended by Seller on a day-to-day basis for reasons set forth in Section 2.2.3.

2.2.2. Conditions Precedent to Achieving Commercial Operation. Commercial Operation shall occur only when all of the following conditions have been satisfied:

- 2.2.2.1. Seller has received technology certification from \_\_\_\_\_ (applicable state agency);
- 2.2.2.2. Seller has registered for tracking of renewable credits by \_\_\_\_\_ (applicable state agency);

- 2.2.2.3. Seller has demonstrated operability.
- 2.2.3. Extension. Subject to the terms of the Agreement, the Commercial Operation Date may be modified by Seller from time to time after the Execution Date. Extension shall be granted in the following instances and for the following durations:
- 2.2.3.1. Where delay occurs by fault of Seller, the Commercial Operation Date shall be extended as needed on a day-to-day basis. Seller shall give Buyer notice of this type of delay at least 45 days before the Commercial Operation Date. For every day extended, Seller shall compensate Buyer using Liquidated Damages, which are calculated as 2% percent of the Seller deposit per day. Extension shall continue day-to-day until the deposit is exhausted. A Termination Event shall occur if Commercial Operation has not been attained by exhaustion of Seller deposit;
- 2.2.3.2. Where a Party has taken all commercially reasonable actions to: a) to obtain permits necessary for the construction and operation of the Facility, but is unable to obtain such permits due to delays beyond reasonable control (a “Permitting Delay”); or b) have the Facility physically interconnected to the state grid operator grid, or to the Transmission/Distribution Owner’s distribution system, and to complete all Electric System Upgrades needed, if any, in order to interconnect the Facility (a “Interconnection Delay”) but fails to secure any necessary commitments due to delays beyond Seller’s reasonable control, then extension shall be granted on an unlimited basis.
- 2.2.3.3. An event of Force Majeure (“Force Majeure Delay”), without regard to Interconnection Delay or Permitting Delay. Extension shall be granted on an unlimited basis.
- 2.2.3.4. For any other delay not specified in this Section 2.2.3, extension shall be granted for a cumulative period no longer than twelve (12) months.
- 2.2.4. Notice. In order to request a Permitting Delay or Interconnection Delay (individually and collectively, “Delay”), the requesting Party shall provide Notice of the requested Delay within three (3) Business Days of the date that Party becomes aware of, or reasonably should have become aware of, the circumstances giving rise for the applicable Delay. Notice must clearly identify the Delay being requested, the length of the Delay requested, and include information necessary for to verify the length and qualification of the Delay. Seller shall provide Notice to Buyer of the latest expected Commercial Operation Date of the Facility no later than sixty (60) days before such date.
- 2.3. Transaction. During the Delivery Term of this Agreement, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received,

the Product from the Facility, up to \_\_\_\_\_ kW, at the Delivery Point, pursuant to Seller's election of a (check one):

full buy/sell; or

excess sale arrangement.

2.3.1. Full Buy/Sell. Seller agrees to sell to Buyer the Facility's gross output in kilowatt-hours, net of Station Use and transformation and transmission losses to the Delivery Point into the Buyer system.

2.3.2. Excess Sale. Seller agrees to sell to Buyer the Facility's gross output in kilowatt-hours, net of Station Use and any on-site use by Seller and transformation and transmission losses to the Delivery Point into the Buyer system.

2.3.3. Payment. On a monthly basis throughout the Delivery Term, Buyer shall pay Seller for each kilowatt hour ("kWh") of the Product delivered to Buyer. The amount of Product delivered is determined by the meter or Check Meter, which Buyer shall read at its own expense. In no event shall Seller have the right to procure the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement or substitute such Product. Buyer shall have no obligation to receive or purchase the Product from Seller prior to the Commercial Operation Date, or after the end of the Delivery Term.

2.4. Delivery Term. The Seller shall deliver the Product from the Facility to Buyer for a period of (check one) \_\_\_ ten (10), \_\_\_ fifteen (15), \_\_\_ twenty (20), or \_\_\_ Contract Years (specify number, greater than 20) ("Delivery Term"), which shall commence on the first date on which energy is delivered from the Facility to Buyer (the "Commercial Operation Date") under this Agreement and continue until the end of the last Contract Year unless terminated pursuant to the terms of this Agreement.

2.5. Contract Price. Price shall be set at Execution Date, not Effective Date. For the purpose of calculating monthly payments under this Agreement, the amount recorded by the meter specified or Check Meter, as applicable, will be time-differentiated according to the time period and season in which Buyer receives the Product from Seller, and shall be adjusted by the appropriate Time of Delivery ("TOD") factor listed in Appendix C.

2.5.1. The monthly payment will equal the sum of (i) the sum of the monthly TOD Period payments for all TOD Periods in the month and (ii) the Curtailed Product Payment for the month. Each monthly TOD Period payment will be calculated pursuant to the following formula, where "n" is the TOD Period being calculated:

$$\text{TOD PERIOD}_n \text{ PAYMENT} = A \times B \times (C - D)$$

Where:

- A = Contract Price, in \$/kWh.
- B = The Payment Allocation Factor for the TOD Period being calculated.
- C = The sum of Energy recorded by the meter or Check Meter, as applicable, in all hours for the TOD Period being calculated, in kWh.
- D = Any Energy produced by the Facility for which Buyer is not obligated to pay Seller.

2.6. Billing. If the value of the purchased Product in a month is at least fifty dollars (\$50), Buyer shall pay Seller by check or Automated Clearing House transfer on a monthly basis and within approximately thirty (30) days of the Meter Reading Date; if the value of the purchased Product is less than fifty dollars (\$50), Buyer may pay Seller on a quarterly basis. Buyer shall have the right, but not the obligation, to read the Facility's meter on a daily basis.

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

2.8. No Additional Incentives. Seller agrees that, during the Term of this Agreement, Seller shall not seek additional compensation or other benefits pursuant to \_\_\_\_\_ (state incentive programs and ratepayer subsidized programs relating to energy production) with respect to the Facility at issue in this Agreement.

2.9. Private Energy Producer. Seller agrees to provide Buyer with copies of documents set forth in \_\_\_\_\_ (state public utilities code) evidencing compliance with requirements of Private Energy Producers, if applicable, as may be amended from time to time, prior to the Commercial Operation Date and, after the Commercial Operation Date, within thirty (30) days of Seller's receipt of written request.

3. GREEN ATTRIBUTES; RESOURCE ADEQUACY BENEFITS; EIRP REQUIREMENTS; ELIGIBLE RENEWABLE ENERGY CREDIT RESOURCE REQUIREMENTS

3.1. Costs. Seller shall take all actions and execute all documents and instruments reasonable and necessary to effectuate the use of Green Attributes, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, (herein "Benefits") for Buyer throughout the Delivery Term. Seller shall be compensated for these actions in the form of a Benefit Adder, which Seller shall provide to Buyer at the time Buyer checks the Facility meter or Check Meter in order to pay for Product associated with the conveyed benefits. Upon Buyer payment of Product Price and Benefit Adder, Seller shall deliver Benefits.

3.2. Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being

delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

- 3.3. WREGIS. With respect to WREGIS, Seller shall cause and allow Buyer to be the Qualified Reporting Entity and Account Holder (as such terms are defined by WREGIS) for the Facility within thirty (30) days after the Commercial Operation Date. The Parties hereby acknowledge that full registration with WREGIS is not possible prior to operation of the Facility.
- 3.4. Resource Adequacy Benefits. Seller is not required to obtain Resource Adequacy Benefits (herein “RABs”) for the Facility to enable Buyer to count physical generating capacity toward the resource adequacy requirements of \_\_\_\_\_ (codification of state RPS requirement). Should Seller obtain RABs voluntarily, Seller shall comply with all requirements pertaining to RABs as set forth in \_\_\_\_\_ (codified requirements from state agency governing RABs) and all applicable reporting requirements. In such case, Parties shall adhere to the procedure set forth in Section 3.1 “Costs” for delivery and compensation of RABs.
- 3.5. Eligible Renewable Energy Credit Resource. Seller shall use commercially reasonable efforts to achieve and maintain the status of the Facility technology as an eligible renewable energy credit resource (herein “ERR”) that is capable of producing renewable energy credits. Seller shall act in accordance with the procedures for obtaining ERR status as set forth in \_\_\_\_\_ (state code governing ERR), as either code provision is amended or supplemented from time to time. Should Seller fail to maintain Facility as an ERR, Buyer shall have the right, but not obligation, to seek renegotiation of payment price from the \_\_\_\_\_ (appropriate state governing authority). In no case of price negotiation shall Seller may be paid less than value of energy produced.
- 3.6. Eligible Intermittent Resources Protocol (“EIRP”) Requirements. For Facilities 1MW or larger, if at any time during the Term the Facility is eligible for EIRP, Seller shall provide Buyer with a copy of the notice of certification of Facility as Participating Intermittent Resource provided to Seller by \_\_\_\_\_ (the state governing agency) as soon as practicable after receipt of such notice. Following such certification: (i) Seller at its sole cost shall participate in and comply with EIRP and all additional protocols issued by \_\_\_\_\_ (the state governing agency regulating EIRP) relating to Participating Intermittent Resources, and (ii) Buyer in its limited capacity as Seller’s Scheduling Coordinator shall facilitate communication with \_\_\_\_\_ (the state governing agency regulating EIRP) and provide other administrative materials to \_\_\_\_\_ as necessary to satisfy Seller’s obligations and to the extent such actions are at *de minimis* cost to Buyer.
- 3.7. FERC Qualifying Facility Status. Seller shall take all actions, including making or supporting timely filings with the FERC necessary to obtain, or maintain a FERC waiver of, the Qualifying Facility status of the Facility throughout the Term; provided, however, that this obligation does not apply to the extent Seller is unable to maintain Qualifying

Facility status using commercially reasonable efforts because of (a) a change in PURPA or in regulations of the FERC implementing PURPA occurring after the Execution Date, or (b) a change in Laws directly impacting the Qualifying Facility status of the Facility occurring after the Execution Date.

- 3.8. Compliance Cost Cap. Following the Execution Date, a Compliance Cost Cap shall apply for Seller's costs in complying with changes in law associated with Seller's obligations set forth in this Section 3. The Cap amount shall be three thousand dollars (\$3,000) per MW annually, and shall be borne by Seller through the Delivery Term. Should costs associated with the specified obligations exceed the Cap, Buyer shall release Seller from the obligations in excess of the Cap, or Seller shall pay all expenses and be reimbursed for the excess costs by Buyer.

#### 4. REPRESENTATIONS AND WARRANTIES; COVENANTS

- 4.1. Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

- 4.1.1. It is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- 4.1.2. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws;
- 4.1.3. This Agreement and any other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;
- 4.1.4. It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- 4.1.5. There is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- 4.1.6. It is acting for its own account, has made its own independent decision to enter into this agreement and as to whether this agreement is appropriate or proper for it based upon its own judgment is not relying on any promises, representations, statements or information of any kind of the other party that are not contained in this Agreement in deciding to enter into this Agreement, and is capable of assessing the merits of, and understands and accepts the terms, conditions and risk of this agreement;

4.1.7. That the Agreement does not violate relevant state law pertaining to Private Energy Producers, if applicable.

4.2. General Covenants. Each party covenants that, throughout the Term of this Agreement:

4.2.1. It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

4.2.2. It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

4.2.3. It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

4.2.4. It shall cooperate in good faith with the other party in executing the terms of the Agreement.

4.3. Seller Representation and Warranty. In addition to the representations and warranties specified above, Seller represents and warrants, as of the Execution Date, that:

4.3.1. The Facility has not received additional benefits from state incentives or ratepayer subsidized programs relating to energy production;

4.3.2. That Seller holds the rights to all Green Attributes from the Facility as required by the Agreement or as may be obtained voluntarily, and agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility;

4.3.3. The RABs that Seller transfers to Buyer conform to definition and attributes required for compliance with [state] RPS. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;

4.3.4. Seller's execution of this Agreement will not violate [state law pertaining to Private Energy Production];

4.3.5. Seller will deliver any certificates required pursuant to [state governing authority law]

4.3.6. Seller will own and operate the Facility for the duration of the Delivery Period, and will deliver the product free and clear to Buyer at the delivery point, and hold the rights to all of the Product;



4.3.7. Throughout the Term:

4.3.7.1. Seller will not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer; and

4.3.7.2. Seller will not start-up or operate the Facility per instruction of or for the benefit of any third party, except as required by other Laws;

4.3.8. Product will be conveyed *only* to Buyer;

4.3.9. The construction of the Facility shall comply with all Laws, including applicable state and local laws, building standards, and interconnection requirements.

4.4. Seller Covenant. Seller hereby covenants that, throughout the Delivery Term, the Facility is, or will qualify prior to the Commercial Operation Date, as an ERR. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

5. GENERAL CONDITIONS

5.1. Facility Care, Interconnection and Transmission Service. Seller shall execute a Small Generator Interconnection Agreement with Buyer's Generation Interconnection Services Department, pay for and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable Buyer and \_\_\_\_\_ (relevant governing agency) tariff provisions, including applicable interconnection and metering requirements. Seller shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. During the Delivery Term, Seller shall arrange and pay independently for any and all necessary costs under any interconnection agreement with Buyer. To make deliveries to Buyer, Seller must maintain an interconnection agreement with Buyer in full force and effect.

5.2. Metering Requirements. Seller, at its own expense, shall comply with all applicable rules in installing and maintaining a meter appropriate for deliveries pursuant to the Full Buy/Sell or Excess Sale arrangement, and pursuant to \_\_\_\_\_ (state grid operator) standard metric requirements. Where operator does not permit a revenue meter for the Facility, Buyer shall identify a revenue quality meter for the Facility. Where Facility is under 1 MW, the cost to Seller in complying with these rules shall not exceed \$X. Buyer shall reimburse Seller for any costs in excess of this compliance cost cap. For the purpose of validating the grid operator meter, or as a back-up meter, Buyer may install a Check Meter at the Interconnection Point at its own expense. Buyer shall read and record the meter at its own expense, and shall have the right to read the meter on a daily basis. The meter may be read electronically by: (a) a telephone and dial-up

modem; (b) an analog or digital phone connection; or (c) an internet portal address for Buyer's Energy Data Services ("EDS"). The calculation of Buyer's regular payment to Seller shall be based on the recorded meter data.

- 5.3. Standard of Care. Seller shall: (a) maintain and operate the Facility and Interconnection Facilities, except those facilities installed by Buyer, in conformance with all applicable laws and regulations, as they may be amended, supplemented or replaced (in whole or in part) from time to time; (b) obtain all government authorizations and permits required for the construction and thereof; and (c) generate, schedule and perform transmission services in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs. Seller shall reimburse Buyer for any losses, damages, penalties or liability Buyer incurs as a result of Seller's failure to obtain and maintain any government authorizations and permits required for construction and operation of the Facility, except where failure to do so occurs beyond Seller's control, throughout the Term of the Agreement.
- 5.4. Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice during normal business hours for any purpose reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by law, tariff schedules, and \_\_\_\_\_ (state public utility governing agency) rules. Buyer, its authorized agents, employees and inspectors must, at all times: (a) adhere to all safety and security procedures as may be required by Seller; and (b) not interfere with the operation of the Facility. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Facility operator. Seller shall keep Buyer advised of current procedures for communicating with the Facility operator's Safety and Security Departments.
- 5.5. Protection of Property. Each Party shall be responsible for protecting its own facilities from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities and such other Party shall not be liable for any such damages so caused; provided that nothing in this Section 5.5 shall modify any other agreement between the Parties.
- 5.6. Seller Curtailment.
- 5.6.1. Forced Curtailment.
- 5.6.1.1. Where Buyer provides to Seller a Notice of Forced Curtailment, Seller shall curtail the production of the Facility. Forced Curtailment is defined as a curtailment ordered by a) a Government Authority, with reasonable notice; or b) Buyer in response to an instance of Force Majeure. Buyer shall have no obligation to pay for Product during Forced Curtailment, if notice is provided to Buyer with reasonable time for Seller to respond. Seller shall assume all liability and reimburse Buyer for any and all costs and charges incurred by Buyer as a result of Seller Energy delivery in violation of the Curtailment Order only where notice of curtailment was given with reasonable time for

Seller to respond. Where Buyer does not provided notice in reasonable time, Buyer shall be responsible for costs, charges and liabilities associated with continued Energy production.

5.6.1.2. Buyer shall have no obligation to pay for Product that Seller would have been able to deliver during this time but for the Forced Curtailment. However, for all Product in excess of five percent (5%) of the Contract Quantity for the Contract Year that Seller would have been able to deliver but for the fact of a Forced Curtailment, excluding curtailment due to Force Majeure, Buyer shall pay Seller the Contract Price.

5.6.2. Unforced Curtailment.

5.6.2.1. Buyer shall have the right to curtail Energy production from the Facility at any time and for any reason not considered a Forced Curtailment (an “Unforced Curtailment”) by issuing to Seller a Notice of Unforced Curtailment, which shall be issued with reasonable time for Seller to respond. In instances of Unforced Curtailment, Buyer shall pay Seller the Contract Price for the Product that Seller would have been able to deliver but for the fact that Buyer issued a Notice of Unforced Curtailment.

5.6.2.2. Buyer shall estimate the amount of Product the Facility would have been able to deliver but for the Unforced Curtailment Order. Buyer’s estimate shall be based on accepted industry standards for determining the price of Product, past performance of the Facility, meteorological data, solar irradiance data, and any other information relevant to establishing a Paid Curtailment Product purchase price. Seller shall cooperate with Buyer’s requests for information reasonably necessary to calculate an estimate. The total amount of paid curtailed Product shall not exceed 5% of the Contract Quantity for the Contract Year.

5.7. Notice of Outages. Whenever possible, Buyer shall give Seller reasonable notice of the possibility that interruption or reduction of deliveries may be required.

5.8. Greenhouse Gas Emissions. Seller acknowledges that a Government Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the production of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer’s written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Facility reasonably necessary to permit Buyer to comply with such requirements, if any.

6. INDEMNITY

- 6.1. Each Party as indemnitor shall save harmless and indemnify the other Party and the directors, officers, and employees of such other Party against and from any and all loss and liability for injuries to persons including employees of either Party, and damages, including property of either Party, resulting from or arising out of: (a) the engineering, design, construction, maintenance, or operation of; or (b) the installation of replacements, additions, or betterments to the indemnitor's facilities. This indemnity and save harmless provision shall apply notwithstanding the active or passive negligence of the indemnitee. Neither Party shall be indemnified for liability or loss, resulting from its sole negligence or willful misconduct. The indemnitor is not obligated to defend any suit asserting a claim covered by the indemnity or pay costs incurred by the other party in enforcing the indemnity.
- 6.2. Each Party shall remain liable for the acts of their subcontractors and agree to hold harmless the other party for any and all loss or damages, as well as all costs, charges and expenses which the other party may suffer, incur, or bear as a result of any acts, omissions or default by or on behalf of any subcontractor or subsupplier.

## 7. LIMITATION OF DAMAGES

**Except as OTHERWISE provided in THIS AGREEMENT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 6 (INDEMNITY), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.**

## 8. NOTICES

Notices (other than forecasts, scheduling requests and curtailment (or equivalent) instructions) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Notices of curtailment (or equivalent orders) must be written and must be made in accordance with accepted industry practices for such notices. A notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on

which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received on the next Business Day after such Notice is sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All Notices, requests, invoices, statements or payments for this Facility must reference this Agreement's identification number. All contact information shall include email and fax information.

## 9. INSURANCE

9.1. Seller shall, at its own expense, starting on the Execution Date and until the end of the Term, and for such additional periods as may be specified below, provide and maintain in effect the following insurance policies and minimum limits of coverage as specified below, and such additional coverage as may be required by Law, with insurance companies authorized to do business in the state in which the services are to be performed.

9.1.1. Commercial General Liability Insurance, written on an occurrence basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, contractual liability, premises-operations, owners and contractors protective, hazard, explosion, collapse and underground. Seller shall maintain no less than \$1M if Facility nameplate is over 100kW, \$500k if nameplate is more than 20 to 100kW, or \$100k if nameplate is 20kW or less. If Seller elects, with Buyer's written concurrence, to use a "claims made" form of commercial general liability insurance, then the following additional requirements apply: (a) the retroactive date of the policy must be prior to the Execution Date; and (b) either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates. Government agencies which have an established record of self-insurance may provide the required coverage through self-insurance.

## 10. CREDIT AND COLLATERAL REQUIREMENTS

10.1. Collateral Requirement. On or before the thirtieth (30<sup>th</sup>) day following the Execution Date, Seller shall post and thereafter maintain a collateral requirement equal to twenty dollars (\$20.00) if Contract Capacity is less than 1,000 kW, or fifty dollars (\$50.00) if Contract Capacity is greater than or equal to 1,000 kW, for each kilowatt of the Contract Capacity. The Collateral Requirement will be held by Buyer and must be in the form of either a cash deposit or Letter of Credit.

10.2. Maintenance of Collateral Requirement. The Collateral Requirement shall be posted to Buyer and maintained at all times from the thirtieth (30<sup>th</sup>) day following the

Execution Date until the Commercial Operation Date. In the event that Buyer draws on the Collateral Requirement pursuant to this Agreement, Seller shall promptly replenish such Collateral Requirement to the amount specified in Section 10.1, as may be adjusted pursuant to Section 10.3.

10.3. Forfeiture Based on Capacity. If, on the Commercial Operation Date, Seller:

10.3.1. is not capable of delivering any of the Contract Capacity to the Delivery Point, as determined by Buyer in its reasonable discretion, Seller shall forfeit, and Buyer shall be entitled to, the entire Collateral Requirement and Buyer may terminate this Agreement; or

10.3.2. is only capable of delivering a portion of the Contract Capacity to the Delivery Point, based on the Demonstrated Contract Capacity, Seller shall forfeit, and Buyer shall have the right to retain, a portion of the Collateral Requirement equal to the product of (a) twenty dollars (\$20.00), if Contract Capacity is less than 1,000 kW, or fifty dollars (\$50.00), if Contract Capacity is greater than or equal to 1,000 kW, multiplied by (b) the Contract Capacity less the Demonstrated Contract Capacity.

10.4. Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Collateral Requirement, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Collateral Requirement posted with Buyer in the form of cash or Letter of Credit and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Collateral Requirement, Seller agrees to take such action as Buyer reasonably requires in order to perfect such interest. Upon or any time after the occurrence of an Event of Default, an Early Termination Date or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Collateral Requirement, Buyer may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to the Collateral Requirement, as applicable, including any such rights and remedies under Law then in effect; (b) exercise its rights of setoff against any and all property of Seller in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit or retain any cash deposit; and (d) liquidate the Collateral Requirement then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

10.5. Use of Collateral Requirement. Buyer shall be entitled draw upon the Collateral Requirement for any damages arising upon Buyer's declaration of an Early Termination Date or as set forth in Section 13.3.1 and 13.3.2. If Buyer terminates this Agreement and is entitled to draw upon the Collateral Requirement, any amount of Collateral

Requirement that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer.

10.5.1. Return of Collateral Requirement. Buyer shall return the unused portion of the Collateral Requirement, including the payment of any interest due thereon to Seller promptly after the following has occurred: (a) the Term of the Agreement has ended, or an Early Termination Date has occurred, as applicable; and (b) all payment obligations of the Seller arising under this Agreement, including but not limited to payments pursuant to the Settlement Amount, indemnification payments, or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

10.5.2. Full Return of Collateral Requirement. Notwithstanding the foregoing, the full Collateral Requirement will be returned to Seller if Seller attains Commercial Operation as set forth in this Agreement absent draw from Collateral by Buyer for reasons stated above.

10.5.3. Payment of Interest. Buyer shall pay simple interest on cash held to satisfy the Collateral Requirements at the Interest Rate as defined in Appendix A.

10.6. Letter of Credit.

10.6.1. If Seller has provided a Letter of Credit to satisfy the Collateral Requirement, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis. In the event the issuer of such Letter of Credit (a) fails to maintain a Credit Rating of at least (i) an A3 by Moody's with a stable designation and at least an A- by S&P with a stable designation, if the issuer is rated by both Moody's and S&P, or (ii) an A3 by Moody's with a stable designation or an A- by S&P with a stable designation, if the issuer is rated by either Moody's or S&P but not both, (b) indicates its intent not to renew such Letter of Credit or has not renewed such Letter of Credit at least twenty-five (25) Business Days prior to its expiration, or (c) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall cure such default by complying with either Section 10.6.1.1 or 10.6.1.2 below in an amount equal to the Collateral Requirement, and by completing the action within three (3) Business Days of the applicable event (all of which is considered the "Cure"):

10.6.1.1. providing a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or

10.6.1.2. posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the Collateral Requirements of Section 10. If a Letter of Credit has not been renewed at least

twenty (20) Business Days prior to its scheduled expiration, Buyer may draw on the Letter of Credit for the full amount of the Collateral Requirement.

10.6.2. In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

## 11. TERM, EVENTS OF DEFAULT, TERMINATION

11.1. Term. The Term of this Agreement shall commence upon execution by the duly authorized representatives of each of Buyer and Seller and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to an Event of Default. All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

11.2. Events of Default. Buyer shall be entitled to terminate the Agreement before conclusion of the Delivery Term upon the occurrence of any of the following, each of which is an “Event of Default”:

11.2.1. With respect to either party:

11.2.1.1. Failure to adhere to obligations or covenants in the Agreement (most notably failing to make due payments in specified time or failing to deliver product in specified time);

11.2.1.2. Unauthorized assignment;

11.2.1.3. Participation in any form of current diversion, theft of electricity or meter tampering;

11.2.1.4. Failure to remedy any condition resulting in disconnection;

11.2.2. With respect to Seller:

11.2.2.1. Noncompliance in installation of equipment.

11.2.2.2. Failure to achieve Commercial Operation by the Commercial Operation Deadline; or Parties cannot achieve this operation within the time provided for delays beyond Parties’ control;

11.2.2.3. Abandonment of facility;

11.2.2.4. Delivery of product generated by another facility;

11.2.2.5. Failure to keep Facility compliant with Interconnection Agreement requirements;



11.2.2.6. Seller fails to post and maintain the Collateral Requirements pursuant to Section 10 and such failure is not cured within any applicable cure period;

11.2.2.7. Alteration of the Facility's physical location or point of interconnection.

11.2.3. Force Majeure. Neither Party shall be in default in the performance of any of its obligations, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due, such Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. Claimant shall give sufficient evidence of disability, as well as timely notice – the period for which commences at the time the Claimant *becomes aware* of the Force Majeure, not the time when the Force Majeure occurs.

11.3. Change in Law. Where an Event of Default occurs because of a change in current law, Breaching party shall be granted a reasonable period of time to cure the defect. An Event of Default shall be deemed to have occurred only if the breach is not cured by the expiration of the reasonable period of time. If any representation or warranty made by Seller in the agreement becomes false or misleading in any material respect as a result of a change in law, such breach shall not be an Event of Default if Seller uses commercially reasonable efforts to make the representation or warranty no longer false or misleading in a reasonable period of time. Breaching Party shall have thirty (30) days after Notice of Error from the other party to make such representation or warranty no longer false or misleading.

11.4. Termination. When an Event of Default occurs, the non-terminating party shall have the right to a) send notice, designating a day no earlier than 5 days after receipt of such notice and no later than 20 days after receipt of such notice, b) accelerate all amounts due between the parties, and c) terminate the agreement and end the Delivery Term effective as of the Early Termination Date. Parties may agree to resolve the circumstance giving rise to the Termination Event.

11.5. Cure Period. If a breach is of the sort that cannot be remedied within 30 days, then the remedy period shall be extended for up to an additional 60 days, provided that the breaching Party continues to diligently pursue the remedy.

11.6. Release of Liability. Upon termination, neither party shall be under any further obligation or subject to further liability except where applicable with regard to indemnity, which shall remain in effect for twelve (12) months following Early Termination Date.

## 12. DUTY TO MITIGATE; CALCULATION OF SETTLEMENT AMOUNT; CUMULATIVE RIGHTS AND REMEDIES

- 12.1. Mitigation. 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.
- 12.2. Settlement Calculation. If either party exercises a termination right after the Commercial Operation Date, the non-defaulting Party shall calculate a settlement amount ("Settlement Amount") equal to the amount the non-defaulting Party's aggregate Losses and Costs less any Gains, determined as of the Early Termination Date. Prior to the Commercial Operation Date, the Settlement Amount shall be zero dollars (\$0). If the non-defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, determined as of the Early Termination Date, the Settlement Amount shall be Zero dollars (\$0).
- 12.3. Cumulative Rights and Remedies. The rights and remedies of the Parties pursuant to this Agreement shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

### 13. SCHEDULING

- 13.1. Scheduling Coordinator. Buyer shall be Seller's designated Scheduling Coordinator and will schedule Seller's Facility using Prudent Utility Practices. Seller shall employ Prudent Utility Practices and exercise reasonable efforts to operate and maintain its Facility. All generation interconnection and scheduling services shall be performed in accordance with all applicable operating policies, criteria, guidelines and tariffs of the \_\_\_\_\_ (state grid operator) or its successor, and any other generally accepted operational requirements. Buyer shall be responsible for all costs and charges assessed by the state grid operator with respect to Scheduling and imbalances. Seller, at its own expense, shall be responsible for complying with all applicable contractual, metering and interconnection requirements. Seller shall promptly notify Buyer of significant (i.e., greater than 100 kW) changes to its energy schedules using Buyer's web site. Seller will exercise reasonable efforts to comply with conditions that might arise if the \_\_\_\_\_ (state grid operator) modifies or amends its tariffs, standards, requirements, and/or protocols in the future.
- 13.2. Forecasting. Buyer shall be responsible for all forecasting; Seller shall be responsible for producing raw data on a monthly basis, and for providing timely notification of any known, upcoming Facility take-down periods.
- 13.3. Government Charges. Seller shall pay or cause to be paid all taxes imposed by any Government Authority ("Government Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Facility, land, land rights or interests in land for the Facility. Buyer shall pay or cause to be paid all Government Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Government Charges which are Buyer's

responsibility hereunder, Buyer shall reimburse Seller for such Government Charges within thirty (30) days of Notice by Seller. If Buyer is required by Law or regulation to remit or pay Government Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall reimburse Buyer for such amounts within thirty (30) days of Notice from Buyer. Nothing shall obligate or cause a Party to pay or be liable to pay any Government Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Government Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Government Charge shall be in accordance with the first four sentences of this Section.

#### 14. CONFIDENTIALITY

Seller authorizes Buyer to release to the \_\_\_\_\_ (relevant state regulatory agencies) information regarding the Facility, including the Seller's name and location, and the size, location and operational characteristics of the Facility, the Term, the eligible renewable energy resource credit type, the Commercial Operation Date, Greenhouse Gas Emissions data and the net power rating of the Facility, as requested from time to time pursuant to the agency rules and regulations. Such information is by default deemed non-confidential and the Seller authorizes the agency to release such information to non-market participants upon request.

#### 15. ASSIGNMENT

Seller may not assign this Agreement or its rights or obligations under this Agreement without Buyer's prior written consent, which consent will not be unreasonably withheld; provided, however, that Seller may, without Buyer's consent (and without relieving Seller from liability under this Agreement), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender in connection with any financing for Facility if (i) such Lender assumes the payment and performance obligations provided under this Agreement with respect to Seller, (ii) such Lender agrees in writing to be bound by the terms and conditions of this Agreement, and (iii) Seller delivers such tax and enforceability assurance as Buyer may reasonably request. Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will not be deemed an assignment, such that Notice of Change in Control is not required.

#### 16. 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 this state, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

## 17. DISPUTE RESOLUTION

17.1. Intent of the Parties. The preferred procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Section 16, except that either Party may seek an injunction in Superior Court in [utility-specific location], \_\_\_\_\_ (county, state) if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure. Both Parties agree to utilize the dispute resolution procedure in this section as the first venue for dispute resolution. Either Party may subsequently seek legal remedies, if this dispute resolution procedure fails.

17.2. Management Negotiations.

17.2.1. The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's authorized representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting, to be held in person or telephonically, to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place.

17.2.2. All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent judicial or arbitration process between the Parties, whether with respect to this dispute or any other.

17.2.3. If the matter is not resolved within forty-five (45) days of commencement of negotiations under Section 16.2.1, or if the Party receiving the written request to meet refuses or does not meet within the ten (10) Business Day period specified in Section 16.2.1, either Party may initiate arbitration of the controversy or claim according to the terms of Section 16.3.

17.2.4. Arbitration Initiation. If the dispute cannot be resolved by negotiation as set forth in Section 16.2 above, then the Parties shall resolve such controversy through arbitration ("Arbitration"). The Arbitration shall be adjudicated by one retired judge or justice from the JAMS panel. The Arbitration shall take place in [utility-specific location, and State] and shall be administered by and in accordance with JAMS' Commercial Arbitration Rules. If the Parties cannot mutually agree on the arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to

arbitrate at any time following the unsuccessful conclusion of the management negotiations provided for in Section 16.2.

- 17.2.5. Arbitration Process. The arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request for depositions. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.
- 17.2.6. The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- 17.2.7. The arbitrator's award shall be made within nine (9) months of the notice of intention to arbitrate and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary. At the conclusion of the Arbitration, the arbitrator shall prepare in writing and provide to each Party a decision setting forth factual findings, legal analysis, and the reasons on which the arbitrator's decision is based.
- 17.2.8. The arbitrator shall not have the power to commit errors of law or fact, or to commit any abuse of discretion, that would constitute reversible error had the decision been rendered by a \_\_\_\_\_ (state) superior court. The arbitrator's decision may be vacated or corrected on appeal to a \_\_\_\_\_ (state) court of competent jurisdiction for such error.
- 17.2.9. The \_\_\_\_\_ (state) Superior Court of the City and County of [*utility-specific location*] may enter judgment upon any award rendered by the arbitrator.
- 17.2.10. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.
- 17.2.11. The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

17.2.12. Unless otherwise agreed to by the Parties, all proceedings before the arbitrator shall be reported and transcribed by a certified court reporter, with each Party bearing one-half of the court reporter's fees.

## 18. MISCELLANEOUS

- 18.1. Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by the \_\_\_\_\_ (state energy regulatory agency) or any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- 18.2. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.
- 18.3. Interpretation. Whenever this Agreement specifically refers to any Law, tariff, Government Authority, regional reliability council, Transmission/Distribution Owner, or credit rating agency, the Parties hereby agree that the references also refers to any successor to such Law, tariff or organization.
- 18.4. General. The state governing authority has reviewed and approved this Agreement. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.
- 18.5. Modification. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both parties. Unilateral contract modification upon a change in governing law shall be impermissible. Unilateral filings with the state governing authority regarding changes in rates, charges, classifications, service, Tariffs or any agreement relating thereto shall similarly be impermissible.
- 18.6. Construction. The Parties acknowledge and agree that this Agreement has been approved by the \_\_\_\_\_ (state energy regulatory agency) and that the Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below. [Need to put in provision around amount of Deposit during Development and how that Collateral is held. Re-insert language regarding development collateral but leave out the exact \$ amount per MW]

***[insert utility name]* BUYER**

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

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

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

**SELLER**

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

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

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

## **APPENDIX A DEFINITIONS**

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

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

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

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

“Commercial Operation Date” means the date on which the Facility is operating and is in compliance with applicable interconnection and system protection requirements, and able to produce and deliver energy to Buyer pursuant to the terms of this Agreement.

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

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

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

“Compliance Cost Cap” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under sections pertaining to REC tracking, Obtaining and Maintaining Certification and Verification, Resource Adequacy, EIRP Requirements, Greenhouse Gas Emissions Reporting and including, but not limited to, registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller’s internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date



which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date.

“Contract Year” means a period of twelve (12) consecutive months with the first Contract Year commencing on the first day of the month immediately following the Initial Energy Delivery Date and each subsequent Contract Year commencing on the anniversary of the Initial Energy Delivery Date.

“Delivery Point” is the point of interconnection with the state grid operator for those Facilities with Contract Capacity of 1 MW or greater, and the point of interconnection for those Facilities with Contract Capacity less than 1 MW interconnecting at the distribution level.

“Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, Deliverability Upgrades, or Interconnection Facilities that are determined to be necessary by the state grid operator or Transmission/Distribution Owner, as applicable, to physically and electrically interconnect the Facility to the Transmission/Distribution Owner’s electric system for receipt of Energy at the Point of Interconnection if connecting to the state Grid, or the Interconnection Point, if the Transmission/Distribution Owner’s electric system is not part of the state Grid.

“Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in the state code pertaining to eligible renewable energy resources, as either code provision may be amended or supplemented from time to time.

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

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

“Forced Curtailment” has the meaning set forth in Section 5.6.1.1.

“Forced Outage” means any unplanned reduction or suspension of the electrical output from the Facility resulting in the unavailability of the Facility, in whole or in part, in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of the Facility for operation, in whole or in part, for maintenance or repair that is not a scheduled maintenance outage and not the result of Force Majeure.

“Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could

not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby. Force Majeure shall not be based on:

- (i) BUYER's inability economically to use or resell the energy or capacity purchased hereunder;
- (ii) Seller's ability to sell the energy, capacity or other benefits produced by or associated with the Facility at a price greater than the price set forth in this Agreement,
- (iii) Seller's inability to obtain approvals of any type for the construction, operation, or maintenance of the Facility; \
- (iv) Seller's inability to obtain sufficient fuel to operate the Facility, except if Seller's inability to obtain sufficient fuel is caused by an event of Force Majeure of the specific type described in any of subsections (i) through (iv) of this definition of Force Majeure;
- (v) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (i) through (iv) of this definition of Force Majeure;
- (vi) a strike or labor dispute limited only to Seller, Seller's affiliates, the Engineering, Procurement, and Construction Contractor or subcontractors thereof; or
- (vii) any equipment failure not caused by an event of Force Majeure of the specific type described in any of subsections (i) through (iv) of this definition of Force Majeure.

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

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation 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 (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations InterGovernment 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;<sup>3</sup> (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) production tax credits associated with the 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 state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

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

"Nameplate" has the meaning set forth in Section 2.1.5.

"Product" means the energy (net of Station Use), capacity and all ancillary products, services or attributes similar to the foregoing which are or can be produced by or associated with the Facility, including, without limitation, renewable attributes, Renewable Energy Credits, Resource Adequacy Benefits and Green Attributes. <sup>3</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

"Renewable Energy Credit" has the meaning set forth in the relevant state code, as may be amended from time to time or as further defined or supplemented by Law.

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

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

“Unforced Outage” has the meaning set forth in Section 5.6.2.1.

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

**APPENDIX B**  
**DESCRIPTION OF THE FACILITY**

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

Name of the Facility:

Address of the Facility:

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

Drawing showing the general arrangement of the Facility:

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

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

Longitude and latitude of the centroid of the Site:

**APPENDIX C**  
**TIME OF DELIVERY PERIODS AND PAYMENT ALLOCATION FACTORS**

**[PG&E Time of Delivery (TOD) Periods & Payment Allocation Factors]**

**Energy-Only Payment Allocation Factors**

<b>Monthly Period</b>	<b>Super-Peak<sup>1</sup></b>	<b>Shoulder<sup>2</sup></b>	<b>Night<sup>3</sup></b>
Jun – Sep	1.35	1.07	0.70
Oct.- Dec., Jan. & Feb.	1.23	1.11	0.78
Mar. – May	1.13	1.02	0.71

**Full Capacity Deliverability Payment Allocation Factors**

<b>Monthly Period</b>	<b>Super-Peak<sup>1</sup></b>	<b>Shoulder<sup>2</sup></b>	<b>Night<sup>3</sup></b>
Jun – Sep	2.38	1.12	0.59
Oct.- Dec., Jan. & Feb.	1.10	.94	0.66
Mar. – May	1.22	0.90	0.61

Definitions:

1. Super-Peak (5x8) = HE (Hours Ending) 13 – 20 (Pacific Prevailing Time (PPT)), Monday - Friday (*except* NERC holidays) in the applicable Monthly Period.
2. Shoulder = HE 7 - 12, 21 and 22 PPT Monday - Friday (*except* NERC holidays); and HE 7 - 22 PPT Saturday, Sunday and *all* NERC holidays in the applicable Monthly Period.
3. Night (7x8) = HE 1 - 6, 23 and 24 PPT all days (*including* NERC holidays) in the applicable Monthly Period.

“NERC Holidays” mean the following holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. Three of these days, Memorial Day, Labor Day, and Thanksgiving Day occur on the same day each year. Memorial Day is the last Monday in May; Labor Day is the first Monday in September; and Thanksgiving Day is the 4<sup>th</sup> Thursday in November. New Year’s Day, Independence Day, and Christmas Day, by definition, are predetermined dates each year. However, in the event they occur on a Sunday, the “NERC Holiday” is celebrated on the Monday immediately following that Sunday. However, if any of these days occur on a Saturday, the “NERC Holiday” remains on that Saturday.