

**Renewable Power Purchase Agreement**

**By and between**

**The City of Santa Clara, t/d/b/a Silicon Valley Power**

**And**

**Viento Loco Wind LLC**

**August \_\_, 2018**

**RENEWABLE POWER PURCHASE AGREEMENT  
BETWEEN  
THE CITY OF SANTA CLARA t/d/b/a SILICON VALLEY POWER  
AND  
VIENTO LOCO WIND LLC**

This RENEWABLE POWER PURCHASE AGREEMENT (the “Agreement”) is made and entered into this \_\_\_\_\_ day of August, 2018, (“Effective Date”), by and between the City of Santa Clara, t/d/b/a Silicon Valley Power, a chartered California municipal corporation (“Buyer”), and Viento Loco Wind LLC, a Delaware limited liability company (“Seller”). Buyer and Seller are sometimes referred to in this Agreement individually as a “Party” and collectively as the “Parties”.

A. Seller desires to develop, build, and operate a wind-powered electric generating facility as described in Exhibit A (“Project”).

B. The Parties wish to enter into a power purchase agreement for the sale and purchase of Energy, Capacity, Capacity Attributes, and Environmental Attributes from the Project to Buyer.

**NOW THEREFORE**, in consideration of the mutual covenants contained in this Agreement, and of other good and valuable considerations, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. DEFINITION OF TERMS**

Alternative Delivery Point: A CAISO Scheduling Point, other than the Delivery Point, at which Buyer and Seller mutually agree to make and take delivery of Product pursuant to Section 2.2 during transmission outages or curtailments that prevent delivery of Product to the Delivery Point.

Availability Shortfall: [REDACTED]

Availability Shortfall Damages: [REDACTED]

An example of the calculation of Availability Shortfall Damages is set forth in Exhibit L.

Available Time: For each wind turbine comprising the Project and for each Contract Year, the aggregate amount of time (expressed in hours) during such Contract Year that the wind turbine is available to produce Energy, as determined by Seller's supervisory control and data acquisition (SCADA) system used for reporting availability; provided, that such wind turbine will be deemed to be available to produce Energy during (i) a Force Majeure event; (ii) a Weather Event; and/or (iii) a curtailment of the Project by Buyer pursuant to Section 6.5 or curtailment by the CAISO or any other applicable Transmission Provider. Seller will provide Buyer with the wind turbine manufacturer availability data and any adjustments or calculations applied to that data to obtain the wind turbine availability determined by Seller's SCADA.

Balancing Authority (BA): Entity responsible for the reliable planning and operation of the bulk electric power system in a defined area.

Balancing Authority Area: The system of transmission lines and associated facilities that is operated by a Balancing Authority and for which the Balancing Authority has operational control and responsibility for grid reliability of the bulk electric power system.

Business Day: Any Monday through Friday, inclusive, but excluding days that are observed as business holidays by either Party or days that are NERC Holidays.

Buyer: The City of Santa Clara, t/d/b/a Silicon Valley Power.

CAISO: The California Independent System Operator Corporation or its successor.

CAISO Price: The price at the Delivery Point applied by the CAISO to Energy scheduled for delivery in the CAISO's Fifteen Minute Market or other mutually agreed upon CAISO market price applicable to the Delivery Point.

CAISO Tariff: The California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

California Energy Commission (CEC): The agency responsible for certifying eligible renewable resources and tracking the procurement of such resources.

California Renewable Portfolio Standard (RPS): The standard, codified in Public Utilities Code (PUC) Sections 399.11 through 399.20, and Public Resources Code (PRC) Sections 25740 through 25751, as may be amended from time to time.

Capacity: The instantaneous ability of a generator to produce Energy (real power) at a specified output. Capacity is measured in megawatts ("MW") AC or kilowatts ("kW") AC.

Capacity Attributes: Any current or future defined characteristic, certificate, tag or credit, whether general in nature or specific as to the location, , or any other attribute intended to value any aspect of the capacity of the Project to produce Energy, including but not limited to any accounting construct, so that in each case such capacity may be counted toward a resource adequacy obligation or similar measure.

CEC Certification: The California Energy Commission (or its successor agency) has certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility, net of Station Service Load, qualifies as generation from an ERR for purposes of the Facility.

CEC Pre-Certification: The California Energy Commission (or its successor agency) has pre-certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility, net of Station Service Load, qualifies as generation from an ERR for purposes of the Facility.

Change of Law: The adoption or enactment of any law, statute, regulation, rule, code, order, or ordinance by any Governmental Authority or WREGIS or issuance of any written ruling, determination, authorization, or approval of a Governmental Authority or WREGIS.

Commercial Operation: The period of operation of the Project once the Project has met the requirements specified in Section 2.3.1.

Commercial Operation Date: The date specified in the Commercial Operation Date Confirmation Letter on which the Project has achieved Commercial Operation.

Commercial Operation Date Confirmation Letter: A letter that the Parties execute and exchange in accordance with Section 2.3.3, the form of which is attached as Exhibit E.

Compliance Costs: All incremental costs and expenses incurred by Seller to comply with the following, (each a "Compliance Cost Event"): (i) Article 4 (Conveyance of Capacity Attributes) and Exhibit F; or (ii) Article 3 (Certification as an Eligible Renewable Energy Resource ) and Exhibit H; provided, however, that Compliance Costs does not include normal operating costs that would have been incurred by Seller in the absence of a Compliance Cost Event and regular ongoing administrative activity costs (including but not limited to reporting to Governmental Authorities) even if caused by a Compliance Cost Event.

Compliance Cost Cap: Has the meaning set forth in Section 2.5.

Compliance Cost Event: Has the meaning set forth in the definition of "Compliance Costs".

Contract Capacity: The amount equal to two hundred (200) MW, as it may be revised pursuant to Section 2.3.6.

Contract Price: The price paid by Buyer to Seller in return for the sale and delivery of the Product from the Project. The Contract Price for each Contract Year is shown in Exhibit B.1.

Contract Year: Any of the one-year periods during the Delivery Term, with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the applicable anniversary of such date.

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

Curtailed Product: Product that could have been produced by the Project but for a curtailment of the Project by Buyer pursuant to Section 6.5. Each month, Seller shall reasonably calculate and provide notice to Buyer of the Curtailed Product, determined in accordance with Exhibit N.

Curtailed Product Event: A curtailment of the Project by Buyer pursuant to Section 6.5.

Curtailed Product Price: The price paid by Buyer to Seller for Curtailed Product. The Curtailed Product Price for each Contract Year is shown in Exhibit B.2.

Day Ahead Schedule: Has the meaning set forth in the CAISO Tariff.

Delay Damages: The compensation paid by Seller to Buyer due to a failure of Seller to meet the Guaranteed Commercial Operation Date.

Delivery Point: The PV West 500 Scheduling Point; provided that, if the PV West 500 Scheduling Point is temporarily unavailable or permanently ceases to be a valid Scheduling Point, then the Delivery Point will be the other Scheduling Point designated by the CAISO for the scheduling of transactions at the intertie between the CAISO Balancing Authority Area and the Salt River Project or Arizona Public Service Balancing Authority Area.

Delivery Term: The period of the Agreement from the Commercial Operation Date through the end of the twentieth (20<sup>th</sup>) Contract Year, unless terminated earlier in accordance with the terms of this Agreement.

Dispatch Instruction: Has the meaning set forth in the CAISO Tariff.

Dynamic Schedule: Has the meaning set forth in the CAISO Tariff.

Eligible Renewable Energy Resource (ERR): An Eligible Renewable Energy Resource as defined in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25471, as either code may be amended or supplemented from time to time, as defined in the CEC Renewables Portfolio Standard Eligibility Guidebook, as may be amended or supplemented from time to time.

Energy: Electrical energy measured in megawatt-hours (MWh).

Environmental Attributes: means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facility, and its avoided emission of pollutants. Environmental 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;<sup>1</sup> (3) the reporting rights to these avoided emissions, such as Environmental Attribute Reporting Rights. Environmental Attribute Reporting Rights are the right of an Environmental Attribute Purchaser to report the ownership of accumulated Environmental Attributes in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Environmental Attribute Purchaser's discretion, and include without limitation those Environmental Attribute 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. Environmental Attributes are accumulated on a MWh basis and one Environmental Attribute represents the Environmental Attributes associated with one (1) MWh of Energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facility, (ii) production tax credits associated with the construction or operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating 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 Generating Facility for compliance with local, state, or federal operating and/or air quality permits.

Expected Nameplate Capacity: The amount equal to two hundred twenty (220) MW.

Expected Annual Energy Production: The Energy that the Project is expected to produce and deliver to the Delivery Point during a typical year of operation, factoring in typical weather patterns, expected fuel availability, etc., which is equal to the product of (a) the Contract Capacity, multiplied by (b) a [REDACTED] multiplied by (c) 8,760 hours, adjusted by (d) [REDACTED].

EWG: An Exempt Wholesale Generator as defined in 18 CFR Section 366.1.

FERC: The Federal Energy Regulatory Commission or any successor government agency.

<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Environmental Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Fifteen Minute Market: Has the meaning set forth in the CAISO Tariff.

Fifteen Minute Market Schedule: Has the meaning set forth in the CAISO Tariff.

Forced Outage: The removal from service of the Project, or any portion of the Project, for emergency reasons or any condition in which the Project is unavailable due to an unanticipated failure, and specifically excludes any outage due to Force Majeure or Planned Outage.

Force Majeure: An event or circumstance that prevents or delays the ability of one Party from performing obligations under this Agreement, and which is not in the reasonable control of, or the result of negligence of, the Party claiming Force Majeure, and which the claiming Party is unable to overcome or cause to be avoided by the exercise of due diligence. Force Majeure shall include riot, insurrection, war, mobilization, explosion, strike, civil disturbances, national emergency, fire, flood, earthquake, vandalism, storm, lightning, tsunami, backwater caused by flood, act of the public enemy, terrorism, epidemic, or any action or inaction by any Governmental Authority. Under no circumstances shall the following constitute an event of Force Majeure: (a) either Party's financial incapacity, (b) Seller's ability to sell electric Energy, Capacity, Capacity Attributes, or Environmental Attributes at a more favorable price or under more favorable conditions or Buyer's ability to acquire electric Energy, Capacity, Capacity Attributes, or Environmental Attributes at a more favorable price or under more favorable conditions or other economic reasons, (c) Forced Outages to the extent such are not caused or exacerbated by an event of Force Majeure as described above, (d) delays or nonperformance of suppliers, vendors or other third parties with whom a Party has contracted, except to the extent that such delays or nonperformance were due to circumstances that would themselves constitute Force Majeure, or (e) any other economic hardship or changes in market conditions affecting the economics of either Party.

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

Governmental Authority: The federal government of the United States, and any state, county, municipal or local government or regulatory department, body, political subdivision, commission, agency, instrumentality, ministry, court, judicial or administrative body, taxing authority, or other authority thereof (including any corporation or other entity owned or controlled by any of the foregoing) having jurisdiction over any Party, the Project, or the rights or obligations of any Party under this Agreement; provided, however, that the City of Santa Clara shall be considered a Governmental Authority hereunder. The CAISO shall be considered a Governmental Authority for purposes of this Agreement.

Guaranteed Commercial Operation Date: The date specified in Section 2.3.4.

Hourly Production: For each hour, the sum of the total Energy produced by the Project in each of the four (4) CAISO fifteen-minute settlement intervals in the hour, measured in MWh. For any hour in which Energy from the Project is scheduled through the use of Dynamic Schedules or a Pseudo-Tie, the Hourly Production will equal the Metered Amounts for such hour. For any hour in which Energy from the Project is not scheduled through the use of Dynamic Schedules or a Pseudo-Tie, the Hourly Production will equal the lesser of (a) Metered Amounts, or (b) Scheduled Amounts.

Interconnection Agreement: The agreement between SunZia LLC, or one of its Affiliates, and Seller specific to the interconnection of the Project to the SunZia 500 kV line.

Interconnection Point: The physical point of interconnection of the Project to the SunZia 500 kV line, as further identified in the Interconnection Agreement.

Interest Rate: For any date, the lesser of: (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) plus two percent (2%); and (ii) the maximum rate permitted by applicable law.

Letter(s) of Credit: One or more irrevocable, transferable standby letters of credit issued by a Qualified Issuer in substantially the form set forth in Exhibit D or any other form that is reasonably acceptable to Buyer.

Losses: means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. If the Non-Defaulting Party is the Seller, then “Losses” shall exclude any loss of Production Tax Credits, Energy Investment Tax Credits, or other federal or state tax credits, grants, or benefits related to the Project or generation therefrom.

Qualified Issuer: is defined as a major U.S. commercial bank or a U.S. branch of a foreign bank that, at the time of delivery of a Letter of Credit, (i) has a net worth of \$10,000,000,000 and (ii) has a senior unsecured long-term credit rating of at least “A-” by Standard & Poor’s Rating Services (or its successors) or “A3” by Moody’s.



Market-Based Rate Authorization: Has the meaning set forth in Section 14.3.

Mechanical Availability: The availability of the wind turbines referenced in Exhibit A comprising the Project to produce Energy. The Mechanical Availability for each Contract Year shall be calculated as the quotient of (a) the sum of the Available Time for each of the wind turbines comprising the Project for such Contract Year, divided by (b) the product of the total number of wind turbines comprising the Project and the total number of hours for such Contract Year.

Metered Amounts: The Energy produced by the Project, as measured by the revenue-quality meter for the Project, net of all applicable electrical losses between the meter and the Delivery Point, except to the extent that such losses are financially settled by Seller pursuant to the terms of a Transmission Provider's tariff.

Moody's: Moody's Investor Services, Inc. or its successor.

MWh (Megawatt-hours): A unit of energy measurement corresponding to 1,000 kilowatt-hours.

NERC: The North American Electric Reliability Corporation, or any successor organization.

NERC Holidays: Days that NERC establishes as holidays for electric energy trading.

Partial Delay Damages: The compensation paid by Seller to Buyer due to Seller achieving Commercial Operation with a Total Nameplate Capacity that is less than the Contract Capacity.

Party/Parties: Buyer and Seller are referred to individually as a "Party" and collectively as "Parties."

Planned Outage: An outage that has been scheduled in advance of one or more of the Project's components that results in a reduction of the ability of the Project to produce Energy.

Portfolio Content Category 1 (PCC-1): Renewable energy comprised of Energy and Environmental Attributes meeting the criteria defined by the CEC Renewable Portfolio Standard Eligibility Guidebook, for Portfolio Content Category 1.

Product: The as-generated Energy, Capacity, Capacity Attributes, and Environmental Attributes that are generated by the Project and delivered to the Delivery Point or Alternative Delivery Point under this Agreement.

Project: The wind-powered electric generating facility described in Exhibit A.

Prudent Utility Practice: Those practices, methods and acts that would be implemented and followed by prudent non-utility operators of electric energy generating facilities in the Western United States, similar to the Project, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with prudent business practices, economy, reliability, and safety. Seller

acknowledges that the use of Prudent Utility Practice by Seller does not exempt Seller from any obligations set forth in this Agreement.

Prudent Utility Practice includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding paragraph that comply with manufacturers' warranties, restrictions in this Agreement, the requirements of governmental authorities, and WECC and NERC standards.

Pseudo-Tie: Has the meaning set forth in the CAISO Tariff.

Renewable Energy Credit (REC): A certificate of proof issued by WREGIS that an Eligible Renewable Energy Resource (ERR) has generated one megawatt hour (MWh or 1,000 kWh) of electricity. A REC shall also have the same meaning as in California Public Utilities Code Section 399.12(h). Currently RECs are used to convey Environmental Attributes associated with electricity production by a renewable energy resource.

Resource Adequacy: A requirement by a Governmental Authority, in accordance with a FERC-approved tariff, or a policy approved by a local regulatory authority, that is binding upon either Party and that requires such Party procure a certain amount of electric generating Capacity.

RPS Certification: A certification by the CEC (or, with respect to periods before the Project has commenced commercial operation (as such term is defined by and according to the CEC), a pre-certification by the CEC) that the Project is an ERR for purposes of the RPS legislation and that all Energy produced by the Project, net of Station Service Load, qualifies as generation from an ERR.

Scheduled Amounts: The Energy delivered to the Delivery Point by Seller, as evidenced in the final e-tags for deliveries from the Project.

Scheduling: The act of producing, or relating to the production of, a schedule for the delivery, production or use of Energy, Capacity, and/or transmission that is in compliance with NERC Scheduling (NERC tagging) requirements.

Scheduling Coordinator: Seller, or its designee, shall be the Scheduling Coordinator. Scheduling Coordinator has the meaning set forth in the CAISO Tariff.

Scheduling Point: Has the meaning set forth in the CAISO Tariff.

Seller: The Party so identified in the preamble of this Agreement, and its permitted successors and assigns.

Settlement Amount: means the amount in US\$ equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

Station Service Load: The electrical loads associated with the operation and maintenance of the Project that may at times be supplied from the Project.

Target Availability: For purposes of determining Availability Shortfall and calculating Availability Shortfall Damages, the Target Availability, expressed as a decimal, is [REDACTED].

Target Commercial Operation Date: The planned Commercial Operation Date of the Project, which is December 1, 2021.

Total Nameplate Capacity: For any given date, the sum of the manufacturer's nameplate ratings of all installed wind turbine generators comprising the Project as of such date.

Transmission Provider: An electric utility, grid operator or other entity owning or controlling high voltage wires, transformers and related equipment used to transmit Energy from the Project to the Delivery Point.

Weather Event: Any condition causing icing on the wind turbine blades, excessive wind speeds in excess of the cut out speed for the wind turbines or insufficient wind speeds below the cut-in speed for the wind turbines (in each case, as specified in the manufacturers' technical specifications for such wind turbines set forth in Attachment 1 to Exhibit A), or any period during which a hail or tornado warning exists, provided that (a) such Weather Event is not attributable to Seller's fault or negligence, (b) such Weather Event is caused by factors beyond Seller's reasonable control, and (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, Seller has been unable to prevent, avoid, mitigate or overcome such event or consequences. For the avoidance of doubt, a wind turbine will be deemed to be available for purposes of the Available Time definition during a Weather Event affecting such wind turbine even if that wind turbine is recorded as unavailable in Seller's SCADA system.

WECC: The Western Electricity Coordinating Council, which is the regional entity responsible for coordinating and promoting bulk electric system reliability in the western United States and western Canada, or any successor organization.

WREGIS: The Western Renewable Energy Generation Information System, sponsored by WECC and utilized by the CEC for tracking the generation and transfer of RECs, or any successor renewable energy tracking system utilized by the CEC for implementing California's RPS, including tracking the generation and transfer of RECs.

## **2. FACILITY; PURCHASE AND SALE OF PRODUCTS**

### **2.1 Project**

This Agreement governs Buyer's purchase of Product from the Project. After the close of each calendar quarter until the Commercial Operation Date, Seller shall provide quarterly updates to Buyer regarding the progress of the development and construction of the Project, including progress towards achieving the development milestones set forth in Exhibit M. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("Remedial Action Plan"),

providing a detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and the Guaranteed Commercial Operation Date. If the missed Milestone(s) is not the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.1, then Seller shall not be considered in default of its obligations under this Agreement.

## **2.2 Products Purchased**

During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, all Products generated by the Project. Energy shall be supplied only from the Project, and shall be supplied from the Project whenever available. To the extent that a transmission outage or curtailment occurs and Seller is unable to deliver Product to the Buyer at the Delivery Point but Seller identifies one or more Alternative Delivery Point(s) at which it is willing to deliver Product to Buyer and make Buyer financially indifferent in respect of congestion and losses, Buyer will have the option to take Product at one of the identified Alternative Delivery Points. If Buyer does not agree to take Product at an Alternative Delivery Point within one (1) day following Notice from Seller of such Alternative Delivery Point(s), or if Seller fails to identify an Alternative Delivery Point, Seller shall have the right to sell Product to third parties for the duration of the transmission outage or curtailment. Seller agrees to sell to Buyer the Project's gross output of Energy in kilowatt-hours, net of Station Service Load and transformation and transmission losses to the Delivery Point (to the extent that transmission losses are not settled financially under the applicable Transmission Provider's tariff). In no event shall Seller have the right to procure Energy, Capacity, Capacity Attributes, or Environmental Attributes from sources other than the Project for sale or delivery of Products to Buyer under this Agreement. For the avoidance of doubt, the Parties agree that financial settlement of transmission losses does not result in Energy being procured from a source other than the Project for sale to Buyer hereunder.

## **2.3 Commercial Operation**

### **2.3.1 Requirements for Commercial Operation**

The Project will be deemed to have achieved Commercial Operation on the latest date on which all of the following conditions have been satisfied or waived by both Parties:

- (a) Wind turbine generators with a Total Nameplate Capacity of at least [REDACTED] MW have been installed and commissioned;
- (b) The Project is complete in all material respects and Seller is capable of performing its obligations under this Agreement;
- (c) All contracts with the Transmission Providers for necessary transmission service have been executed and are in good standing;
- (d) All contracts required for a Pseudo-Tie or the Dynamic Scheduling of the Project have been executed with CAISO;
- (e) The electrical interconnection facilities of Seller have demonstrated the ability to accept the Contract Capacity;

- (f) All applicable regulatory authorizations, approvals and permits for the continuous operation of the Project ("Governmental Approvals") are obtained;
- (g) Seller shall have obtained the CEC Pre-Certification for the Facility;
- (h) Seller shall have delivered a Letter of Credit for the security required pursuant to Section 9.2;
- (i) The Project is capable of delivering Energy to the Delivery Point in accordance with Prudent Utility Practices; and
- (j) Seller has delivered the notice required in Section 2.3.2.

### **2.3.2 Notice of Commercial Operation**

Seller shall provide Buyer with written notice of Commercial Operation for Buyer's review when the Project has satisfactorily completed the requirements in Section 2.3.1. Such notice shall include a letter from a licensed engineer stating the Total Nameplate Capacity of the Project as of the date of such letter.

### **2.3.3 Commercial Operation Date Confirmation Letter**

Upon satisfaction of the requirements in Section 2.3.1, Seller shall execute and then provide to Buyer for execution, the "Commercial Operation Date Confirmation Letter." Within five (5) Business Days after receipt from Seller of the Commercial Operation Date Confirmation Letter, Buyer shall either inform Seller that (i) Buyer has verified the claimed Commercial Operation Date; or (ii) that Buyer believes that the submission requires additional information or that Seller must take additional action to achieve Commercial Operation. During this review period, Buyer will verify completion of construction and compliance with material permitting requirements, review of other material actions required by the Project. If Buyer determines that additional information or Seller actions are required, Buyer shall provide with specificity the outstanding requirements. Upon resubmission of an amended Commercial Operation Date Confirmation Letter by Seller, Buyer shall have five (5) Business Days to review and respond to the amended Commercial Operation Date Confirmation Letter with a verification of Commercial Operation or identification of outstanding requirements. Any disputes regarding the Commercial Operation for the Project shall be subject to Section 19. Once Buyer verifies Commercial Operation or the Commercial Operation Date is determined through dispute resolution, Exhibit A (Description and Location of Project) shall be updated with appropriate values. The Commercial Operation Date specified in the Commercial Operation Date Confirmation Letter shall be the latest date on which all of the conditions in Section 2.3.1 were satisfied or waived by both Parties, irrespective of the date on which the Commercial Operation Date Confirmation Letter is signed by both Parties. The fully executed version of the Commercial Operation Date Confirmation Letter shall be attached as Exhibit E to this Agreement and automatically replace the Exhibit E currently attached to this Agreement.

### **2.3.4 Payment for Delay of Commercial Operation**

If Seller fails to achieve Commercial Operation of the Project on or before December 31, 2022, (the "Guaranteed Commercial Operation Date"), then Seller shall pay Buyer Delay Damages of [REDACTED] for every calendar day the Project does not

achieve Commercial Operation after the Guaranteed Commercial Operation Date and until Commercial Operation is achieved; provided that (a) the Delay Damages shall not exceed the amount of project development security provided by Seller pursuant to Section 9.1 and (b) the Guaranteed Commercial Operation Date will be extended on a day-for-day basis and Seller shall not owe Buyer Delay Damages if the delay was caused by Force Majeure, a failure of Buyer to comply with its obligations under this Agreement, or a delay in completion of interconnection facilities or transmission upgrades required for the Project or transmission of Energy to the Delivery Point (unless such delay was caused by the fault or negligence of Seller).

### **2.3.5 Buyer Termination Right for Failure to Achieve Commercial Operation**

If Seller fails to achieve Commercial Operation of the Project on or before the date that is [REDACTED] calendar days after the Guaranteed Commercial Operation Date, as extended pursuant to Section 2.3.4, then Buyer shall have the right, but not the obligation, to terminate this Agreement. To exercise this right, Buyer shall provide Seller with a 30 calendar day advance written notice. If Seller achieves the Commercial Operation Date prior to the end of the 30 calendar day notice period, Buyer may not exercise its right to terminate the Agreement. If Buyer exercises this termination right, then Buyer's sole and exclusive remedy will be to draw upon and retain the full amount of the security posted by Seller pursuant to Section 9.1.

### **2.3.6 Partial Commercial Operation**

If Seller achieves Commercial Operation with a Total Nameplate Capacity that is less than the Contract Capacity, then (a) Seller shall be entitled to a period of twelve (12) months after the Commercial Operation Date to continue installing wind turbine generators at the site to achieve the Expected Nameplate Capacity, and (b) Seller shall pay Buyer Partial Delay Damages of [REDACTED] for each calendar day after the Commercial Operation Date until the earlier of (i) the date on which Seller provides notice that it has completed installation of wind turbine generators comprising the Project and the Total Nameplate Capacity at such time is at least [REDACTED] MW, or (ii) the first (1<sup>st</sup>) anniversary of the Commercial Operation Date; provided that the sum of any Delay Damages paid pursuant to Section 2.3.4 and any Partial Delay Damages paid pursuant to this Section 2.3.6 shall not exceed the amount of project development security provided by Seller pursuant to Section 9.1. If the Total Nameplate Capacity as of the first (1<sup>st</sup>) anniversary of the Commercial Operation Date is at least one hundred eighty (180) MW, but less than the Contract Capacity, then the Contract Capacity will automatically be reduced to equal the Total Nameplate Capacity at such time, and the Parties will promptly update Exhibit A accordingly.

### **2.3.7 Buyer Termination Right for Failure to Install Additional Capacity**

If (a) Seller achieves Commercial Operation with a Total Nameplate Capacity that is less than the Contract Capacity, and (b) the Total Nameplate Capacity as of the first (1<sup>st</sup>) anniversary of the Commercial Operation Date is less than [REDACTED] MW, then Buyer shall have the right, but not the obligation, to terminate this Agreement. To exercise this right, Buyer must provide Seller with written notice of termination within

thirty (30) calendar days after the first (1<sup>st</sup>) anniversary of the Commercial Operation Date or else such termination right will be deemed to have been waived. If Buyer exercises this termination right, then Buyer's sole and exclusive remedy will be to draw upon and retain from the security posted by Seller pursuant to Section 9.2 an amount equal to the difference between (a) the amount of project development security provided by Seller pursuant to Section 9.1 minus (b) the amount of any Delay Damages paid pursuant to Section 2.3.4 and any Partial Delay Damages paid pursuant to Section 2.3.6.

#### **2.3.8 Seller Early Termination Rights**

In the event that Seller has failed to [REDACTED]

[REDACTED] then Seller shall have the right to terminate this Agreement by providing notice of such termination to Buyer. If such failure is not due to the fault or negligence of Seller, then upon such termination, neither Party will have any liability to the other hereunder, and Buyer will return to Seller any security then held by Buyer pursuant to Section 9.1. If such failure is due to the fault or negligence of Seller, then upon such termination, Buyer will have the right to draw upon and retain the full amount of the security posted by Seller pursuant to Section 9.1, which will be Buyer's sole and exclusive remedy for early termination of this Agreement.

### **2.4 Payment for Products Purchased; Payment for Curtailed Product**

#### **2.4.1 Contract Price**

Prior to the Commercial Operation Date, Seller shall sell and Buyer shall purchase all Energy and other Product produced by the Project and delivered to the Delivery Point at a price equal to the CAISO Price plus, as long as the PCC1 RECs are created in WREGIS, [REDACTED]. Once the Project has achieved Commercial Operation, Buyer will pay Seller the Contract Price for the Product produced by the Project and delivered to the Delivery Point each hour.

#### **2.4.2 CAISO Pass Through**

Each month, Seller shall pass through to Buyer all CAISO revenues, credits, costs and charges received by or assessed to the Seller or Seller's designee, as Scheduling Coordinator for the Project, in respect of the Project, participation of the Project in CAISO's markets and the delivery of Product to the Delivery Point, including all CAISO costs and revenues associated with imbalances and deviations. Seller shall provide to Buyer the CAISO settlement data, including charge codes, for such revenues, credits, costs and charges including the meter data, Day Ahead Schedules, Dispatch Instructions and the Fifteen Minute Market Schedules.

#### **2.4.3 Curtailed Product**

Each month, Buyer shall pay Seller for the Curtailed Product in the prior month by multiplying the applicable Curtailed Product Price by the Curtailed Product.

#### **2.4.4 System Losses**

All Products specified herein are amounts as provided at the Delivery Point, and Seller is responsible for all losses to the Delivery Point, which Seller may elect to settle financially with its Transmission Providers.

#### **2.4.5 Title and Risk of Loss**

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

#### **2.4.6 Invoicing; Payments**

On or before the fifteenth (15<sup>th</sup>) of each month, Seller shall provide an invoice to Buyer specifying amounts due to Seller pursuant to this Agreement for the prior month. The invoice shall reflect the net amount owing to Seller or Buyer under this Agreement in respect of the prior month (including any adjustments to prior invoiced amounts as a result of changes in CAISO amounts). Within thirty (30) calendar days after receipt of such invoice, the Party owing shall pay the other Party the amount due by check or Automated Clearing House transfer, or by any other means agreed upon by the Parties in writing from time to time. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate equal to the Interest Rate.

#### **2.4.7 True-up for Failure to Deliver Environmental Attributes**

If, by May 1 of each Calendar Year, Seller fails to deliver in WREGIS, RECs equal to the aggregate Hourly Production during the prior Calendar Year, Seller shall pay Buyer the positive difference, if any, between the applicable Contract Price for such Calendar Year and the simple average of the CAISO Price during such Calendar Year for the corresponding difference between aggregate Hourly Production and RECs delivered for such Calendar Year. If (a) Seller subsequently delivers any RECs for which damages were paid by Seller pursuant to the foregoing sentence, and (b) those RECs are eligible to be used for compliance with a RPS PCC1 procurement requirement for at least ninety (90) days after their delivery, then Buyer shall refund the damages paid by Seller for such PCC1 RECs.

#### **2.4.8 Annual Availability Guarantee**

Seller shall follow Prudent Utility Practices as well as all manufacturers' guidelines and warranty requirements in operating and maintaining the Project and shall make any needed and commercially reasonable repairs identified through compliance with the foregoing requirements in a reasonably timely manner so as to maximize the Project's availability for generation of electricity.



Within thirty (30) calendar days after the end of each Contract Year, Seller shall submit records supporting Seller's calculation of Mechanical Availability for the prior Contract Year. If the Mechanical Availability for such Contract Year is less than the Target Availability, then Buyer shall send Seller its calculation of Availability Shortfall Damages due for such Contract Year. Availability Shortfall Damages shall be deducted from amounts due to Seller hereunder. Buyer shall have the right to audit and dispute Seller's calculation of Mechanical Availability, but any Availability Shortfall Damages shall be applied during the pendency of such audit or dispute, with a true-up to occur upon resolution of any dispute. Seller's payment of Availability Shortfall Damages (through netting) shall be Buyer's sole and exclusive remedy for the corresponding Availability Shortfall. If any Availability Shortfall Damages remain unpaid upon termination of this Agreement, then Buyer may deduct the Availability Shortfall Damages from the security provided pursuant to Section 9.2.

## **2.5 Compliance Cost Cap**

The Parties agree that the Compliance Costs Seller shall be required to bear during the term of this Agreement to comply with Compliance Cost Events shall be capped at a total of [REDACTED] per calendar year and [REDACTED] in the aggregate from the Effective Date of this Agreement through the end of the Delivery Term ("Compliance Cost Cap"). Within thirty (30) calendar days after the end of each calendar quarter during the term of this Agreement, Seller will provide Buyer with a report describing the Compliance Costs that Seller incurred during that calendar quarter, the total Compliance Costs incurred during the calendar year that includes such calendar quarter, and the total Compliance Costs incurred to date under the Agreement. Prior to incurring Compliance Costs associated with a Compliance Cost Event that are anticipated to exceed \$25,000, Seller shall notify Buyer of the Compliance Cost Event and the expected Compliance Costs. Following such notice, the Parties shall attempt to agree to limit such Compliance Costs to the extent practicable; provided, however, that nothing herein limits Seller's right to incur Compliance Costs that Seller believes in good faith must be incurred for Seller to comply with its obligations under this Agreement, as long as the above notification provisions are met. If Seller determines that it will need to incur costs in excess of the Compliance Cost Cap to comply with one or more Compliance Cost Events, then Seller shall notify Buyer and provide documentation and calculations to support the expected excess costs. Buyer may then: (1) approve the expected excess costs and notify Seller of such approval, and Seller shall comply with the Compliance Cost Events upon receipt of notice of Buyer's approval and Buyer's payment for the expected excess costs; or (2) elect not to pay Seller for the expected excess costs and notify Seller of such decision, in which case this Agreement shall continue in full force and effect and Seller shall continue to be excused from performing any obligation that causes, or would cause, Seller to incur such Compliance Costs in excess of the Compliance Cost Cap. Buyer is not required to reimburse Seller for any Compliance Costs unless and until Buyer approves the expected Compliance Costs in excess of the Compliance Cost Cap. Seller is excused from performing any obligation or taking any action that would cause Seller to incur Compliance Costs in excess of the Compliance Cost Cap unless and until Seller receives payment from Buyer for the expected costs in excess of the Compliance Cost Cap.

### **3. CERTIFICATION AS AN ELIGIBLE RENEWABLE ENERGY RESOURCE**

#### **3.1 RPS Certification and Portfolio Content Category 1**

**3.1.1 RPS Certification.** Buyer requires that all renewable energy sold under this Agreement will meet the State's RPS requirements. At its own expense, Seller shall obtain RPS Certification of the Project with the CEC. Seller shall file an application with the CEC for RPS Certification as soon as possible but in no event later than ten (10) Business Days after receipt of the Commercial Operation Date Confirmation Letter from Buyer, and shall provide the CEC all information necessary to verify this RPS claim. Seller shall maintain RPS Certification throughout the Delivery Term.

**3.1.2. Portfolio Content Category 1.** Seller shall ensure that throughout the Delivery Term, Products from the Project meet the criteria defined by the CEC Renewables Portfolio Standard Eligibility Guidebook for PCC-1.

**3.1.3. Change of Law.** In the event there is a material change in law or regulations governing certification of the Project by the CEC, or with regard to the reporting, tracking and transfer of Environmental Attributes, then the Parties shall use commercially reasonable efforts to comply with the modified laws or regulations. Notwithstanding anything herein to the contrary, Seller shall not be in breach of this Agreement, Buyer shall not have the right to terminate this Agreement, and Buyer shall continue to be obligated to purchase Product from the Project and pay the Contract Price therefor, if Seller's failure to obtain or maintain RPS Certification or if failure of the Products to conform to the requirements of this Agreement is due to a Change of Law occurring after the Effective Date of this Agreement, so long as the Seller has used commercially reasonable efforts to maintain RPS Certification and ensure Products conform to the requirements of this Agreement, including, but not limited to, meeting the criteria for PCC-1 status. As used in the foregoing sentence, "commercially reasonable efforts" means actions consistent with, and subject to, Section 2.5.

#### **3.2 Environmental Attribute Delivery Obligation**

Seller shall sell and deliver, and Buyer shall receive and purchase from Seller, all rights, title, and interest in all Environmental Attributes associated with Energy produced by the Project and delivered to Buyer at the Delivery Point whether now existing or that hereafter come into existence during the Delivery Term except as otherwise excluded herein, provided that, subject to Section 3.1.3, Buyer shall not be obligated to purchase and pay Seller for any Environmental Attributes associated with any amount of Energy that is not considered eligible by the CEC. Seller agrees to sell to Buyer all such Environmental Attributes to the fullest extent allowable by applicable law, and convey the same to Buyer in accordance with the procedures in Exhibit H. Seller warrants that all Environmental Attributes provided to Buyer shall be free and clear of all liens, security interests, claims and encumbrances.

#### **3.3 WREGIS Registration**

Prior to the Commercial Operation Date, Seller shall register the Project in WREGIS and take all other actions necessary to ensure that the Energy and/or Environmental Attributes produced from the Project are issued, tracked and transferred to SVP through WREGIS. Documentation of

Environmental Attributes associated with the Energy produced under this Agreement shall be tracked through WREGIS. Seller shall serve as the Qualified Reporting Entity for purposes of this Agreement. Seller is responsible for all WREGIS costs and fees associated with the issuance/creation of WREGIS Certificates for the Project, and, if applicable, any fees assessed to Seller for transfer to Buyer. Seller shall be responsible for all costs associated with its WREGIS account and for all of its costs in service as the Qualified Reporting Entity. Buyer shall be responsible for all costs associated with its WREGIS account and, if applicable, any fees assessed to Buyer for receipt of WREGIS Certificates transferred to Buyer.

In addition to the Energy, RECs are required to be provided monthly for all Energy produced from the contracted renewable resource, evidencing that Buyer has exclusive rights to the Environmental Attributes.

As part of Seller's obligation to convey Environmental Attributes through WREGIS, Seller shall comply with the e-tagging requirements set forth in Section 7.1.

### **3.4 Modification of Environmental Attribute Reporting and Conveyance Procedure.**

In the event that:

- (a) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with Exhibit H after the Effective Date; or
- (b) WREGIS is replaced as the primary method that Buyer uses for conveyance of Environmental Attributes, or additional methods to convey all Environmental Attributes are required,

then, subject to Section 2.5, the Parties will cooperate to modify Exhibit H to reflect changes necessary in the Environmental Attribute conveyance procedure for Buyer to be able to receive and report the Environmental Attributes purchased under the Agreement as belonging to Buyer.

### **3.5 Reporting of Ownership of Environmental Attributes**

Seller shall not report to any person or entity that the Environmental Attributes sold and conveyed hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any such program that such Environmental Attributes purchased hereunder belong to it.

### **3.6 Greenhouse Gas (GHG) Emissions**

Each Party shall be responsible and bear all liability for compliance with requirements applicable to such Party regarding reporting any and all GHG emissions from the Project, and for any compliance obligations under federal, state (including AB 32) and local laws for such emissions.

#### **4. CONVEYANCE OF CAPACITY ATTRIBUTES**

##### **4.1 Conveyance of Capacity Attributes**

Seller shall provide to Buyer any attestation Buyer reasonably requires in order for Buyer to show evidence that it has procured the Capacity Attributes associated with the Project in accordance with the procedure in Exhibit F. At Buyer's request, Seller shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes.

##### **4.2 Reporting of Ownership of Capacity Attributes**

Seller shall not report to any person or entity that the Capacity Attributes sold and conveyed hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any such program that such Capacity Attributes purchased hereunder belong to it.

##### **4.3 Modification of Capacity Attribute Conveyance Procedure**

If the Capacity Attribute conveyance procedure in Exhibit F becomes insufficient to permit Buyer to report the Capacity Attributes as belonging to Buyer, then, subject to Section 2.5, the Parties will cooperate to revise Exhibit F to reflect changes necessary in the Capacity Attribute conveyance procedure for Buyer to be able to receive and report the Capacity Attributes purchased under the Agreement as belonging to Buyer.

#### **5. INTERCONNECTION; TRANSMISSION**

##### **5.1 Interconnection Agreement and Interconnection Costs**

Seller shall submit an interconnection request, comply with all Transmission Provider interconnection procedure obligations, and execute an Interconnection Agreement for the Project in accordance with the Milestones set forth in Exhibit M. During the Delivery Term, Seller shall arrange and pay independently for any and all necessary costs under the Interconnection Agreement.

##### **5.2 No Additional Loads**

Seller shall not connect any loads not associated with Station Service Loads at the location of the Project in a manner that would reduce the Energy provided from the Project to Buyer hereunder.

##### **5.3 Transmission**

Seller has entered into (or shall enter into) transmission service agreements with the Transmission Provider(s) for transmission service for delivery of the Product from the Project to the Delivery Point, and shall keep such agreements (or replacement agreements) in effect throughout the Delivery Term. Buyer shall arrange and be responsible for transmission service for delivery of the Product at and from the Delivery Point.

## **6. PERMITTING; STANDARD OF CARE; OPERATIONS; CURTAILMENT**

### **6.1 Permitting**

Seller shall be responsible for obtaining and maintaining all permits and other governmental approvals for the construction, ownership and operation of the Project.

### **6.2 Standard of Care**

Seller shall pay and be responsible for designing, installing, operating, and maintaining the Project in accordance with all applicable laws and regulations, and shall comply with all applicable CAISO, WECC, FERC, and NERC requirements, and with Prudent Utility Practice, including applicable interconnection and telemetering requirements set forth in the Interconnection Agreement.

Seller shall: (a) operate and maintain the Project in a safe manner in accordance with the Interconnection Agreements, manufacturer's guidelines, warranty requirements, and Prudent Utility Practice; and (b) maintain any governmental authorizations and permits required for the construction and operation thereof. Seller shall make any necessary and commercially reasonable repairs with the intent of optimizing the availability of electricity to Buyer.

### **6.3 Operation of the Project**

Seller must operate the Project in accordance with Prudent Utility Practice. Seller shall use commercially reasonable efforts to maximize availability of the Project in accordance with Prudent Utility Practice. Seller may interrupt or reduce deliveries only due to Force Majeure, curtailment by Buyer pursuant to Section 6.5, curtailment by the CAISO or any interconnection or transmission service provider, Planned Outages, Forced Outages, and excessive wind speeds in excess of the cut out speed for the wind turbines or insufficient wind speeds below the cut-in speed for the wind turbines (in each case, as specified in the manufacturers' technical specifications for such wind turbines set forth in Attachment 1 to Exhibit A). Seller shall take all reasonable measures in accordance with Prudent Utility Practice to minimize the frequency and actual duration of Planned Outages. All Planned Outages shall be scheduled in advance.

### **6.4 Buyer Performance Excuse**

Buyer shall not be obligated to accept or pay for Energy produced by, or Capacity provided from, the Project during a Force Majeure event that prevents Buyer's ability to accept Energy from the Project.

### **6.5 Buyer Economic Curtailment Rights**

Seller acknowledges that Buyer will retain the ability to curtail the output of the Project through full or partial curtailment, by specifying the terms of the bid to be submitted by Seller in the CAISO market ("Economic Bid"). Buyer's Economic Bid shall be communicated to Seller by written notification prior to the commencement of deliveries hereunder and shall be in full compliance with the CAISO Tariff and applicable law. Seller, or its qualified designee, as Scheduling Coordinator, shall submit such Economic Bids to CAISO. Buyer may, at its sole

discretion, change its Economic Bid price from time to time by written notification to Seller substantially in the form of Exhibit C, and Seller shall accommodate such changes within two (2) Business Days of receipt of such written notification. If all or part of Buyer's Economic Bid does not clear in the applicable CAISO market, then Seller will promptly curtail Project output to the amount of the Economic Bid that did clear in the applicable CAISO market. Buyer will pay Seller for the resulting Curtailed Product pursuant to Section 2.4.2. Seller assumes all financial risk for discrepancies, if any, between Buyer's Economic Bid instructions, and the prices and quantities actually submitted by Seller, unless Seller reasonably determines that such Economic Bid instructions do not comply with the CAISO Tariff or applicable law. If Seller incorrectly submits Buyer's Economic Bid (other than as a result of Seller's determination that the Economic Bid did not comply with the CAISO Tariff or applicable law), then Seller shall be responsible for any negative pricing consequences related to the portion of the Hourly Production that would not have cleared in the applicable CAISO market if Seller had accurately submitted Buyer's Economic Bid.

## **7. SCHEDULING AND FORECASTING; OUTAGES; ACCESS RIGHTS**

### **7.1 Scheduling and Forecasting**

Seller shall enter into contracts with the CAISO, as required, to accommodate a Pseudo-Tie or the Dynamic Scheduling of the Product to the CAISO. Seller shall be responsible for scheduling Energy produced by the Project with the CAISO and generating associated e-tags, including obtaining any required CAISO Scheduling Coordinator services. Seller shall use commercially reasonable efforts to comply with all applicable CAISO Tariff procedures, agreements, protocol, rules and testing, and applicable electric utility tariffs, and take such other actions, as necessary for the Energy produced by the Project to be either (a) delivered via a Pseudo-Tie, in accordance with Appendix N of the CAISO Tariff, or successor thereto, or (b) Dynamically Scheduled to the Delivery Point, in accordance with Appendix M of the CAISO Tariff, or successor thereto.

Buyer intends to perform WREGIS e-tag matching for its CEC RPS reporting. To the extent that e-tags are required to include additional information to comply with CEC, CARB and other Environmental Attribute reporting requirements, including WREGIS e-tag match reporting, Seller shall use **commercially reasonable** efforts to include in each e-tag such additional information as provided by Buyer. The e-tag shall include CEC RPS ID for the Project. The current CEC RPS ID for the project is shown on Exhibit H.

Seller shall schedule in the Fifteen Minute Market unless otherwise directed by Buyer.

### **7.2 Planned Outages**

For the purposes of this Agreement a maintenance outage shall constitute a Planned Outage. Except for Planned Outages taken during Low Wind Periods, Planned Outages may only be taken upon thirty (30) calendar days written notice to Buyer. Except for Planned Outages taken during Low Wind Periods, Seller may not schedule or take any Planned Outages during the months of June through September. Seller shall provide Planned Outage notifications in accordance with the Outage Notification Procedure detailed in Exhibit G.

### **7.3 Forced Outages**

Seller shall notify Buyer of any Forced Outage of the Project that will reduce the Project Capacity by more than 10 MW for more than 24 consecutive hours of duration.

Seller shall provide Forced Outage notifications in accordance with the Outage Notification Procedure detailed in Exhibit G.

### **7.4 Modification of Outage Notification Procedure**

Upon mutual consent of both Parties, Buyer shall modify Exhibit G to reflect changes necessary in the Outage Notification Procedure, give written notice to Seller regarding the revision, and issue a new Exhibit G which shall then become part of the Agreement to reflect changes in the Outage Notification Procedure.

### **7.5 Access Rights**

Upon reasonable advance notice and during regular business hours, Buyer and its representatives may enter the Project site, provided that Buyer and its representatives will comply with Seller's safety and security requirements at all times while at the site.

## **8. TERM, EVENTS OF DEFAULT AND TERMINATION**

### **8.1 Term**

The term of this Agreement (the "Term") shall commence upon the Effective Date and shall remain in effect until the conclusion of the Delivery Term, unless terminated sooner pursuant to the terms of this Agreement. All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

### **8.2 Events of Default**

An "Event of Default" shall mean:

with respect to each Party, the occurrence of any of the following:

- 8.2.1 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written notice;
- 8.2.2 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated and such failure is not cured within thirty (30) calendar days after notice;
- 8.2.3 failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within thirty (30) calendar days after written notice (provided that if such failure is not capable of being remedied within such period, then for such longer period as is reasonably needed to effect the

remedy, not to exceed a total period of ninety (90) calendar days, so long as the failing Party diligently pursues such remedy);

8.2.4 the initiation of an involuntary proceeding against such Party under the bankruptcy, insolvency, or dissolution laws, which involuntary proceeding remains undismissed for ninety (90) calendar days, or in the event of the initiation by such Party of a voluntary proceeding under the bankruptcy, insolvency, or dissolution laws;

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

with respect to Seller, the occurrence of any of the following:

8.2.6 after the Commercial Operation Date, Seller has not sold or delivered Energy from the Project to Buyer for a period of twelve (12) consecutive months, unless such failure is due to Force Majeure; or

8.2.7 If, at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated by the Project;

8.2.8 During the Delivery Term, except during any periods in which Buyer is not purchasing or accepting delivery of Product under this Agreement, including as provided in Section 2.2, Seller sells or transfers any Product from the Project to any Person other than Buyer.

8.2.9 Failure by Seller to satisfy the insurance requirements as set forth in Section 10.

8.2.10 Seller fails to maintain the security set forth in Section 9.1 or 9.2, or any of the following occurs with regard to the lender supplying a letter of credit on behalf of Seller, if Seller does not provide a replacement letter of credit within five (5) Business Days after Notice from Buyer:

(a) The failure of the lender to make any payment required or to perform any other material covenant or obligation under a letter of credit provided in connection with this Agreement;

(b) the lender becomes bankrupt;

(c) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against such lender as debtor or its parent or any other Affiliate that could materially impact such lender's ability to perform



its obligations under any letter of credit made in connection with this Agreement; unless such lender obtains a stay or dismissal of the proceeding within 90 Days of such filing; or

(d) The lender repudiates, disaffirms, disclaims, or rejects in whole or in part, or challenges the validity of any letter of credit.

### **8.3 Termination - Declaration of an Event of Default**

If an Event of Default has occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the right to: (a) send notice, designating a day, no earlier than five calendar days after such notice is deemed to be received (as provided in Section 15) and no later than 20 calendar days after such notice is deemed to be received (as provided in Section 15), as an early termination date of this Agreement ("Early Termination Date") unless the Parties have agreed to resolve the circumstances giving rise to the Event of Default; (b) accelerate all amounts owing between the Parties; and (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date. For all claims, causes of action and damages with respect to an Event of Default, in addition to the right to terminate this Agreement, the Non-Defaulting Party shall be entitled to recover the Termination Payment, as determined pursuant to Section 8.4.

**8.4 Settlement Amounts.** The Termination Payment shall be the Settlement Amount plus any or all other amounts due to the Non-Defaulting Party, less amount due to the Defaulting Party, netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Settlement Amount as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses and Costs may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount payable to the Non-Defaulting Party shall not include consequential, incidental, punitive, exemplary, or indirect damages; provided, however, that any lost Capacity Attributes, Environmental Attributes and tax or other financial benefits that Seller has not been able to mitigate after use of commercially reasonable efforts shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

**(a) Termination Payments Generally.** Each Party agrees and acknowledges that (a) the actual damages that it would incur in connection with the termination of this Agreement would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of such Party in connection with a termination under this Agreement but shall not otherwise act to limit such Party's rights or remedies if such Party does not elect to terminate this Agreement as its remedy for an Event of Default by the Defaulting Party.

**(b) Notice of Payment of Termination Payment.** As soon as practicable after a termination, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount, interest on amount due and the sources for such calculation. The Party owing the Termination Payment shall make the Termination Payment within ten (10) Business Days after such Notice is effective.

**(c) Disputes With Respect to Termination Payment.** 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 determined in accordance with Article 19 below.

## **9. CREDITWORTHINESS**

### **9.1 Project Development Security**

Within 30 calendar days after Effective Date of this Agreement, Seller will provide project development security in the amount of [REDACTED] and in the form of cash or Letter of Credit, and maintain such security until the Commercial Operation Date or any earlier termination of this Agreement. Seller shall renew or provide a new Letter of Credit at least thirty (30) calendar days before the current Letter of Credit expiration date. As set forth in the definition of Letter of Credit, a Letter of Credit must be in substantially the form set forth in Exhibit D or any other form that is reasonably acceptable to Buyer.

### **9.2 Delivery Term Security**

Prior to commencement of the Delivery Term, Seller to provide Delivery Term security in the amount of [REDACTED] and in in the form of cash, Letter of Credit, or guaranty acceptable to Buyer for the duration of the Delivery Term. Seller shall renew or provide a new Letter of Credit at least thirty (30) calendar days before the current Letter of Credit expiration date. As set forth in the definition of Letter of Credit, a Letter of Credit must be in substantially the form set forth in Exhibit D or any other form that is reasonably acceptable to Buyer.

### **9.3 Limitation of Liability**

Notwithstanding anything to the contrary herein, in no event will Seller's liability exceed the amount of security required to be posted by Seller at such time pursuant to Section 9.1 and Section 9.2.

## **10. INSURANCE**

Seller shall comply with the insurance requirements of the attached Exhibit J.

## **11. FORCE MAJEURE**

### **11.1 Effect of Force Majeure**

Buyer or Seller, as the case may be, shall be excused from performance under this Agreement to the extent, but only to the extent, that performance hereunder is prevented or delayed by an act or event of Force Majeure. The Party invoking Force Majeure shall exercise due diligence to overcome or mitigate the effects of such an act or event of Force Majeure; *provided, however, that* nothing in this Agreement shall be deemed to obligate the Party invoking Force Majeure (a) to forestall or settle any strike, lock-out or other labor dispute against its will; or (b) for Force Majeure affecting Seller only, to purchase electric power to cure the event of Force Majeure.

### **11.2 Notice of Force Majeure**

In the event of any delay or nonperformance resulting from an act or event of Force Majeure, the Party invoking Force Majeure shall, as soon as practicable under the circumstances, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance.

### **11.3 Termination Due to Force Majeure Event**

If a Party is prevented from performing its material obligations under this Agreement for a period of (a) twelve (12) consecutive months or longer due to Force Majeure that does not require the repair or replacement of long lead-time items like transformers, or (b) thirty-six (36) consecutive months or longer due to Force Majeure that does require the repair or replacement of long lead-time items like transformers, then, in either case, the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) calendar days written notice at any time during the Force Majeure event.

## **12. INDEMNITY**

### **12.1 Indemnity by Seller**

Seller shall defend, release, indemnify and hold harmless Buyer, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees, resulting from, or arising out of or in any way connected with claims by third parties associated with the actions or omissions of Seller, its directors, officers, employees, agents and representatives relating to: (i) the Energy delivered at the Delivery Point; (ii) Seller's operation and/or maintenance of the Project; or (iii) this Agreement; excepting only such loss, claim, action or suit to the extent caused by the willful misconduct or gross negligence of Buyer, its agents, employees, directors or officers.

## **12.2 Indemnity by Buyer**

Buyer shall defend, release, indemnify and hold harmless Seller, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees resulting from, or arising out of or in any way connected with claims by third parties associated with the actions or omissions of Buyer, its directors, officers, employees, agents, and representatives, relating to: (i) the Energy delivered by Seller under this Agreement after the Delivery Point, or (ii) this Agreement; excepting only such loss, claim, action or suit to the extent caused by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

## **13. LIMITATION OF LIABILITIES AND 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. EXCEPT AS EXPRESSLY SPECIFIED IN THIS AGREEMENT 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. EXCEPT WITH REGARD TO INDEMNIFICATION OF THIRD PARTY CLAIMS IN ACCORDANCE WITH SECTION 12, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 12 (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. NOTWITHSTANDING THE FOREGOING TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## **14. REPRESENTATION AND WARRANTIES; COVENANTS**

### **14.1 Representations and Warranties**

On the Effective Date, each Party represents and warrants to the other Party that:

14.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

14.1.2 The execution, delivery and performance of this Agreement is within its corporate powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

14.1.3 This Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

14.1.4 It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its actual knowledge, threatened against it which would result in it being or becoming bankrupt;

14.1.5 There are not pending or to its actual knowledge threatened legal proceedings against it or any of its affiliates that could materially adversely affect its ability to perform its obligations under this Agreement; and

14.1.6 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 upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

## **14.2 General Covenants**

Each Party covenants that throughout the Term of this Agreement:

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

14.2.2 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; and

14.2.3 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.

## **14.3 Seller Market-Based Rate Authorization and EWG Status**

At least five (5) calendar days before the date on which Seller first sells and delivers electricity to Buyer, Seller shall have delivered to Buyer (a) a copy of Seller's notice of self-certification of EWG status filed with FERC, and (b) a final order by FERC authorizing Seller to sell electricity at wholesale at market-based rates under the Federal Power Act (the "Market-Based Rate Authorization"). Seller shall maintain and shall be in compliance with the Market-Based Rate Authorization for the term of this Agreement.

## **15. NOTICES**

Notices 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). Whenever this Agreement requires or permits delivery of a "notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by facsimile transmission or email 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 two (2) Business Days after it was 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 written notices shall be directed as shown in Exhibit I. Either Party may request a change to Exhibit I as necessary to keep the Exhibit I information current.

## **16. RELEASE OF DATA**

Buyer may release information regarding the Project, including but not limited to this Agreement. To the extent allowed by law, Buyer shall not release, and shall redact from any copy of this Agreement released, pricing-related information and other confidential information reasonably designated by Seller in writing; however, Buyer may release this information if compelled by law to be disclosed. As a California public agency subject to, among other things, the California Public Records Act (Cal. Gov. Code §§ 6250 *et seq.*) and the Ralph M. Brown Act (Cal. Gov Code §§ 54950 *et seq.*), Buyer makes no representations or warranties express or implied that any information shall be deemed subject to nondisclosure under California law. Subject to the foregoing, Seller has requested and Buyer has agreed to redact from public disclosure the text of this Agreement set forth in Exhibit O, including the text of Exhibit O.

"Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Seller as Confidential Information, the Buyer as soon practical but within three (3) days of receipt of the request, shall notify the Seller that such request has been made, by telephone call, letter sent via facsimile, electronic mail, and/or by US Mail to the address, e-mail address, and/or facsimile number listed at the end of the Agreement. The Seller shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Buyer. If the Seller takes no such action, after receiving the foregoing notice from the Buyer, the Buyer shall be permitted to comply with the Requestor's demand and is not required to defend against it.

Seller is the Party to whom the Confidential Information originally belongs and who (after appropriate notice) shall bear the burden of pursuing legal remedies to retain confidentiality as set forth in Exhibit O. Buyer is the Party to this Agreement who receives information designated as Confidential Information by the Seller."

Notwithstanding the above, Buyer may disclose information in data filings/reports required by WREGIS and Governmental Authorities including, but not limited to, the Energy Information

Administration, the CEC, the FERC, the NERC, and the WECC provided, however, that the disclosed information does not include non-aggregate pricing information, unless required by the Governmental Authority or WREGIS.

## **17. SET OFF**

Each Party shall be entitled to offset amounts owed to it by the other Party under this Agreement from the amounts it owes to such other Party under this Agreement.

## **18. ASSIGNMENT**

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however:

18.1 Upon written request of Seller, Buyer will execute a consent to assignment with Seller and Seller's lenders and/or tax equity investors in a commercially reasonable form.

18.2 NOTWITHSTANDING THE FOREGOING, NO CONSENT SHALL BE REQUIRED FOR:

18.2.1 Any assignment or transfer of this Agreement by Seller to an affiliate of Seller or its guarantor, provided that such affiliate's or guarantor's creditworthiness is equal to or greater than that of Seller, as reasonably determined by Buyer, and Seller provides Buyer at least thirty (30) calendar days notice of such assignment or transfer, and the assignee expressly assumes all of Seller's obligations and provides or maintains the Credit Support in accordance with Section 9 prior to the effective date of any such assignment; or

18.2.2 Any assignment or transfer of this Agreement by Seller or Buyer to a person succeeding to all or substantially all of the assets of such Party, provided that such person's creditworthiness is equal to or greater than that of such Party, as reasonably determined by the non-assigning or non-transferring Party, and the assigning or transferring Party provides the non-assigning or non-transferring Party at least thirty (30) calendar days notice of such assignment or transfer, and the assignee assumes all of the assigning Party's obligations and, if the assigning Party is Seller, the assignee provides or maintains Credit Support in accordance with Section 9 prior to the effective date of any such assignment, and if the assignor is Buyer, the assignee provides reasonable assurance to Seller that it will re-sell all Energy purchased hereunder; or

18.2.3 Any assignment or transfer of this Agreement by Seller pursuant to Section 25 of this Agreement.

## **19. APPLICABLE LAW; DISPUTES; ARBITRATION**

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.

If the Parties are unable to resolve a dispute with respect to this Agreement, either Party shall send a notice to the other requesting a meeting at which senior officers or officials of the Parties will attempt to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) calendar days after the meeting notice is received by the Party to whom it is directed, or such longer period as the Parties may agree, then either Party may initiate binding arbitration as set forth herein.

Arbitration is commenced by either Party delivering to the other Party written notice (the "Arbitration Demand") which shall set forth in reasonable detail the basis of the dispute including supporting documentation. The Parties shall use their reasonable efforts to agree upon a single arbitrator, who shall be a neutral, disinterested party with significant experience in the electric power industry, who has never been an officer, director, employee or attorney of either Party, or any of their affiliates and who has a formal financial, accounting or legal education. If the Parties are unable to agree upon a mutually acceptable arbitrator on or before thirty (30) calendar days after receipt of the Arbitration Demand, then each Party shall select its own arbitrator on or before forty-five (45) calendar days after receipt of the Arbitration Demand, and the two arbitrators so selected shall select a third arbitrator on or before sixty (60) calendar days after receipt of the Arbitration Demand. The arbitration shall take place in San Francisco, California and shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association. The hearing shall be commenced on or before sixty (60) calendar days after the selection of the arbitrator(s). The Parties and the arbitrator(s) shall proceed diligently and in good faith so that the arbitration award shall be entered on or before sixty (60) calendar days after the arbitration hearing. The decision of the arbitrator, or a majority of the arbitrators, if applicable, shall be final, binding and non-appealable. Any judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Each Party shall bear its own attorney's fees and costs of pursuing the arbitration; the Parties shall share equally all fees and costs of the arbitration, the arbitrator and similar expenses.

## **20. SEVERABILITY**

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court or arbitration panel having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use commercially reasonable efforts to modify this Agreement to give effect to the original intention of the Parties.

## **21. 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.

## **22. TAXES**

Unless otherwise exempt under the requirements of law, Seller shall pay or cause to be paid all taxes on or with respect to the Product sold hereunder arising prior to the Delivery Point. Unless otherwise exempt under the requirements of law, Buyer shall pay or cause to be paid all taxes on or with respect to the Product purchased hereunder at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of Seller). In the event Seller is required by law or regulation to remit or pay taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such taxes. If Buyer is required by law or regulation to remit or pay taxes which are Seller's responsibility hereunder, Buyer may deduct the amount of any such taxes from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under the law.

## **23. MOBILE-SIERRA**

Notwithstanding any other provision of this Agreement, neither Party may seek to revise the rates, terms or conditions of service of this Agreement, prospectively or retroactively, through application or complaint to FERC under any of the Federal Power Act, absent written consent of the other Party. Nor, absent the prior written consent of the other Party, may a Party, directly or indirectly, support any third party seeking to revise the rates, terms or conditions of service of this Agreement under any provision of the Federal Power Act. Because the rates, terms and conditions of this Agreement are fixed for the duration of the Agreement and are the product of arms' length bargaining, absent prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall 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 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

## **24. WAIVER OF SOVEREIGN IMMUNITY**

Buyer hereby waives, to the fullest extent permitted by Law, any right to rely upon the doctrine of sovereign immunity in connection with any dispute or claim arising under this Agreement. Buyer warrants and covenants that with respect to its contractual obligations hereunder and performance hereof it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside of the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets or (e) execution or enforcement of judgment.

## **24. GENERAL**

No amendment to, modification of, or waiver under this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver

of any other default. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

## 25. PROJECT SUBSTITUTION

At any time prior to the Commercial Operation Date, Seller may substitute for the Project an alternative wind-powered electric generating facility that has the same general characteristics (e.g. similar wind profile, ) as the Project and with which Seller is able to comply with its obligations under this Agreement.

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

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form:

Dated: \_\_\_\_\_

\_\_\_\_\_  
BRIAN DOYLE  
City Attorney

\_\_\_\_\_  
DEANNA J. SANTANA  
City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

"BUYER"

**VIENTO LOCO WIND LLC**  
a Delaware limited liability company

Dated: \_\_\_\_\_

By (Signature): \_\_\_\_\_

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

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

Principal Place of  
Business Address \_\_\_\_\_

Email Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

Fax: ( ) \_\_\_\_\_

"SELLER"

## **EXHIBITS**

**Exhibit A – Description and Location of Project**

**Exhibit B.1 – Contract Price**

**Exhibit B.2 – Curtailed Product Price**

**Exhibit C – Form of Buyer’s Notification of Economic Bid Price**

**Exhibit D – Form of Letter of Credit**

**Exhibit E – Commercial Operation Date Confirmation Letter**

**Exhibit F – Capacity Attribute Reporting and Conveyance Procedure**

**Exhibit G – Outage Notification Procedure**

**Exhibit H – Environmental Attribute Reporting and Conveyance Procedure**

**Exhibit I – Notices**

**Exhibit J – Insurance Requirements**

**Exhibit K – Scheduling**

**Exhibit L – Example of Availability Shortfall Damages**

**Exhibit M - Milestone Schedule**

**Exhibit N – Seller’s Calculation of Curtailed Product**

**Exhibit O – Text to be Redacted**

## **Exhibit A**

### **DESCRIPTION AND LOCATION OF FACILITY**

- A.1 The Project is described as a wind-powered electric generating facility at the location specified below, with an Expected Nameplate Capacity of 220 MW.
- A.2 The Project is expected to interconnect to the transmission system in or near Lincoln County, New Mexico.
- A.3 The Project's primary fuel is wind.
- A.4 The Contract Capacity is 200 MW.
- A.5 The Expected Nameplate Capacity is 220 MW.
- A.6 The number of wind turbines that comprises the Project is expected, as of the Effective Date, to be 80 (to be first completed upon the Commercial Operation Date, and periodically updated if number of wind turbines changes)
- A.7 The manufacturers' technical specifications for the cut-in and cut out speeds for the wind turbines are set forth in Attachment 1 to this Exhibit A. If the manufacturers' technical specifications for the wind turbines comprising the Project change after the Effective Date, Seller shall provide notice to Buyer of such revision, including a new Attachment 1 to this Exhibit A, which shall supersede the existing Attachment 1.
- A.8 The Delivery Point is the PV West 500 Scheduling Point; provided that, if the PV West 500 Scheduling Point ceases to be a valid Scheduling Point, then the Delivery Point will be the other Scheduling Point designated by the CAISO for the scheduling of transactions at the intertie between the CAISO Balancing Authority Area and the Salt River Project or Arizona Public Service Balancing Authority Area.
- A.9 The Delivery Term commences on the Commercial Operation Date and continues through the end of the twentieth (20<sup>th</sup>) Contract Year, unless terminated earlier in accordance with the terms of this Agreement.
- A.10 Upon mutual consent of both Parties, Buyer shall revise this Exhibit A as appropriate, give written notice to Seller regarding the revision, and issue a new Exhibit A which shall then become part of the Agreement to reflect changes to the information contained within Exhibit A.

**Attachment 1  
To  
Exhibit A**

**Exhibit B.1**

**CONTRACT PRICE**

<b>Contract Year</b>	<b>Contract Price (\$/MWh)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**Exhibit B.2**

**CURTAILED PRODUCT PRICE**

<b>Contract Year</b>	<b>Curtailed Product Price (\$/MWh)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**Exhibit C**

**FORM OF Buyer's NOTIFICATION OF ECONOMIC BID PRICE**

**[Communicated via email to XXXX : john.smith@XXX.com and  
Contract Administration: @XXX.com.]**

**[Date]**

**Buyer hereby notifies Seller of the following change to its Economic Bid for the Project.  
Buyer changes its Economic Bid from [\$\_\_] to [\$\_\_] effective within two Business Days of  
the date of this notice.**



**Exhibit D**

**FORM OF LETTER OF CREDIT**

Irrevocable Standby Letter of Credit No. [Bank Use Only]

Date: [Bank Use Only]

MUFG Union Bank, N.A.  
Trade Service Operations  
1980 Saturn Street, V02-906  
Monterey Park, California 91755-7417  
Attention: Standby Letter of Credit Section

**BENEFICIARY**

Silicon Valley Power  
City of Santa Clara  
881 Martin Ave,  
Santa Clara, CA, 95050

**APPLICANT**

Pattern Energy Group LP  
Pier 1, Bay 3  
San Francisco, CA, 42111

Currency USD

Amount

Available by

Expiry Date

Payment at this office

One year from issuance date or any automatically extended expiration date at the close of business of this office in Monterey Park, California.

Ladies/Gentlemen:

We hereby issue our Irrevocable Standby Letter of Credit ("Letter of Credit") in your favor. This Letter of Credit is available by sight payment with ourselves at MUFG Union Bank, N.A., Trade Service Operations, 1980 Saturn Street, V02-906, Monterey Park, California 91755-7417, Attention: Standby Letter of Credit Section against presentation at this office of the following documentation:

1. A dated statement signed by an authorized officer of the Beneficiary certifying that:

"The undersigned being a duly authorized officer of the City of Santa Clara "Buyer" ("Beneficiary") hereby demands payment of \$\_\_\_\_\_ and certifies that the amount represents payment due and owing to the Beneficiary since Viento Loco Wind LLC has failed to comply to the terms and conditions of the contract No. \_\_\_\_\_ dated \_\_\_\_\_ by and between Beneficiary and Viento Loco Wind LLC."

This Letter of Credit shall be deemed automatically extended without an amendment for a one year period beginning on the present expiration date hereof and upon each anniversary of such date, unless at least sixty (60) days prior to any such expiration date we have sent you written notice by courier service or overnight mail at the above address that we elect not to permit this

Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

This Letter of Credit sets forth in full the terms of our undertaking, and such terms shall not be modified, amended or amplified by any document, instrument or agreement referred to in this Letter of Credit, in which this Letter of Credit is referred to or to which this Letter of Credit relates.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification and is our individual obligation which is in no way contingent upon reimbursement or any right of subrogation. We irrevocably waive any and all rights of subrogation, whether as provided by statute or otherwise, now or hereafter that might, but for such waiver, exist, in respect to this Letter of Credit or any payment we make under it, as to the Applicant, you, or the transaction between you and the Applicant. We further give irrevocable notice that we are not now and will not be the secondary obligor or co-obligator of Applicant's obligations and liabilities to you for any purpose. Our obligations to you under this Letter of Credit are our primary obligations and are strictly as stated herein.

Partial and multiple drawings are allowed.

The original of this Letter of Credit must be presented together with Exhibit A and the above signed, dated statement in order to endorse the amount of each drawing on the reverse side and will be returned to the Beneficiary unless it is fully utilized.

We hereby agree with you that documents presented in compliance with the terms of this credit will be duly honored upon presentation and delivery to MUFG Union Bank, N.A., at the address above if presented on or before the expiration date. Documents are to be sent in one lot by courier service, overnight mail or hand delivery.

This Letter of Credit is subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590.

Unless otherwise instructed herein, all correspondence and inquiries regarding this transaction should be directed to our Customer Service Center at the above address, telephone: 800-858-9120, facsimile no. (323) 720-2773. Please indicate our reference number in all your correspondence or telephone inquiries.

MUFG Union Bank, N.A.

---

Authorized Signature

FORM OF SIGHT DRAFT

(INSERT DATE OF SIGHT DRAFT)

TO: (INSERT NAME OF ISSUER) \_\_\_\_\_

ON SIGHT, PAY TO THE ORDER OF (INSERT NAME OF BENEFICIARY)  
\_\_\_\_\_ BY WIRE TRANSFER OF  
IMMEDIATELY AVAILABLE FUNDS TO THE FOLLOWING ACCOUNT:

[NAME OF ACCOUNT]

[ACCOUNT NUMBER]

[NAME AND ADDRESS OF BANK AT WHICH ACCOUNT IS MAINTAINED]

[ABA NUMBER]

[REFERENCE]

THE FOLLOWING AMOUNT:

[INSERT NUMBER OF DOLLARS IN WRITING] UNITED STATES DOLLARS  
(US\$ [INSERT NUMBER OF DOLLARS IN FIGURES])

DRAWN UPON YOUR IRREVOCABLE STANDBY LETTER OF CREDIT NO.

\_\_\_\_\_ DATED \_\_\_\_\_, \_\_\_\_\_.

{BENEFICIARY}

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

[NAME AND ADDRESS OF BENEFICIARY]

**Exhibit E**

**COMMERCIAL OPERATION DATE CONFIRMATION LETTER**

In accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“Agreement”) by and between the City of Santa Clara t/d/b/a Silicon Valley Power (“Buyer”) and Viento Loco Wind LLC (“Seller”), this letter serves to document the parties further agreement that (i) the conditions precedent to the occurrence of Commercial Operation have been satisfied, and (ii) Buyer has received the energy, as specified in the Agreement, as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

This letter shall confirm the Commercial Operation Date, as defined in the Agreement, as the date referenced in the preceding sentence.

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

SELLER

Buyer

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

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

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

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

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

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

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

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

## **Exhibit F**

### **CAPACITY ATTRIBUTE REPORTING AND CONVEYANCE PROCEDURE**

#### **F.1 Additional Definitions for the Conveyance of Capacity:**

None.

**F.2 Reporting of Capacity Attributes.** Buyer will report the Capacity Attributes acquired herein in any regulatory filing that Buyer is required to make in order to declare the Capacity of the Project (or any portion thereof) as meeting Buyer's Capacity planning requirement (also known as Resource Adequacy).

## Exhibit G

### OUTAGE NOTIFICATION PROCEDURE

G.1 Additional Definitions for the Outage Notification Procedure:  
None.

- a. **G.2 Planned Outage Notifications.** Not later than September 1<sup>st</sup> each year following the Commercial Operation Date, Seller shall submit to Buyer its schedule of Planned Outages greater than 10MW for the upcoming year (“Outage Schedule”). Within ten (10) business days after its receipt of the Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule. If Buyer fails to provide such notice within the prescribed period, Buyer shall be deemed to have approved the Outage Schedule. If Buyer requests changes to the Outage Schedule, it shall suggest alternative dates in writing to Seller. If Seller can accommodate such alternate dates within Prudent Utility Practices and the operating requirements of the Project, and if Buyer agrees to compensate Seller for any incremental costs associated with rescheduling the outage as requested by Buyer, such alternate dates shall be accepted; otherwise Seller’s proposed Outage Schedule shall remain unchanged. Seller may make reasonable requests to change the approved Outage Schedule. If Buyer can accommodate such alternate dates, or if the alternate dates are imposed on Seller by CAISO and/or a Transmission Provider under any rights CAISO or the Transmission Provider may have, such dates shall be accepted.
- b. On the first business day of each calendar quarter, Seller shall provide Buyer updates to the Outage Schedule, if any, including any outages planned for the following twelve (12) months.
- c. No Planned Outages shall be scheduled during June, July, August or September except as necessary to comply with manufacturer’s recommendations for maintenance or Prudent Utility Practice.

Seller shall annually notify Buyer of its schedule for Planned Outages. Further, Seller shall notify Buyer at least 72 hours in advance of Planned Outages that result in a reduction in the effective output of the Project during period over which the Planned Outage is scheduled. Notification should be by email to the addresses shown in the Outages section of the Notices, Exhibit I.

G.3 Forced Outage Notifications. For Forced Outages that Seller is required to report to the CAISO under the CAISO Tariff, Seller shall report such Forced Outage to Buyer promptly following Seller's report to the CAISO. In addition, within 24 hours of a Forced Outage of the Project that impacts the ability of the Project to produce Energy, Seller shall notify Buyer of the Forced Outage, including the Capacity of the Project that is impacted, and the expected duration of the Forced Outage. Within 24 hours of the return of the Project to service following the Forced Outage Seller shall notify Buyer of the return to service details. Notification shall be made by email to the addresses shown in the Outages section of the Notices, Exhibit I.

G.4 Weather Event Notification. In the event of a loss of availability resulting from a Weather Event, Seller shall, as soon as practicable under the circumstances, notify Buyer in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance.

## Exhibit H

### ENVIRONMENTAL ATTRIBUTE REPORTING AND CONVEYANCE PROCEDURE

#### H.1 Additional Definitions for the Conveyance of Environmental Attributes:

“Certificate Transfers” means the process, as described in the WREGIS Operating Rules whereby a WREGIS account holder may request that WREGIS Certificates from a specific generating unit be directly deposited into another WREGIS account.

“WREGIS” means the Western Renewable Energy Generation Information System, sponsored by the WECC and utilized by the CEC for tracking the generation and transfer of RECs. The URL for WREGIS is [www.WREGIS.org](http://www.WREGIS.org).

“WREGIS Certificates” means a certificate created within the WREGIS system that represents all Renewable and Environmental Attributes from one MWh of electricity generation from an Eligible Renewable Energy Resource that is registered with WREGIS.

“WREGIS Operating Rules” means the document published by WREGIS that govern the operation of the WREGIS system for registering, tracking, conveying, etc. Renewable Energy Credits produced from Eligible Renewable Energy Resources that are registered with WREGIS.

#### H.2 Renewable Energy Credits. Environmental Attributes shall be conveyed by Seller to Buyer through Renewable Energy Credits (“RECs”) which shall be registered, tracked, and conveyed to Buyer using WREGIS.

The CEC RPS ID No. is \_\_\_\_\_. The CEC Facility Name is \_\_\_\_\_.

Seller will provide the CEC RPS ID No. and the CEC Facility Name promptly after receipt of its RPS pre-certification from the CEC.

#### H.3 WREGIS Registration. Prior to the Commercial Operation Date, Seller will register the Project in WREGIS.

#### H.4 Buyer’s WREGIS Account. Buyer shall, at its sole expense, establish and maintain Buyer’s WREGIS account sufficient to accommodate the WREGIS Certificates associated with the Energy produced by the Project. Buyer shall be responsible for all expenses associated with (A) establishing and maintaining Buyer’s WREGIS Account, and (B) receiving, subsequently transferring, or retiring WREGIS Certificates provided by Seller.



H.5 Qualified Reporting Entity. Seller shall be responsible for Qualified Reporting Entity services for the Project, and shall be responsible for providing metered Project output data to WREGIS.

H.6 Reporting of Environmental Attributes.

H.6.1 WREGIS Certificates for the Project will be created on a calendar month basis in accordance with the certification procedure established by the WREGIS Operating Rules in an amount equal to the Energy generated by the Project and delivered to Buyer in the same calendar month.

H.6.2 WREGIS Certificates will only be created for whole MWh amounts of energy generated. Any fractional MWh amounts (*i.e.*, kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate and all such accumulated MWh of Environmental Attributes will then be available to Buyer.

H.6.3 Should a WREGIS Certificate Modification be required to reflect any errors or omissions regarding the Environmental Attributes from the Project, Seller will manage the submission of the WREGIS Certificate Modification, and the Parties will cooperate reasonably to correct any such errors or omissions.

H.6.4 Due to the expected delay in the creation of WREGIS Certificates relative to the timing of invoice payments under Section 2.4.5, Buyer shall make an invoice payment for a given month in accordance with Section 2.4.5 before the WREGIS Certificates for such month may be transferred to Buyer's WREGIS account. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 2.4.5.

## **Exhibit I**

### **NOTICES**

All notices shall be directed as follows:

#### **I.1 For Contract Administration**

**To Buyer:**

City of Santa Clara dba Silicon Valley Power  
1500 Warburton Ave.  
Santa Clara, CA 95050  
Phone: 408-615-6632  
Email: khughes@svpower.com

**To Seller:**

Viento Loco Wind LLC  
Attn: General Counsel  
Street: Pier One, Bay Three  
City: San Francisco, CA  
Phone: 415-283-4000

Facsimile: 415-362-7900

#### **I.2 For Billing and Settlements**

**To Buyer:**

Energy Settlements  
City of Santa Clara dba Silicon Valley Power  
1500 Warburton Ave.  
Santa Clara, CA 95050  
Phone: 408-615-6645  
Email: pviraska@svpower.com

**To Seller:**

Viento Loco Wind LLC  
Pier One, Bay Three  
San Francisco, CA 94111  
Attn: Treasurer  
Phone: 415-283-4000  
Facsimile: 415-362-7900

**I.3 For Scheduling**

**To Buyer:**

City of Santa Clara dba Silicon Valley Power  
1500 Warburton Ave.  
Santa Clara, CA 95050  
Phone: 408-615-6692  
Email: slopez@svpower.com

**To Seller:**

24/7 Operations Control Center  
1201 Louisiana Street, Suite 3200  
Houston, TX 77002  
Attn: Manager  
Phone: 713-308-4242

Facsimile: 281-694-2848

**I.4 For Planned Outages**

**To Buyer:**

City of Santa Clara dba Silicon Valley Power  
1500 Warburton Ave.  
Santa Clara, CA 95050  
Phone: 408-615-6696  
Email: svpsched@svpower.com

**To Seller:**

24/7 Operations Control Center  
1201 Louisiana Street, Suite 3200  
Houston, TX 77002  
Attn: Manager  
Phone: 713-308-4242  
Facsimile: 281-694-2848

**I.5 For Forced Outages**

**To Buyer:**

City of Santa Clara dba Silicon Valley Power  
1500 Warburton Ave.  
Santa Clara, CA 95050  
Phone: 408-615-6696  
Email: svpsched@svpower.com

**I.6 Phone Notification of Outages, or Requests for Energization**

In addition to the email distribution, phone notification is required for planned or forced outages, or requests for energization, as follows:

**To Buyer:**

**To Seller:**

24/7 Operations Control Center  
1201 Louisiana Street, Suite 3200  
Houston, TX 77002  
Attn: Manager  
Phone: 713-308-4242  
Facsimile: 281-694-2848

**I.7 Changes to Exhibit I**

Either Party may request a change to Exhibit I as necessary to keep the information current.

## Exhibit J

### INSURANCE REQUIREMENTS

1. Types of Coverage: During the term of this Agreement, Seller shall provide and maintain insurance with insurance carriers that maintain an AM Best's rating of at least "A- VII" and are authorized to do business in the states where work is being performed:
  - a) Workers' Compensation including Occupational Disease Insurance for each party's employees, executive officers, sole proprietors and partners to the extent of statutory limits.
  - b) Employer's Liability Insurance not less than \$1,000,000 each accident, \$1,000,000 by disease policy limit, \$1,000,000 by disease each employee.
  - c) Commercial General Liability Insurance, written on an ISO occurrence form CG 00 01 10 93 or substitute form providing equivalent coverage which shall include Products and Completed Operations, Premises, Operations, contractual liability assumed under this Agreement, Bodily Injury and Property Damage, Personal Injury, and Advertising Injury as applicable to each party's obligations under this Agreement with limits not less than \$1,000,000 each occurrence and \$2,000,000 in the aggregate.
  - d) Automobile Liability Insurance with limits not less than \$1,000,000 combined single limit for any occurrence. This coverage shall include coverage for but not limited to bodily injury and property damage for any and all vehicles owned, non-owned, used, or hired.
  - e) Umbrella or Excess Liability Insurance covering employer's liability, commercial general liability, and automobile liability, each to a limit of not less than \$15,000,000 per occurrence and in the aggregate.
2. Additional Requirements:
  - a) Buyer and its City Council, commissions, officers, employees, and agents shall be named as additional insureds on the policies of insurance referred to in the Agreement, other than Workers' Compensation/Employer's Liability, to the extent of the insurance limits specified herein.
  - b) Seller's policies of insurance referred to in this Agreement, other than Workers' Compensation/Employer's Liability shall be endorsed to specify that they are primary and not excess over or on a contributing basis.
  - c) Seller's policies of insurance referred to in this Agreement shall include a waiver of subrogation in favor of Buyer.
3. Certificates and Cancellation: Prior to the Commercial Operation Date, Seller shall provide Buyer with a certificate of insurance evidencing the coverage required by this Agreement and providing that such policies may not be canceled or materially changed without providing 30 days' prior written notice to Buyer. Seller must provide proof of replacement insurance in advance of the effective date of such cancellation or expiration. Certificates evidencing

coverage will be submitted to Buyer at the renewal of each policy during the term of this Agreement and if any of the insurance coverages are required to remain in force after completion of this Agreement.

4. In the event that the insurance required hereunder is not available under commercially reasonable terms, Seller shall, subject to Buyer's review and approval, not to be withheld unreasonably, procure the most similar coverage that is available under commercially reasonable terms.

## Exhibit K

### SCHEDULING

Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff and other applicable Transmission Provider tariff changes, accommodate changes to their respective generation technology and organizational structure, and address changes in the operating and scheduling procedures of the CAISO and other applicable Transmission Providers. Upon mutual consent of both Parties, Buyer shall revise this Exhibit K as appropriate, give written notice to Seller regarding the revision, and issue a new Exhibit K which shall then become part of the Agreement to reflect changes to the information contained within Exhibit K.

- K.1 Annual Delivery Forecasts. No later than (i) forty-five (45) calendar days before the first day of the first Contract Year; and (ii) August 10<sup>th</sup> of each calendar year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's average-day expected Hourly Production, by hour, for the following calendar year.
- K.2 Monthly Delivery Forecasts. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each day's average expected Hourly Production, by hour, for the following month.
- K.3 Daily Delivery Forecasts. By 9:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Hourly Production for each hour of the immediately succeeding day ("Day-Ahead Forecast"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day.
- K. 4 Real Time Forecasts. Prior to the Commercial Operation Date, Seller and Buyer shall cooperate reasonably to allow Buyer throughout the Delivery Term to obtain "read-only" access to the CAISO forecasts of the Energy to be produced by the Project, including Seller requesting that the CAISO issue a "read-only" digital certificate or similar access right to Buyer.

## Exhibit L

### EXAMPLE OF AVAILABILITY SHORTFALL DAMAGES

$$\text{Availability Shortfall Damages (D)} = (A) \times (B) \times (C)$$

where:

- (A) equals the Availability Shortfall for such Contract Year;
- (B) equals the prevailing Contract Price for such Contract Year;
- (C) equals the Expected Annual Energy Production for such Contract Year.

#### Example Assumptions:

1. Calculation is for the third (3<sup>rd</sup>) Contract Year.
2. 8,760 hours in the third (3<sup>rd</sup>) Contract Year.
3. Project is comprised of 70 wind turbines.
4. Contract Capacity of 200 MW
5. Available Time measured by SCADA = 450,000 hours.
6. Available Time resulting from Force Majeure Events, Weather Events, and curtailments = 30,000 hours.
7. Contract Price = [REDACTED].

#### Sample Calculation:

- A) Mechanical Availability = Available Time / (# of wind turbines x # of hours in year)  
Mechanical Availability = (450,000 + 30,000) hours / (70 wind turbines x 8,760 hours)  
Mechanical Availability = 480,000 hours / 613,200 hours = 0.7828  
Mechanical Availability = 0.7828

$$\begin{aligned}\text{Availability Shortfall} &= [REDACTED] - \text{Mechanical Availability} \\ \text{Availability Shortfall} &= [REDACTED] - 0.7828 = [REDACTED] \\ \text{Availability Shortfall} &= [REDACTED]\end{aligned}$$

B) Contract Price = [REDACTED]

- C) Expected Annual Production = (Contract Capacity x [REDACTED] x hours in Contract Year x 0.93)  
Expected Annual Production = 200 x [REDACTED] x 8760 x 0.93  
Expected Annual Production = [REDACTED] MWh

- D) Availability Shortfall Damages =  
(A) Availability Shortfall x (B) Contract Price x (C) Expected Annual Energy Production  
Availability Shortfall Damages = [REDACTED] x \$[REDACTED]/MWh x [REDACTED] MWh  
Availability Shortfall Damages = [REDACTED]



## Exhibit M

### MILESTONE SCHEDULE

No.	Seller's Milestone Obligations	Estimated Date
1.	Deliver Development Period Letter-of-Credit	October 1, 2018
2.	Submit CEC pre-Certification application	June 1, 2021
3.	Submit final New Mexico Public Regulatory Commission Locational Control Permit	December 31, 2018
4.	Submit interconnection request in compliance with the Transmission Provider generator interconnection procedure obligations	June 30, 2019
5.	Execute Interconnection Agreement	September 30, 2019
6.	Deliver documents demonstrating site control	March 31, 2019
7.	Issue Full Notice To Proceed under EPC Contract for Construction of Project	December 31, 2020
8.	Deliver notice of funding for Project construction	December 31, 2020
9.	Register the Project with WREGIS	November 30, 2021
10.	Obtain all necessary permits	December 31, 2020
11.	Commercial Operation	December 1, 2021

Note: The milestone dates set forth above are estimates. Seller shall revise the dates set forth in this Exhibit M as necessary to reflect updated estimated completion dates and provide a new Exhibit M to Buyer, which shall supersede the existing Exhibit M.

## **EXHIBIT N**

### *Seller's Calculation of Curtailed Product*

Curtailed Product shall be calculated by Seller in accordance with the procedures described in this Exhibit N.

Seller shall (i) collect the measurement data and perform the engineering calculations specified below in one (1) or more Microsoft Excel Workbooks (the "Curtailed Product Workbook") and (ii) electronically send the Curtailed Product Workbook to Buyer.

Buyer shall have the right to verify all data by inspecting measurement instruments and reviewing Project operating records.

Seller shall update the Curtailed Product Workbook each month and shall include the latest revision of the Curtailed Product Workbook with its monthly Curtailed Product Report.

#### 1. Log of Curtailed Product Events.

The log of Curtailed Product Events must be created on a single, dedicated worksheet that is arranged with:

- (a) One (1) column for a unique Curtailed Product Event number;
- (b) One (1) column for the Contract Year number;
- (c) One (1) column for the start date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the duration;
- (h) One (1) column for the cause;
- (i) One (1) column for the total of Metered Amounts during all of the Settlement Intervals of the Curtailed Product Event, recorded as set forth in Item 4(i) in this Exhibit N;
- (j) One (1) column for the total of the Curtailed Product *preliminary* results during all of the Settlement Intervals of the Curtailed Product Event, calculated as set forth in Item 4(j) in this Exhibit N;
- (k) One (1) column for a percentage calculated by *dividing* the preliminary results set forth in Item 1(j) of this Exhibit L *by* the Metered Amounts set forth in Item 1(i) of this Exhibit N;
- (l) One (1) column for the total of the Curtailed Product *final* results during all of the Settlement Intervals of the Curtailed Product Event, calculated as set forth in Item 4(k) in this Exhibit N; and
- (m) One (1) row for each Curtailed Product Event.

#### 2. Project Power Curve.

Seller shall create a "Project Power Curve" table on a single dedicated worksheet that is arranged with:

- (a) One (1) column for an item number;
- (b) One (1) column for the wind speeds;
- (c) One (1) column for the manufacturer's estimate of the electric energy that can be produced by a single wind turbine at each wind speed;
- (d) One (1) column for a power curve which estimates the electric energy that could be produced by the entire Project at each wind speed calculated by:
  - (i) *Multiplying* the wind turbine manufacturer's estimate of the electric energy that will be produced by a single wind turbine, set forth in Item 2(c);
  - (ii) *Times* the total number of Project wind turbines; and then
  - (iii) *Adjusting* the results for the estimated impacts the wind turbines have on each other and for electric losses within the Project;
- (e) One (1) column for each Contract Year power curve which includes a simple average of all Metered Amount data points, set forth in Item 3(f) of this Exhibit N, at each wind speed; and
- (f) One (1) row for each one half (0.5) meter per second wind speed.

Seller shall also create a single chart which plots all of power curves set forth in Item 2(d) and Item 2(e) of this Exhibit N on the Project Power Curve worksheet.

3. Wind Speed Data Collection.

Seller shall record average Settlement Interval wind speeds, in increments of one half (0.5) meters per second, and Metered Amounts for the Settlement Interval in the Curtailed Product Workbook on individual Contract Year worksheets.

Each Contract Year worksheet must be arranged with:

- (a) One (1) column for an item number;
- (b) One (1) column for the date;
- (c) One (1) column for the beginning time;
- (d) One (1) column for the weekday;
- (e) One (1) column for each recorded wind speed measurement;
- (f) One (1) column for each Metered Amounts quantity;
- (g) One (1) row for each Settlement Interval period.

4. Detailed Estimate of Curtailed Product.

Seller's detailed estimate of the Curtailed Product amounts during the Delivery Term shall be presented on a single worksheet organized as follows:

- (a) One column for an item number;
- (b) One (1) column for the Curtailed Product Event number;

- (c) One (1) column for the state date;
- (d) One (1) column for the start time;
- (e) One (1) column for the end date;
- (f) One (1) column for the end time;
- (g) One (1) column for the weekday;
- (h) One (1) column for the wind speeds;
- (i) One (1) column for Metered Amounts;
- (j) One (1) column for a *preliminary* estimate of the Metered Amounts that would have been produced by the Project, but for the Curtailed Product Event calculated by:
  - (i) *Multiplying* the wind speed;
  - (ii) *Times* the appropriate initial power curve as follows:
    - (1) For the first eleven (11) months of the first Contract Year the appropriate initial power curve shall be the power curve set forth in Item 2(d) of this Exhibit N;
    - (2) For the first eleven (11) months of any Contract Year, other than the first Contract Year, the appropriate initial power curve shall be the power curve set forth in Item 2(e) of this Exhibit N for the previous Contract Year;
- (k) One (1) column for a *final* estimate of the Metered Amounts that would have been produced by the Project, but for the Curtailed Product Event calculated by:
  - (i) *Multiplying* the wind speed;
  - (ii) *Times* the *final* power curve from Item 2(e) of this Exhibit N for the Contract Year being calculated;
- (l) One (1) column for the *preliminary* estimate of Curtailed Product calculated by:
  - (i) *Subtracting* the actual Metered Amounts set forth in Item 4(i) of this Exhibit N;
  - (ii) *From* the *preliminary* estimate of the Metered Amounts that would have been produced by the Project, but for the Curtailed Product Event, calculated in Item 4(j); and
- (m) One (1) column for the *final* estimate of Curtailed Product calculated by:
  - (i) *Subtracting* the actual Metered Amounts set forth in Item 4(i) of this Exhibit N;
  - (ii) *From* the *final* estimate of Metered Amounts that would have been produced by the Project, but for the Curtailed Product Event, calculated in Item 4(k) of this Exhibit N; and
- (n) One (1) row for each Settlement Interval.

5. Project Efficiency Calculation.

Seller shall calculate a Project efficiency value for each calendar month and each Contract Year on a dedicated worksheet organized with three tables.

- (a) The first table must contain the monthly Metered Amount totals and must consist of:
  - (i) One (1) column for the month number;
  - (ii) One (1) column for the month name;
  - (iii) One (1) column for the year number;
  - (iv) One (1) column for the monthly Metered Amount totals for each Contract Year from the wind speed data collection worksheet column set forth in Item 3(f) of this Exhibit N; and
  - (v) One (1) row for each month;
- (b) The second table must contain the monthly totals of forecasted Metered Amount and must consist of:
  - (i) One (1) column for the month number;
  - (ii) One (1) column for the month name;
  - (iii) One (1) column for the year number;
  - (iv) One (1) column for the monthly totals of forecasted Metered Amount for each Contract Year from the wind speed data collection worksheet column set forth in Item 4(j) of this Exhibit N; and
  - (v) One (1) row for each month; and
- (c) The third table must contain monthly Metered Amount totals and must consist of:
  - (i) One (1) column for the month number;
  - (ii) One (1) column for the month name;
  - (iii) One (1) column for the year number;
  - (iv) One (1) column for a monthly Project efficiency result and a Contract Year Project efficiency results calculated by:
    - (1) *Dividing* the appropriate value in the first table;
    - (2) *By* the appropriate value in the second table;
  - (v) One (1) row for each month; and
  - (vi) One (1) row for the Contract Year Project efficiency results.

6. Periodic Review of Curtailed Product Calculation.

At least once per Contract Year, Buyer shall review the variation in the Curtailed Product preliminary and final results to determine if other variables, including temperature, ambient pressure, humidity, precipitation or other parameters, should be incorporated into the Curtailed Product calculations.

7. Assignment of Curtailed Product Estimate to an Independent Consultant.

The Parties can by mutual agreement elect to have the estimate of Curtailed Product prepared by an independent consultant.

---

\*\*\* *End of EXHIBIT N* \*\*\*

**Exhibit O**

**TEXT TO BE REDACTED**

**The redacted portions of the Agreement are included in full in this Exhibit O. This Exhibit O has been deemed as confidential by Seller, and is subject to disclosure pursuant to Section 16 of this Agreement.**