

**POWER PURCHASE AGREEMENT**

**BETWEEN**

**SOUTH FEATHER WATER AND POWER AGENCY**

**AND**

**NORTHERN CALIFORNIA POWER AGENCY**

**Dated as of [\_\_\_\_\_], 20[\_\_]**

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**POWER PURCHASE AGREEMENT  
BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND  
SOUTH FEATHER WATER AND POWER AGENCY**

THIS POWER PURCHASE AGREEMENT (this “*Agreement*”), dated as of this [\_\_\_\_] day of [\_\_\_\_], 20[\_\_\_], is being entered into by and between the NORTHERN CALIFORNIA POWER AGENCY (“*Buyer*”), a joint powers agency and a public entity organized under the laws of the State of California and created under the provisions of the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500, et. seq., (“*Act*”) and the “Amended and Restated Northern California Power Agency Joint Powers Agreement” entered into pursuant to the provisions of the Act among Buyer and Buyer’s members, dated as of January 1, 2008, and SOUTH FEATHER WATER AND POWER AGENCY, an irrigation district formed under the Irrigation District Act (Division 11 of the California Water Code) of the State of California (“*Seller*”). Each of Buyer and Seller is referred to individually in this Agreement as a “*Party*” and together as the “*Parties*.”

**RECITALS**

WHEREAS, Buyer’s members have adopted or are adopting policies that are designed to increase the amount of energy that they provide to their retail customers from eligible renewable energy resources and carbon free resources to comply with the California Renewable Energy Resources Act and other applicable requirements; and

WHEREAS, Seller owns and operates four existing hydroelectric generating plants operating under a FERC license (FERC Project No. 2088): the Forbestown Powerhouse (37.5 MW), the Kelly Ridge Powerhouse (11.0 MW), the Sly Creek Powerhouse (13.0) MW and the Woodleaf Powerhouse (60.0 MW) (the “Facility or as otherwise referred to as the South Feather Power Project”); and

WHEREAS, the Seller’s license for the South Feather Power Project was issued for a period ending March 31, 2009; on March 26, 2007, Seller filed an Application for a New License pursuant to the Federal Power Act and FERC’s regulations thereunder; and Seller currently operates the South Feather Power Project under an annual license issued from year-to-year under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in the Federal Power Act; and

WHEREAS, the Kelly Ridge Powerhouse and Sly Creek Powerhouse (“the Renewable Facilities”) are eligible renewable energy resource certified by the CEC; and

WHEREAS, Buyer is interested in purchasing Products from the Facilities; and

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller, certain energy, capacity rights and associated environmental attributes for the purchase price set forth in Appendix A; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATION

#### Section 1.1 Definitions.

The following terms in this Agreement and the appendices hereto shall have the following meanings when used with initial capitalized letters:

“**Act**” has the meaning set forth in the preamble of this Agreement.

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or, as is appropriate given the context, is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Agreement**” has the meaning set forth in the preamble of this Agreement, and includes the Appendices attached hereto.

“**Agreement Term**” has the meaning set forth in Section 2.2(a).

“**Annual True-Up Credit**” has the meaning set forth in Appendix A.

“**ASME**” means American Society of Mechanical Engineers.

“**Assumed Daily Deliveries**” has the meaning set forth in Section 11.3(c).

“**ASTM**” means American Society for Testing and Materials.

“**Authorized Auditors**” means representatives of Buyer or Buyer’s Authorized Representative who are authorized to conduct audits on behalf of Buyer.

“**Authorized Representative**” means, with respect to each Party, the Person designated as such Party’s authorized representative pursuant to Section 12.1.

“**Available Generating Capacity**” means the Contract Capacity less the amount of capacity that is not available due to an outage.

“**Availability Incentive Payment**” has the meaning set forth in the CAISO Tariff.



**“Availability Standard”** has the meaning set forth in the CAISO Tariff.

**“AWS”** means American Welding Society.

**“Bankruptcy”** means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case, action or proceeding shall be consented to or acquiesced in by such Person or shall result in an order for relief or shall remain undismissed for ninety (90) days.

**“Base Output”** has the meaning set forth in Appendix A.

**“Base Output Compensation”** has the meaning set forth in Appendix A.

**“Base Output Monthly Payment”** has the meaning set forth in Appendix A.

**“Brown Act”** has the meaning set forth in Section 12.21(b).

**“Business Day”** means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Los Angeles, California or New York, New York.

**“Buyer”** has the meaning set forth in the preamble of this Agreement.

**“Buyer Curtailment”** has the meaning set forth in Section 6.5(b).

**“Buyer Indemnitee”** has the meaning set forth in Section 12.19(a).

**“Cal-OSHA”** means the California Occupational Safety & Health Administration.

**“CAISO”** means the California Independent System Operator.

**“CAISO Costs”** means (i) all current and future costs, expenses, fees, charges, credits and other amounts assessed by the CAISO to Seller or to Buyer in connection with the Facilities and (ii) any and all costs, expenses, fees, charges and other amounts incurred in connection with performing Scheduling services, settlement services and serving as the Scheduling Coordinator.

**“CAISO Master File”** has the meaning set forth in the CAISO Tariff.

**“CAISO Tariff”** means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures and standards attached thereto and any replacement thereof or successor thereto in effect.

“**CAMD**” means the Clean Air Markets Division of the EPA and any other state, regional or federal or intergovernmental entity or Person that is given authorization or jurisdiction or both over a program involving the registration, validation, certification or transferability of Environmental Attributes.

“**Capacity Rights**” means the rights, whether in existence as of the Effective Date or arising thereafter during the Agreement Term, to capacity, Resource Adequacy Attributes, Local Capacity Requirement Attributes, flexible capacity attributes, operating reserves, regulation services, and other associated attributes or reserves, or any of the foregoing as may in the future be defined by the CAISO, or any other balancing authority, reliability entity or Governmental Authority, associated with the electric generating capability of the Facilities, including the right to resell such rights.

“**CEC**” means California’s State Energy Resources Conservation and Development Commission, also known as the California Energy Commission.

“**CEC Certified**” means that the CEC has certified that the Facility is an eligible renewable energy resource in accordance with RPS Law.

“**CEC Performance Standard**” means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for electric generation facilities that are owned or operated (or both) by local publicly owned electric utilities, or for which a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

“**CEQA**” means the California Environmental Quality Act, California Public Resources Code §§ 21000, et seq.

“**Change in Law**” means a material change to any WREGIS standards, rules, or requirements, or a change to any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority, including the adoption of any new law, resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval.

“**Compliance Showings**” means the applicable load serving entities compliance with the resource adequacy requirements of its applicable regulatory authority for an applicable Showing Month.

“**Conditional Use Permit**” means the conditional use permits for the Facility.

“**Confidential Information**” has the meaning set forth in Section 12.21(a).

**“Contract Capacity”** means the amount of installed Facility capacity set forth in Appendix B.

**“Contract Price”** means, for any period of time, the Contract Price set forth in Appendix A.

**“Contract Year”** means (a) with respect to the first (1st) Contract Year, the period beginning on the Initial Delivery Date and extending through December 31 of the calendar year in which the Initial Delivery Date occurs, (b) with respect to the second (2nd) through the twentieth (20th) Contract Years, the applicable calendar year, and (c) with respect to the twenty first (21st) Contract Year, the period beginning on January 1 of the applicable calendar year and extending through the day before the anniversary of the Initial Delivery Date.

**“Costs”** has the meaning set forth in Section 11.3(f)(iii).

**“CPRA”** has the meaning set forth in Section 12.21(b).

**“Curtailed Period”** means a period of time during the Delivery Term during which the generation of Facility Energy is required to be curtailed or reduced (in whole or part) as a result of an order, direction, alert, request, notice, instruction or directive from a Transmission Provider, the CAISO, WECC, NERC, or any other reliability entity due to (a) a System Emergency, (b) system improvements, curtailments, or scheduled and unscheduled repairs or maintenance at or downstream from the Point of Delivery, (c) an event of Force Majeure at or downstream from the Point of Delivery, (d) over-generation or any other reason adversely affecting the normal function and operation of the CAISO grid or a Transmission Provider’s system, as may from time to time be identified by the CAISO, the Transmission Provider, WECC, NERC, or any other reliability entity. For the avoidance of doubt, the term “Curtailed Period” shall not include curtailments directed by CAISO for economic reasons as described in Section 6.5(b) or any curtailment by Buyer pursuant to Section 6.5(b).

**“Day-Ahead Market”** has the meaning set forth in the CAISO Tariff.

**“Deemed Generated Energy”** has the meaning set forth in Section 6.5(c).

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

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

**“Delivery Term”** has the meaning set forth in Section 2.2(b).

**“Dispute”** has the meaning set forth in Section 12.3(a).

**“Dispute Notice”** has the meaning set forth in Section 12.3(a).

**“Early Termination Date”** has the meaning set forth in Section 11.3(a).

“**EI**” means Edison Electric Institute.

“**Effective Date**” means the date on which Buyer and Seller have both executed this Agreement.

“**Electric Metering Devices**” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Facility Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“**Energy**” means electrical energy.

“**Environmental Attribute Reporting Rights**” means all rights to report ownership of the Environmental Attributes to any Person, including under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute, or any other current or future international, federal, state or local law, regulation or bill, or otherwise.

“**Environmental Attributes**” means RECs, and any and all other current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated (A) that are at any time recognized or deemed of value (or both) by Buyer, applicable law, or any voluntary or mandatory program of any other Governmental Authority or other Person and (B) that are attributable to (i) generation by the Facility during the Delivery Term or Replacement Energy required to be delivered by Seller to Buyer during the Delivery Term and (ii) the emissions or other environmental characteristics of such generation or such Replacement Energy or its displacement of conventional or other types of Energy generation. Environmental Attributes include any of the aforementioned arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, carbon, or any other greenhouse gas or chemical compound, particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (the “*UNFCCC*”), the Kyoto Protocol to the UNFCCC, California’s greenhouse gas legislation (including RPS Law and California Assembly Bill 32 (Global Warming Solutions Act of 2006) and any regulations implemented pursuant to that act, including any compliance instruments accepted under the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations of the California Air Resources Board or any successor regulations thereto) or any similar international, federal, state or local program or crediting “early action” with a view thereto, laws or regulations involving or administered by the CAMD and all Environmental Attribute Reporting Rights, including all evidences (if any) thereof such as renewable energy certificates of any kind. Environmental Attributes for purposes of this definition are separate from the Energy produced from the Facility and do not include (a) investment tax credits, any local, state or federal production tax credits, depreciation deductions or other tax credits providing a tax benefit to Seller or any other Person based on an ownership or security interest in the Facility, (b) any other depreciation deductions and benefits, and other tax benefits arising from ownership of the Facility and (c) cash grants or other financial incentives from any local, state or federal government available to Seller with respect to the Facility.

“**EPA**” means the United States Environmental Protection Agency.

**“EPS Compliance”** or **“EPS Compliant”** when used with respect to the Facility, means that the Facility satisfies both the PUC Performance Standard and the CEC Performance Standard in effect at the time; *provided*, if it is impossible for the Facility to satisfy both the PUC Performance Standard and the CEC Performance Standard in effect at any time, the Facility shall be deemed EPS Compliant if it satisfies the CEC Performance Standard in effect at the time and those portions of the PUC Performance Standard in effect at the time that it is possible for the Facility to satisfy while at the same time satisfying the CEC Performance Standard in effect at the time.

**“EPS Law”** means Sections 8340 and 8341 of the California Public Utilities Code or its successor or comparable state or federal programs.

**“Extended Delivery Term”** has the meaning set forth in Section 2.2(b).

**“Facility”** means the four (4) hydroelectric generating facilities described in the Recitals hereto, and Appendix B, including all property interests and related Interconnection Facilities owned by Seller.

**“Facility Energy”** means Energy generated by the Facility, less station load, transformation losses and transmission losses to the Point of Delivery, as measured by CAISO-approved Electric Metering Devices.

**“Facility Monthly Variable Output”** has the meaning set forth in Appendix A.

**“FERC”** means the Federal Energy Regulatory Commission.

**“Fixed Monthly Payment”** has the meaning set forth in Appendix A.

**“Force Majeure”** has the meaning set forth in Section 12.6(b).

**“Force Majeure Notice”** has the meaning set forth in Section 12.6(a).

**“Forced Outage”** means the removal of service availability of the Facility, or any portion of the Facility, for emergency reasons or conditions in which the Facility, or any portion thereof, is unavailable due to unanticipated failure, including as a result of Force Majeure.

**“Full Capacity Deliverability Status”** or **“FCDS”** has the meaning set forth in the CAISO Tariff.

**“GAAP”** means generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

“**Gains**” has the meaning set forth in Section 11.3(f)(i).

“**Governmental Authority**” means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority with jurisdiction over the Parties, the Facility, or this Agreement, or any Person acting as a delegate or agent of any Governmental Authority; provided that “Governmental Authority” specifically excludes Buyer, any successor or assignee of Buyer and the Participating Members.

“**Gross Facility Energy**” means the amount of Facility Energy delivered to the Point of Delivery during a Buyer Curtailment plus the amount of MWh calculated to approximate the amount of Energy that could have been produced and delivered to the Point of Delivery during the Buyer Curtailment, based on the volume of water bypassed at the Facility during a Buyer Curtailment. For the avoidance of doubt, volumes of water bypassed at the Facility for any reason other than a Buyer Curtailment, including natural spill conditions that may occur, shall not be included in the calculation of Gross Facility Energy.

“**IEEE**” means the Institute of Electrical and Electronics Engineers.

“**Insurance**” means the policies of insurance as set forth in Appendix E.

“**Interest Rate**” has the meaning set forth in Section 9.3.

“**Initial Delivery Date**” means December 19, 2021 and is the first day of the Delivery Term.

“**Initial Delivery Term**” has the meaning set forth in Section 2.2(b).

“**ISA**” means the Instrument Society of America.

“**Interconnection Agreement**” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Delivery Term.

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

“**Licensed Professional Engineer**” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of California, and otherwise qualified to perform the work required hereunder.

“**Lien**” means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including any option, of any other Person in or with respect to any real or personal property.

“**Local Capacity Requirement Attributes**” means the benefits or attributes now or existing in the future based on the procurement obligations of Buyer with respect to local resource capacity requirements as prescribed by the PUC, the CAISO or other regional entity, and that are associated with the electric generating capability of the Facility.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**Losses**” has the meaning set forth in Section 11.3(f)(ii).

“**Major Maintenance Blockout**” has the meaning set forth in Section 3.5(a).

“**Month**” means a calendar month commencing at 00:00 Pacific Prevailing Time on the first day of such month and ending at 24:00 Pacific Prevailing Time on the last day of such month.

“**Monthly Base Output**” has the meaning set forth in Appendix A.

“**MW**” means megawatt in alternating current, or ac.

“**MWh**” means megawatt-hours.

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

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff; provided, however, the amount of Net Qualifying Capacity provided by the Facility shall be equal to the amount of Resource Adequacy Capacity that is eligible to be used by Buyer to satisfy Compliance Showing requirements, including adjustments to account for Facility availability, operational limitations and Scheduled Outages.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.3(a).

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

“**Notice of Termination**” has the meaning set forth in Section 2.2(c).

“**Notifying Party**” has the meaning set forth in Section 12.3(a).

“**OSHA**” means the Occupational Safety and Health Administration of the United States Department of Labor.

“**Pacific Prevailing Time**” means the local time in the State of California.

**“Participating Members”** means the Cities of Healdsburg, Lodi, Lompoc, Roseville, Santa Clara and Ukiah, and the San Francisco Bay Area Rapid Transit District, and the City of Oakland, acting by and through its Board of Port Commissioners.

**“Party”** or **“Parties”** has the meaning set forth in the preamble of this Agreement.

**“Permits”** means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described that are required to be filed, submitted, obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the Facility, the production, sale and delivery of Products from the Facility, including Facility Energy, Capacity Rights and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including the, Conditional Use Permit, CEQA determinations and the Permits as may be applicable.

**“Person”** means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.

**“PNode”** means the CAISO Pricing Node for the Facility as defined in the CAISO Tariff to be established by CAISO, as set forth in Appendix B.

**“Point of Delivery”** mean the Point of Interconnection for each Facility.

**“Point of Interconnection”** has the meaning set forth in Appendix B.

**“Present Value Rate”** means, at any date, the sum of 0.50% plus the yield reported on page “USD” of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally-recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

**“Products”** means any and all Facility Energy, Capacity Rights, Environmental Attributes, and ancillary products, services or attributes similar to the foregoing that are or can be produced by, or are associated with, the Facility, whether now attainable or established in the future, including delivered energy, renewable attributes, operating reserves and renewable energy credits.

**“Prudent Utility Practices”** means those practices, methods, and acts, that are commonly used by a significant portion of the hydroelectric electric generation industry in prudent engineering and operations to design, construct, and operate and maintain electric equipment lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of the CAISO, FERC, NERC, WECC, as each may be amended from time to time, and all applicable Requirements of Law.



Prudent Utility Practices are not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the hydroelectric generation industry.

“**Public Utilities Code**” means the Public Utilities Code of the State of California, as may be amended from time to time.

“**PUC**” means the California Public Utilities Commission and any successor thereto.

“**PUC Performance Standard**” means, at any time, the greenhouse gas emission performance standard in effect at such time for electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, or for which a load-serving entity and not a local publicly owned electric utility has entered into a contractual agreement for the purchase of power from such facilities, as established by the PUC or other Governmental Authority under the EPS Law.

“**QRE**” has the meaning set forth in Section 7.4.

“**RA Capacity Monthly Payment**” has the meaning set forth in Appendix A.

“**RA Capacity Rate**” has the meaning set forth in Appendix A.

“**RA Deficiency Amount**” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 8.4.

“**RA Shortfall Month**” means, for purpose of calculating an RA Deficiency Amount under Section 8.4, any month which the amount of Resource Adequacy Capacity supplied from the Facility for such month was less than the Net Qualifying Capacity for such month.

“**Real-Time Market**” has the meaning set forth in the CAISO Tariff.

“**REC**” or “**Renewable Energy Credit**” means a certificate of proof associated with the generation of electricity from an eligible renewable energy resource, which certificate is issued through the accounting system established, used or approved by the CEC pursuant to the RPS Law, evidencing that one (1) MWh of Energy was generated and delivered from such eligible renewable energy resource. Such certificate is a tradable environmental commodity (also known as a “green tag” or “renewable energy certificate”) for which the owner of the REC can evidence that it has purchased Energy that is CEC Certified.

“**Recipient Party**” has the meaning set forth in Section 12.3(a).

“**Remaining Term**” means, at any date, the remaining portion of the Delivery Term at that date without regard to any early termination of this Agreement.

“**Replacement RA**” has the meaning set forth in Section 8.4(c).

**“Requirements”** means, collectively, (a) any standards or requirements of ASTM, ASME, AWS, EPA, EEI, IEEE, ISA, National Electrical Code, NERC, National Electric Safety Code, OSHA, Cal-OSHA, Uniform Building Code, or Uniform Plumbing Code applicable to the design or construction of the Facility, (b) any applicable local county fire department standards or codes, (c) Prudent Utility Practices, (d) FERC licenses, and federal and state dam safety regulations, (e) all applicable Requirements of Law, including the UCC, and (f) all other requirements of this Agreement.

**“Requirement of Law”** means any federal, state, local or other law (including any environmental law, EPS Law or RPS Law), resolution, standard, code, rule, ordinance, directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, license or approval of a Governmental Authority, including those pertaining to electrical, building, zoning, environmental, dam safety, cyber and physical security, and occupational safety and health requirements.

**“Resource Adequacy Attributes”** of **“Resource Adequacy Capacity”** means the benefits or attributes, including flexible attributes, if any, now or existing in the future based on the procurement obligations of Buyer with respect to Resource Adequacy as prescribed by the PUC, the CAISO or any other regional entity, and that are associated with the electric generating capability of the Facility.

**“RPS Compliance”** or **“RPS Compliant”** means, when used with respect to the Facility, that all Energy generated by such facility at all times shall, together with all of the associated Environmental Attributes, qualify as a “portfolio content category 1” eligible renewable resource, as such term is defined in Public Utilities Code Section 399.12 or Section 399.16, or equivalent if the RPS Law is changed, under the RPS Law.

**“RPS Law”** means the California Renewable Energy Resources Act, including the California Renewables Portfolio Standard Program, Article 16 of Chapter 2.3, Division 1 of the Public Utilities Code, California Public Resources Code § 25740 through 25751, any related regulations or guidebooks promulgated by the CEC or, as applicable, the PUC or its successor or equivalent state or federal programs.

**“SCADA”** means the supervisory control and data acquisition system for the Facility.

**“Schedule”** or **“Scheduling”** means the actions of Seller and Buyer, their Authorized Representatives, the Scheduling Coordinator and the Transmission Providers, if applicable, of notifying, requesting and confirming to the CAISO the amounts of Facility Energy expected to be delivered consistent with the Scheduling Interval at the Point of Delivery on any given date during the Delivery Term, all in the manner contemplated by the CAISO Tariff.

**“Scheduled Outage”** means any outage with respect to the Facility other than a Forced Outage.

**“Scheduled Outage Projection”** has the meaning set forth in Section 3.5(a).

“**Scheduling Coordinator**” has the meaning set forth in the CAISO Tariff.

“**Seller**” has the meaning set forth in the preamble of this Agreement.

“**Seller Indemnitees**” has the meaning set forth in Section 12.19(b).

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Statement**” has the meaning set forth in the CAISO Tariff.

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

“**Subcontract**” means any agreement or contract entered into on or after the Effective Date by Seller and a Person other than Buyer, which Person is providing goods or services to Seller that are related to the performance of Seller’s obligations under this Agreement. Subcontracts specifically include any agreement or contract that is referred to or defined as a “subcontract” in the policies, ordinances, codes or laws with which Seller must comply pursuant to this Agreement, or that is made with a “subcontractor” as such term is used or defined in such policies, ordinances, codes, or laws.

“**Subcontractor**” means any party to a Subcontract with Seller.

“**System Emergency**” means each of the following: (i) “System Emergency” as set forth in the CAISO Tariff and (ii) a condition or situation that in the judgment of Buyer (a) is imminently likely to endanger life or property; or (b) is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, reliability of, or damage to the Transmission System, Transmission Provider’s interconnection facilities (as defined in the Interconnection Agreement) or the transmission systems of others to which the Transmission System is directly connected.

“**Tax**” or “**Taxes**” means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

“**Termination Notice**” has the meaning set forth in Section 11.3(a).

“**Termination Payment**” means a payment in an amount equal to the Non-Defaulting Party’s (a) Losses, plus (b) Costs, minus (c) Gains; *provided, however*, that if such amount is a negative number, the Termination Payment shall be equal to zero.

“**Transmission Provider**” means the Person operating the Transmission System to and from the Point of Delivery.

“**Transmission Services**” means the transmission and other services required to transmit Facility Energy to or from the Point of Delivery.

“**Transmission System**” means the facilities utilized to provide Transmission Services.

“**Unexcused Cause**” has the meaning set forth in Section 12.6(b).

“**UNFCCC**” has the meaning set forth in the definition of “Environmental Attributes.”

“**Variable Output**” has the meaning set forth in Appendix A.

“**Variable Output Monthly Payment**” has the meaning set forth in Appendix A.

“**Variable Output Rate**” has the meaning set forth in Appendix A.

“**Variable Output True-Up**” has the meaning set forth in Appendix A.

“**WECC**” means the Western Electricity Coordinating Council.

“**WREGIS**” means Western Renewable Energy Generation Information System.

“**WREGIS Certificates**” has the meaning set forth in Section 7.4.

“**WREGIS Operating Rules**” means the rules describing the operations of the WREGIS, as published by WREGIS.

Other terms defined herein have the meanings so given when used in this Agreement with initial-capitalized letters.

**Section 1.2 Interpretation.** In this Agreement, unless a clear contrary intention appears:

- (a) time is of the essence;
- (b) the singular number includes the plural number and vice versa;
- (c) reference to any Person includes such Person’s successors and assigns (regardless of whether such Person’s successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (d) reference to any gender includes the other;
- (e) reference to any agreement (including this Agreement), document, act, statute, law, instrument, tariff or Requirement means such agreement, document, act, statute, law,

instrument, or tariff, or Requirement, as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, act, statute, law, instrument, tariff, or Requirement expressly refers to amendments, modifications, replacements, or successors;

(f) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

(g) “hereunder,” “hereof,” “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;

(h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term, regardless of whether words such as “without limitation” are expressly included in the applicable provision;

(i) relative to the determination of any period of time, “from” means “from and including,” “to” means “to but excluding” and “through” means “through and including”;

(j) unless otherwise indicated, reference to time shall always refer to Pacific Prevailing Time; and reference to any “day” shall mean a calendar day, unless otherwise indicated; and

(k) the term “or” is not exclusive, regardless of whether “and/or” is used in the applicable provision.

## **ARTICLE II EFFECTIVE DATE, TERM, AND EARLY TERMINATION**

**Section 2.1 Effective Date.** This Agreement is effective as of the Effective Date. On or prior to the Effective Date, each of the following has occurred: (a) both Parties have executed and delivered this Agreement; (b) Buyer has received copies of all requisite resolutions and incumbency certificates of Seller and any other documents evidencing all actions taken by Seller to authorize the execution and delivery of this Agreement, such resolutions to be certified as of the Effective Date by an authorized representative of Seller; and (b) Seller has received copies of all requisite resolutions and incumbency certificates of Buyer authorizing the execution and delivery of this Agreement, such resolutions to be certified as of the Effective Date by an authorized official of Buyer.

### **Section 2.2 Term.**

(a) **Agreement Term.** The term of this Agreement (the “*Agreement Term*”) shall commence on the Effective Date and end on the last day of the Delivery Term, or upon the earlier termination of this Agreement in accordance with the terms hereof.

(b) **Delivery Term.** The initial delivery term of this Agreement (the “**Initial Delivery Term**”) shall begin on the Initial Delivery Date and shall continue uninterrupted through 11:59 pm on December 31, 2031, unless sooner terminated in accordance with the terms of this Agreement. At the end of the Initial Delivery Term of this Agreement, the term of this Agreement shall automatically extend for an additional ten (10) year period (the “**Extended Delivery Term**”) unless Seller provides written Notice of Termination pursuant to Section 2.2(c), of its election to not automatically extend the term of this Agreement.

(c) **Notice of Termination.** This Agreement may be terminated by Seller at the end of the Initial Delivery Term by providing written notice to the Buyer at least three hundred sixty five (365) Calendar Days prior to the end of the Initial Delivery Term of this Agreement (“**Notice of Termination**”).

**Section 2.3 Survivability.** The provisions of this ARTICLE II, ARTICLE X, ARTICLE XI, Section 12.9 and Section 12.21 shall survive for a period of one year following the termination of this Agreement. The provisions of ARTICLE IX shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of ARTICLE V, ARTICLE VII, and ARTICLE VIII shall continue in effect after termination to the extent necessary to provide for final billing, adjustments, and deliveries related to any period prior to termination of this Agreement.

#### **Section 2.4 Early Termination.**

(a) **Early Termination by Mutual Agreement.** This Agreement may be terminated by mutual written agreement of the Parties.

(b) **Early Termination for Default.** Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 11.3.

(c) **Early Termination for Force Majeure.** This Agreement may be terminated pursuant to Section 12.6(c) or Section 12.6(d).

(d) **Effect of Termination.** Except as otherwise provided herein, any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of a Party for Defaults occurring prior to such termination.

### **ARTICLE III OPERATION AND MAINTENANCE OF THE FACILITY**

#### **Section 3.1 General Operational Requirements.** Seller shall, at all times:

(a) At its sole expense, operate and maintain the Facility (i) in accordance with the Requirements and (ii) in a manner that is reasonably likely to result in a useful life for the Facility of not less than the Delivery Term;

(b) Use qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer, and ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

(c) Operate and maintain the Facility with due regard for the safety, security and reliability of the Interconnection Facilities; and

(d) Operate and maintain the Facility in accordance with the CAISO Tariff and other applicable requirements, including, but not limited to, submitting Facility technical and modeling information to the CAISO, as may be required; and

(e) Comply with operating and maintenance standards recommended or required by the Facility's equipment suppliers, and in accordance with Prudent Utility Practices.

### **Section 3.2 Operation and Maintenance Plan.**

(a) Seller shall devise and implement a plan of inspection, maintenance, and repair for the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance, and repairs thereto. The aforementioned plan and all records of such activities shall be available for inspection by Buyer during Seller's regular business hours upon reasonable notice.

(b) In addition to the other required and preventative maintenance actions required by this Agreement, Seller shall: (i) conduct regular visual equipment inspections and log significant parameters; (ii) identify and perform all preventative maintenance requirements for the following calendar year; (iii) schedule and assign routine maintenance during operations, planned outages, as well as maintenance that can be conducted in parallel; (iv) conduct periodic maintenance to various equipment; (v) conduct periodic quality assurance and quality control activities and inspections; and (vi) hire Subcontractors, as applicable to meet the Facility's maintenance, betterment, and improvement needs. Notwithstanding the requirements of this Section 3.2(b), Seller shall retain full discretion in budgeting and determining the priority in which it performs preventive maintenance in relation to Seller's other projects and actions.

**Section 3.3 Decommissioning and Other Costs.** Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition.

**Section 3.4 Environmental Credits.** Seller shall, if applicable, obtain in its own name and at its own expense all pollution or environmental credits or offsets necessary to operate the Facility in compliance with any Requirement of Law; *provided* for the avoidance of doubt, Seller shall not use any Environmental Attributes to satisfy the foregoing obligation.

### **Section 3.5 Outages.**

(a) Buyer and Seller shall cooperate to minimize Scheduled Outages during specified periods of time during each calendar year in accordance with Prudent Utility Practices and this Section 3.5 (such periods, the “**Major Maintenance Blockout**”). No later than May 1 prior the commencement of each Contract Year, Buyer shall provide Seller with its specified Major Maintenance Blockout. In the absence of such updated notification, the period of May 1 through September 30 shall apply. Seller shall attempt to minimize its Scheduled Outages during the Major Maintenance Blockout consistent with Prudent Utility Practices. No later than ninety (90) days prior to the first day of the Delivery Period, and for each calendar year thereafter, no later than four (4) months prior to the deadline for providing the CAISO Resource Adequacy filings and proposed maintenance outages for the following year as described in the CAISO Tariff, Seller shall provide Buyer and the Scheduling Coordinator with its non-binding written projection of all Scheduled Outages for the succeeding calendar year (the “**Scheduled Outage Projection**”) reflecting Seller’s attempt to minimize scheduled maintenance during the Major Maintenance Blockout. In addition, Seller shall cooperate in good faith with maintenance scheduling requests by Buyer consistent with Prudent Utility Practices, and Buyer and Seller shall strive to develop a final Scheduled Outage plan no later than three (3) months prior to the deadline for providing the CAISO Resource Adequacy filings and proposed maintenance outages for the following year as described in the CAISO Tariff. Notwithstanding the process described herein for coordination of Scheduled Outages between Buyer and Seller, both Buyer and Seller acknowledge that all Scheduled Outages submitted to the CAISO may be accepted or rejected by the CAISO as described in the CAISO Tariff. In the event the CAISO rejects a Scheduled Outage request submitted by Seller, Buyer and Seller agree to cooperate in good faith to timely coordinate and develop a revised final Scheduled Outage plan to account for any Scheduled Outages that are not approved by the CAISO. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (a) the anticipated start and end dates of each Scheduled Outage; (b) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (c) the anticipated MW of operational capacity, if any, during the Scheduled Outage. Seller shall use commercially reasonable efforts to notify Buyer and its Scheduling Coordinator of any change in the Scheduled Outage Projection sixty-five (65) days prior to first day of the month of the originally-scheduled date of the Scheduled Outage but in no event shall Seller notify Buyer later than fifty-five (55) days prior to the first day of the month of the originally-scheduled date of the Scheduled Outage. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and shall, to the extent feasible and consistent with Prudent Utility Practices, arrange for Scheduled Outages to occur between October 1 and May 1 of each year (or such other period as reasonably determined by Buyer from time to time) and coincident, to the extent known by Seller, with the Transmission Provider’s planned transmission outages, but not to overlap with the Major Maintenance Blockout. In the event of a System Emergency, Seller shall consider and decide in its discretion if it is commercially reasonable to reschedule any Scheduled Outages previously scheduled so that it does not occurs during the System Emergency. In addition, Seller shall use commercially reasonable efforts to coordinate Scheduled Outages with a total duration of 30 calendar days or less to occur within a single calendar month period.

(b) In addition to reporting outages to Buyer and the Scheduling Coordinator within any applicable time period for reporting outages under the CAISO Tariff and applicable rules and regulations of the CAISO, immediately upon identification of a situation likely to result



in a Forced Outage occurring within a twenty-four (24) hour period that is likely to cause or require removal of the Facility from service, or a reduction in the maximum output capability of the Facility by one (1) MW or more from the value most recently recorded in the generation outage reporting system for the CAISO, Seller shall notify Buyer and the Scheduling Coordinator. For all other Forced Outages, Seller shall provide Buyer and the Scheduling Coordinator with as much advance notice as practicably possible, but in all cases, shall notify Buyer and the Scheduling Coordinator within 30 minutes after the commencement of the Forced Outage. Seller shall provide detailed information concerning each Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW of operational capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

(c) In addition to the requirements set forth in Section 3.5(a) and Section 3.5(b), the Parties shall cooperate to develop mutually acceptable procedures for addressing Scheduled Outages and any other outages arising in connection with the Facility.

(d) In the event of any inconsistency between the provisions in this Section 3.5 and any applicable requirements of CAISO, the provisions of CAISO shall govern.

#### **ARTICLE IV COMPLIANCE DURING OPERATIONS**

**Section 4.1 Buyers' Rights to Monitor in General.** Buyer shall have the right, and Seller shall permit Buyer and its Authorized Representative, and any other advisors, engineers and consultants agreed by the Parties (where such agreement shall not be unreasonably withheld), to observe, inspect, and monitor the operations and activities of the Facility; provided that such activities on the part of Buyer and its Authorized Representative shall be coordinated with Seller so as to not interfere with the Facility, and as to other advisors, engineers and consultants, such third parties executing an agreement setting forth the terms and conditions required by the Parties, including insurance, indemnity and non-disclosure terms. Seller shall cause its personnel, consultants, and contractors to be available to, and cooperate in all reasonable respects with, Buyer and its Authorized Representative, advisors, engineers, and consultants at reasonable times and with prior notice for purposes of discussing any aspect of the Facility testing, performance, operation, or maintenance thereof and Buyer's exercise of its rights under this Section 4.1. Buyer's rights to access the Facility shall be subject to Seller's reasonable safety protocols.

**Section 4.2 Effect of Review by Buyer.** Any review by Buyer or a Buyer's Authorized Representative of the operation or maintenance of the Facility, or observation of any testing, is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review or observations with Seller, nor shall any such review or the results thereof (whether or not the results are shared with Seller), nor any failure to conduct any such review, nor any observation of testing or failure to observe testing, relieve Seller from any of its obligations under this Agreement. By making any such review or observing any such testing, Buyer makes no representation as to the economic and technical feasibility, operational capability or reliability of

the Facility. Seller shall in no way represent to any third party that any such review by Buyer or Buyer's Authorized Representative of the Facility thereof, including any review of the operation or maintenance, is a representation by Buyer as to the economic and technical feasibility, operational capability or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

**Section 4.3 No Liens.** Except as otherwise permitted by this Agreement: (a) the Facility shall be owned by Seller during the Agreement Term; and (b) Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien on any portion of the Facility or any other property or assets that are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer, which such written approval shall not be unreasonably withheld.

## ARTICLE V PURCHASE AND SALE OF PRODUCT

**Section 5.1 Purchases by Buyer.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all the Products produced by or associated with the Facility at the Contract Price and in accordance with Appendix A, and Seller shall supply and deliver to Buyer all the Products produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Products, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product from the Facility after the Point of Delivery for resale in the market or to any third party, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Products for which the associated Facility Energy is not or cannot be delivered to the Point of Delivery as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Period.

**Section 5.2 Sale of Environmental Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Environmental Attributes attributable to the Facility Energy generated by the Facility.

## ARTICLE VI TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS

### **Section 6.1 Delivery.**

(a) Energy and Capacity. Subject to the provisions of this Agreement, during the Delivery Term, Seller shall supply and deliver the Products to Buyer at the Point of Delivery, and Buyer shall take delivery of the Products at the Point of Delivery in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Point of Delivery, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with

the delivery of Facility Energy at and after the Point of Delivery, including without limitation transmission costs and transmission line losses. Throughout the Delivery Term, Buyer shall Schedule and dispatch the Facilities in accordance with Prudent Utility Practices and shall have the exclusive right to bid or schedule all Products from each Facility, and provide (or cause to be provided), at its own expense, and will be solely responsible for the performance of all Scheduling Coordinator services required under the term of this Agreement, the CAISO Tariff, applicable protocols and scheduling practices, and any other applicable law, rule or regulatory requirement applicable to Scheduling Coordinators, for the Facilities. The Facility Energy will be scheduled and dispatched with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator for the Facility) in accordance with Appendix C.

(b) Environmental Attributes. All Environmental Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Environmental Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Facility.

**Section 6.2 Scheduling Coordinator; CAISO Cost Allocation.** Buyer or Buyer's designee shall act as Scheduling Coordinator for the Facility and shall have the full right and obligation to Schedule and dispatch all Facility Energy and capacity in accordance with the CAISO Tariff and other applicable requirements. Seller shall provide the capability to implement dispatch order, including adjustments to operating constraints, such as ramp rates, megawatt output, and megavar output, in real-time by means of set points received by the SCADA system or Facility controller of Seller, provided that the dispatch order is consistent with the Facility's operational characteristics as then-currently modeled in the CAISO Master File. The Facility shall have one or more designed resource IDs with CAISO for scheduling purposes, as set forth in the CAISO Master File. Buyer shall be financially responsible for and shall pay for all CAISO Costs; provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges under a Settlement Statement incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement.

**Section 6.3 Interconnection Facilities.** Seller shall maintain an Interconnection Agreement and applicable Interconnection Facilities with the Transmission Provider to enable the Facility to interconnect with the Transmission System at the Point of Delivery. Seller shall be solely responsible for and pay all costs and charges arising under the Interconnection Agreement in compliance with the Interconnection Agreement and applicable rules and requirements in place throughout the Delivery Term.

**Section 6.4 Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar

year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month's average-day expected Facility Energy, and associated hydrological storage, for the following calendar year in a form reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the Initial Delivery Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Facility Energy, hydrological storage, and Available Generating Capacity for each day of the following month in a form reasonably requested by Buyer ("**Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) environmental requirements, including minimum water release requirements, in each case, 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 non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's non-binding best estimate of (i) the Available Generating Capacity and (ii) applicable requirements and minimum water release requirements.

(d) Water Transfers. Seller, in Seller's discretion, may implement temporary or long-term reservoir reoperation or other water transfers during the Delivery Term. Seller will include any such transfers in the Monthly Delivery Forecast and Day-Ahead Forecast. If a transfer is forecasted at the time the Annual Forecast is due, then Seller shall provide notice to Buyer in the Annual Forecast; otherwise, Seller will provide notice to Buyer of any potential water transfer when it is first forecasted. Buyer and the Scheduling Coordinator agree to implement any water transfers and any accompanying regulatory or legal requirements of the transfer, including refill criteria and ramping rates. Buyer and Scheduling Coordinator will neither object to Seller water transfers, nor charge an accommodation or other fee or request any other offset or payment for such transfers during the Delivery Term.

(e) Throughout the Delivery Term, Seller shall provide to Buyer and the Scheduling Coordinator the following data on a real-time basis, and in a format that reasonably allows Buyer and the Scheduling Coordinator to copy, paste or otherwise use such data:

(i) Read-only and/or write access via secure login credentials to Energy output information and operational information collected by the SCADA system for the Facility; *provided* that if Buyer or the Scheduling Coordinator is unable to access the Facility's SCADA system, then upon written request from Buyer or the Scheduling Coordinator, Seller shall provide Energy output information and operational information through such other format as may be mutually acceptable to Seller and Buyer, all as may be updated from time to time based on advancements in technology in accordance with Prudent Utility Practices; and

(ii) Read-only access to all Electric Metering Devices.

(f) Seller, Buyer and the Scheduling Coordinator shall mutually develop forecasting and Scheduling procedures in addition to those set forth in this Section 6.4 and Appendix C, in order to administer the provisions of this Agreement in compliance with all applicable Requirements and requirements of the Transmission Provider, CAISO, NERC, WECC, and any balancing authority involved in the Scheduling of Energy and capacity under this Agreement. Seller, Buyer and the Scheduling Coordinator shall promptly cooperate to make any reasonably necessary and appropriate modifications to such forecasting or Scheduling procedures as may be required from time to time.

### **Section 6.5 Curtailment.**

(a) Seller shall reduce deliveries of Facility Energy to the Point of Delivery as soon as reasonably possible upon notice from the Scheduling Coordinator, the CAISO, a Transmission Provider, or any balancing authority or reliability entity during Curtailment Periods. Buyer shall be excused from receiving any Facility Energy from Seller and shall not be obligated to pay Seller for the amount of reduced Facility Energy arising during a Curtailment Period. If required by the Scheduling Coordinator, the CAISO, a Transmission Provider, any balancing authority or reliability entity, or if requested by Buyer, Seller shall provide the dispatch and operating capability to implement curtailments and adjust ramp rates, megawatt output, and (if applicable) megavar output in real-time by means of setpoints received by the SCADA system or Facility controller of Seller.

(b) Separate from the curtailments described in Section 6.5(a), Buyer may, upon delivering curtailment instruction to Seller, curtail deliveries of Facility Energy at any time and for the duration specified by Buyer ("**Buyer Curtailment**"). For the avoidance of doubt, if the curtailment is resulting from Buyer's bidding and scheduling strategies and activities, including Buyer's strategies to minimize Buyer's exposure to negative pricing, the Facility will be deemed to have been curtailed pursuant to this Section 6.5(b), for which Buyer will be required to reimburse Seller as set forth herein. Buyer, Buyer's real-time operators or the Scheduling Coordinator shall provide to Seller a dispatch notice or instruction in accordance with CAISO scheduling timelines set forth in the CAISO Tariff, or in accordance with the Scheduling and dispatch procedures set forth in Appendix C, of its request for curtailment under this Section 6.5(b), and Seller shall comply with such request in accordance with Prudent Utility Practices, provided that the dispatch order is consistent with the Facility's operational characteristics as then-currently modeled in the CAISO Master File. The curtailment notice to Seller shall indicate the amount of any Facility Energy to be produced in each applicable Settlement Interval. Seller shall respond to curtailment notices (including the end of such curtailment periods) in accordance with Prudent Utility Practices. Seller shall provide the capability to implement curtailment notices, including adjustments to operating constraints, such as ramp rates, megawatt output, and megavar output, in real-time by means of set points received by the SCADA system or Facility controller of Seller. Buyer shall compensate Seller for any Deemed Generated Energy by accounted for Deemed Generated Energy as Monthly Base Output, as further set forth in Appendix A.

(c) “*Deemed Generated Energy*” means the amount of Facility Energy, expressed in MWh, that the Facility would have produced and delivered to the Point of Delivery, but for a curtailment event arising under Section 6.5(b), which amount shall be equal to (i) Gross Facility Energy, less (ii) the amount of Facility Energy delivered to the Point of Delivery during the curtailment or other event, if any; *provided* that, if the applicable difference calculated pursuant to the formula provided above is negative, the Deemed Generated Energy shall be zero (0).

(d) Within thirty (30) days after any curtailment pursuant to Section 6.5(a) and Section 6.5(b), Buyer shall provide Seller with all necessary information needed and reasonably requested by Seller, whether from Buyer or CAISO, including CAISO “flags” with respect to the curtailments, for Seller to determine if compensation is owed to Seller by Buyer pursuant to Section 6.5(b).

**Section 6.6 No Payment.** Buyer shall not be obligated to pay Seller for any Facility Energy that is not or cannot be delivered to the Point of Delivery for any reason (including Force Majeure), except as otherwise stated in Section 6.5(b).

**Section 6.7 Title; Risk of Loss.** As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Energy prior to the Point of Delivery, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of the Energy at and from the Point of Delivery. Seller warrants that it will deliver all Products, including all of the associated Environmental Attributes, to Buyer free and clear of all Liens created by any Person other than Buyer.

**Section 6.8 RPS and EPS Compliance.**

(a) Seller warrants and guarantees that during the Delivery Period the Facility Energy produced by each Facility that is CEC Certified as of the Effective Date, and at all times thereafter until the expiration or earlier termination of the Agreement, the Facility (including the Facility Energy and the associated Environmental Attributes) shall be both RPS Compliant and EPS Compliant (if EPS Law is applicable to the Facility), except if the Facility fails to be RPS Compliant or EPS Compliant (if EPS Law is applicable to the Facility) as a result of (i) a Change in Law making it impossible, after the use of commercially reasonable efforts as required under Section 6.8(b), for the Facility to be RPS Compliant or EPS Compliant, or (ii) any repeal of the RPS Law or EPS Law.

(b) If a Change in Law occurs after the Initial Delivery Date that (i) does not repeal the RPS Law or the EPS Law, (ii) causes the Facility to cease to be RPS Compliant and/or EPS Compliant and (iii) reduces the value to Buyer of the Environmental Attributes, then Seller shall use commercially reasonable efforts to comply with such Change in Law and cause the Facility to be RPS Compliant and EPS Compliant. To the extent a Change in Law occurs after the execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such Change in Law. The term “commercially reasonable efforts” as used in this Section 6.8 means efforts consistent with the subject to Section 6.9.

(c) Subject to Section 7.1, Seller shall also take all other reasonable actions necessary to ensure that the Facility Energy is tracked for purposes of satisfying the RPS Law, as may be amended or supplemented by the PUC or CEC from time to time.

**Section 6.9 Compliance Expenditure Cap.** If a Change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Products, then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at twenty-five thousand dollars (\$25,000.00) per MW of Contract Capacity ("**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**." Seller will determine, in Seller's reasonable discretion, the implementation schedule for Compliance Actions.

If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 6.9 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall endeavor in good faith to expeditiously implement the Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days of Buyer's receipt of any invoice from Seller.

## ARTICLE VII ENVIRONMENTAL ATTRIBUTES

**Section 7.1 Transfer of Environmental Attributes.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by and between Buyer and Seller

to purchase and sell Facility Energy on the terms and conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all right, title, and interest in and to all Environmental Attributes, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Delivery Term associated with the Facility Energy. Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable law upon Seller's production or acquisition of the Environmental Attributes. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of such Environmental Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Environmental Attributes except with respect to any sales by Seller pursuant to Section 5.1. Buyer and Seller acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the Contract Price.

**Section 7.2 Reporting of Ownership of Environmental Attributes.** During the Agreement Term, Seller shall not report to any Person that the Environmental Attributes granted hereunder to Buyer belong to any Person other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it except with respect to any sales by Seller pursuant to Section 5.1, and during a Force Majeure.

**Section 7.3 Environmental Attributes.** Upon the request of Buyer or Buyer's Authorized Representative, Seller shall take all reasonable actions and execute all documents or instruments necessary under applicable law regulations, guidebooks promulgated by the CEC or PUC, bilateral arrangements or other voluntary Environmental Attribute programs of any kind, as applicable, to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term and Seller shall file with the CEC and any other applicable Persons all materials and documents required to demonstrate that the Facility is entitled to be CEC Certified.

**Section 7.4 WREGIS.** In furtherance and not in limitation of Section 7.3, prior to Seller's first delivery of Facility Energy hereunder, Seller shall register with WREGIS to evidence the transfer of any Environmental Attributes under applicable law or any voluntary program ("**WREGIS Certificates**") associated with Facility Energy in accordance with WREGIS reporting protocols and WREGIS Operating Rules and shall register the Facility with WREGIS. After the Facility is registered with WREGIS, at the option of Buyer's Authorized Representative, Seller shall transfer WREGIS Certificates using the Forward Certificate Transfer method as described in WREGIS Operating Rules from Seller's WREGIS account to Buyer's WREGIS accounts, as designated by Buyer's Authorized Representative. Seller shall be responsible for WREGIS Certificate issuance fees and WREGIS expenses associated with registering the Facility, maintaining its account, acquiring and arranging for a Qualified Reporting Entity ("**QRE**") and any applicable QRE agreements, and transferring WREGIS Certificates to Buyer, Buyer's Authorized Representative, or any other designees. Buyer shall be responsible for its WREGIS expenses associated with maintaining its own account, or the accounts of its designees, if any, and subsequent transferring or retiring by it of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Forward Certificate Transfers shall occur monthly based on the certificate creation timeline established by the WREGIS Operating Rules. Seller shall



be responsible for, at its expense, validating and disputing data with WREGIS prior to WREGIS Certificate creation each Month. In addition to the foregoing, Seller shall document the production and transfer of Environmental Attributes under this Agreement to Buyer by delivering to Buyer an attestation in substantially the form attached as Appendix D for the Environmental Attributes associated with Facility Energy, if any, measured in whole MWh, or by such other method as Buyer shall designate.

**Section 7.5 Further Assurances.** In addition to and not in limitation of Section 7.4, Seller shall document the production of Environmental Attributes by delivering with each invoice to Buyer an attestation for the Environmental Attributes associated with Facility Energy, if any, for the preceding Month in the form of the attestation set forth as Appendix D. At Buyer's Authorized Representative's request, the Parties shall execute all reasonable documents and instruments and take commercially reasonable actions in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer and to maximize the attribution, accrual, realization, generation, production, recognition and validation of Environmental Attributes throughout the Agreement Term. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement shall not be recorded, each Party shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

## **ARTICLE VIII CAPACITY RIGHTS**

**Section 8.1 Capacity Rights.** For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell Facility Energy and Environmental Attributes on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of Seller's rights, title and interest in and to the Capacity Rights. The consideration for the transfer of Capacity Rights, if any, is contained within the Contract Price. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the Capacity Rights or otherwise. Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller.

**Section 8.2 Covenant Regarding Capacity Rights.** Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and shall not in the future assign, transfer, convey, encumber, sell or otherwise dispose of any of the Capacity Rights to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the Capacity Rights. During the Agreement Term, Seller shall not report to any Person that any of the Capacity Rights belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the Capacity Rights belongs to it.

**Section 8.3 Further Assurances.** Seller shall execute and deliver such documents and instruments and take such other action as reasonably required by the CAISO and as Buyer's Authorized Representative may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

**Section 8.4 Resource Adequacy Failure.**

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole and exclusive remedy for the Capacity Rights Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the Initial Delivery Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Net Qualifying Capacity for such month, minus (ii) the amount of Resource Adequacy Capacity supplied from the Facility for such month, multiplied by the RA Capacity Rate; *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Net Qualifying Capacity with respect to such month, minus (Y) the amount of Resource Adequacy Capacity supplied from the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice at least sixty-five (65) days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

(c) Option to Provide Replacement RA. If Seller desires to provide replacement Resource Adequacy Capacity for any Showing Month from a different generating unit other than the Facility (the "**Replacement RA**"), then Seller may provide Buyer with Replacement RA from one or more replacement units, provided that in each case the Replacement RA is supplied from like-for-like replacement units that provide Buyer with equivalent Capacity Attributes as the Facility.

(d) Availability Standards. Seller agrees that the Facility may be subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments as contemplated in the CAISO Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of the Buyer and for Buyer's account and that any Non-Availability Charges are the responsibility of the Buyer and for Buyer's account; provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all Non-Availability Charges incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement.

**ARTICLE IX**  
**BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES**

**Section 9.1 Billing and Payment.** Billing and payment for all Products shall be as set forth in this ARTICLE IX.

## **Section 9.2 Calculation of Energy Delivered; Invoices and Payment.**

(a) Not later than the tenth (10th) day of each Month, commencing with the next Month following the Month in which Facility Energy is first delivered by Seller and received by Buyer pursuant to the terms and conditions of this Agreement, Seller shall deliver to Buyer an invoice showing the amount due for the preceding Month from Buyer to Seller for Facility Energy, Capacity Rights and Environmental Attributes. Seller shall calculate the amount of Facility Energy from meter readings at the Electric Metering Devices maintained pursuant to Section 9.6, adjusting for any applicable station load, transformation losses and transmission losses to the Point of Delivery in accordance with a methodology agreed to by Buyer. Each invoice shall show the title of the Agreement and, if applicable, the Agreement number, the name, address and identifying information of Seller and the identification of material, equipment or services covered by the invoices, and shall be sent to the address set forth in Appendix F or such other address as Buyer may provide to Seller. Seller shall separately provide in such invoice for any other amounts due to Seller, including amounts due under Section 6.5. Any electronic information delivered by Seller under this ARTICLE IX shall be in a format such as Microsoft Excel (or its equivalent) that allows Buyer to cut, paste or otherwise readily use and work with such information or documentation or as otherwise mutually agreed by the Parties.

(b) Concurrently with the delivery of each Monthly invoice, Seller shall deliver attestations of all Environmental Attribute transfers (including those transferred with WREGIS) substantially in the form set forth in Appendix D.

(c) Subject to Section 9.2(d) and Section 9.3, not later than the twenty-fifth (25th) day after receipt by Buyer of Seller's Monthly invoice (or the next succeeding Business Day, if the twenty-fifth (25th) day is not a Business Day), Buyer shall pay to Seller, by wire transfer of immediately available funds to an account specified by Seller or by any other means agreed to by the Parties from time to time, the amount set forth as due in such Monthly invoice.

(d) Notwithstanding Section 9.2(c), if Buyer believes that it has insufficient information to verify the amount of Deemed Generated Energy calculated by Seller in the invoice, or if Buyer requires additional time to verify such information, Buyer shall notify Seller thereof within twenty-five (25) days after receipt of an invoice from Seller, and timely pay the amounts set forth in such Monthly invoice not related to Deemed Generated Energy. Within thirty (30) days after receipt by Buyer of additional information regarding such Deemed Generated Energy calculation, or on the date mutually agreed to by the Parties, Buyer shall pay to Seller the amount specified in the invoice or notify Seller of any discrepancies with respect to its calculation of the Deemed Generated Energy, in which event such invoice shall be subject to the provisions of Section 9.3.

(e) Seller shall, in subsequent invoices, adjust previously invoiced amounts to reflect (i) adjustments pursuant to Section 9.3, or (ii) adjustments, reconciliations or final settlements with WREGIS occurring after the date of the initial invoice, or any other adjustments agreed to by the Parties (which shall be without interest of any kind), *provided* that Buyer shall not be required to make invoice payments if the invoice is received more than one (1) year after the billing period.

(f) Except with respect to disputed invoices where the dispute is first raised within six months after the applicable Monthly billing period and for any adjustments made pursuant to Section 9.2(e) and Section 9.6(a), Buyer shall not be required to make invoice payments if the invoice is received more than six (6) Months after the applicable Monthly billing period.

**Section 9.3 Disputed Invoices.** If any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute, setting forth the details of such dispute in reasonable specificity. Disputes shall be discussed directly by the Parties' Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve such Disputes, and any failure to agree shall be subject to resolution in accordance with Section 12.3. Upon resolution of any Dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. For purposes of this Section 9.3, "**Interest Rate**" shall mean the lesser of (i) two percent (2%) above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law.

**Section 9.4 Right of Setoff.** In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, each Party shall have the right at any time or from time to time without notice to other Party or to any other Person, any such notice being hereby expressly waived, to set off against any amount due a Party from the other Party under this Agreement or otherwise any amount due such Party from the other Party under this Agreement or otherwise, including any amounts due because of breach of this Agreement or any other obligation.

**Section 9.5 Records and Audits.** Seller shall maintain, and the Authorized Auditors shall have access to, all records and data pertaining to the performance and management of this Agreement (including compliance with the Requirements) and related Subcontracts, and as necessary to properly reflect all costs claimed to have been incurred hereunder and thereunder, including (a) in their original form, all (i) documents provided to Seller in the ordinary course of business for the Facility, (ii) documents for billing, costs, metering, and Environmental Attributes, (iii) books, records, documents, reports, deliverables, employee time sheets, accounting procedures and practices, and (iv) records of financial transactions, and (b) other evidence, regardless of form (for example, machine readable media such as disk or tape, etc.) or type (for example, databases, applications software, database management software, or utilities). If Seller is required to submit cost or pricing data in connection with this Agreement, Seller shall maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. In the event of a Dispute, records that relate to the Agreement, Dispute, litigation or costs, or items to which an audit exception has been taken, shall be maintained by both Buyer and Seller. All records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following final payment made by Buyer hereunder, the expiration or termination date of this Agreement, or final settlement of all disputes, claims, or litigation, whichever is later. Seller

shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, or other authentic reproductions thereof, available to the Authorized Auditors at Seller's principal business office or any other of Seller's offices as mutually agreed upon by Buyer and Seller, at all reasonable times and without charge. The Authorized Auditors may reproduce, photocopy, download, transcribe, and the like any such records. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller shall be subject at any time with fourteen (14) days prior written notice to audits or examinations by Authorized Auditors, relating to all billings and required to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable governmental audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, et seq. accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review an Authorized Auditor's examination results or audit and respond to Buyer prior to the examination's or audit's finalization and public release. Seller shall contractually require all Subcontractors performing services under this Agreement to comply with the provisions of this Section 9.5 by inserting this Section 9.5 into each Subcontract.

#### **Section 9.6 Electric Metering Devices.**

(a) Facility Energy shall be measured using a CAISO-approved revenue-quality Electric Metering Device that complies with the CAISO Tariff and relevant protocols and is dedicated exclusively to the Facility. The Electric Metering Device may be installed on the low-side of Seller's transformer and will include adjustments to reflect losses to the Point of Delivery. Seller shall arrange and bear all costs associated with the installation of the Electric Metering Devices needed for the registration, recording and transmission of information regarding the Facility Energy. Seller hereby agrees to provide a mutually agreed set of meter data to Buyer, which data shall be accessible to, and usable by, Buyer. In addition to providing Buyer with its meter data, Seller shall use commercially reasonable efforts to support any efforts by Buyer to obtain CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports from the CAISO. If the CAISO makes any adjustment to any CAISO meter data for a given time period not exceeding three (3) months, Seller agrees that it shall submit revised Monthly invoices, pursuant to this ARTICLE IX covering the entire applicable time period in order to fully conform such adjustments to the meter data. Seller shall submit any revised invoices no later than thirty (30) days after the date on which the CAISO provides Seller with binding adjustments to the meter data.

(b) Seller or its Authorized Representative, at no expense to Buyer, shall inspect and test all Electric Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer with reasonable advance notice of, and permit representatives of Buyer to witness and verify, such inspections and tests. Upon reasonable request by Buyer, Seller or its Authorized Representative shall perform additional inspections or tests of any Electric Metering

Device and shall permit a qualified representative of Buyer to inspect or witness the testing of any Electric Metering Device. The actual expense of any additional inspection or testing reasonably requested shall be borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyer.

(c) If an Electric Metering Device fails to register, or if the measurement made by an Electric Metering Device is found upon testing to be inaccurate by more than plus or minus one percent (+/- 1.0%), an adjustment shall be made to correct all measurements made by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy, such adjustment to be made by the Scheduling Coordinator. To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Section 9.6 to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such recomputed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the direction of Buyer, may take the form of an offset to payments due to Seller from Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) days after the owing Party receives notice of the amount due, unless Buyer elects payment via an offset.

**Section 9.7 Taxes.** Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state, and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, or any other assets of Seller, the Products or the transaction arising before or at the Point of Delivery. Buyer shall pay or cause to be paid all Taxes on or with respect to the Products or the transaction from (but excluding) the Point of Delivery to Buyer. If Seller is required by a Requirement of Law to remit or pay Taxes that are the responsibility of Buyer hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

## **ARTICLE X REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 10.1 Representations and Warranties of Buyer.** Buyer makes the following representations and warranties to Seller as of the Effective Date and continuing throughout the Delivery Term:

(a) Buyer is a validly existing California joint powers authority, and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to

perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of Buyer's regulatory or governing bodies, other than that which has been obtained; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

**Section 10.2 Representations and Warranties of Seller.** Except as otherwise set forth in this Agreement, Seller makes each of the following representations and warranties to Buyer as of the Effective Date and continuing throughout the Delivery Term.

(a) Seller is an independent special district formed under the Irrigation District Act (Division 11 of the California Water Code) of the State of California, and has legal power and authority under the Irrigation District Act (Division 11 of the California Water Code) of the State of California to carry on its business as now being conducted and to enter into this Agreement, and to carry out the transactions contemplated hereby, and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) Seller owns and operates the Facility and has not assigned, transferred, conveyed, sold or otherwise disposed of the Facility.

(c) Seller owns or has contractual right to all of the water rights necessary to operate the Facility in accordance with the Agreement.

(d) Seller has filed an Application for a New License for the South Feather Power Project pursuant to the Federal Power Act and FERC's regulations thereunder; and Seller had filed an application with FERC for approval of this Agreement pursuant to Section 22 of the Federal Power Act, 16 U.S.C. § 815.

(e) Except for Seller's need to obtain the regulatory approval addressed in Section 11.1(h), the execution, delivery and performance by Seller of this Agreement (i) have been duly authorized by all necessary action, and does not and will not require any consent or approval of Seller's regulatory or governing bodies, other than that which has been obtained; and (ii) does not violate any federal, state, and local law, including the California Government Code and similar laws.

(f) This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may be limited by

bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(g) The Parties note Seller's pending application for regulatory approval addressed in Section 11.1(h). Assuming receipt of that approval, the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement, does not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of Seller (except as contemplated hereby), and Seller has obtained all Permits and licenses required for the operation, and maintenance of the Facility in accordance with the Requirements and the performance of Seller's obligations hereunder to which Seller is a party, or such Permits and licenses are reasonably expected to be timely obtained in the ordinary course of business.

(h) Other than Seller's pending application for regulatory approval addressed in Section 11.1(h), there is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement.

(i) In 2005 Seller and a neighboring water provider, North Yuba Water District, settled a longstanding dispute through agreement that, among other terms, requires Seller to share fifty percent (50%) of the annual net revenue, if any, from the generation of hydroelectric power from certain facilities. Neither the 2005 Agreement, nor litigation concerning the 2005 Agreement titled North Yuba Water District vs. South Feather Water and Power Agency, Superior Court of the State of California, County of Butte, Case No. 21CV01563 and any related cases affects the legality, validity or enforceability of this Agreement.

(j) Assuming receipt of the regulatory approval described in Section 11.1(h), Seller is not in violation of any Requirement of Law, which violations, individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement.

(k) Assuming receipt of the regulatory approval addressed in Section 11.1(h), Seller owns or possesses or will acquire all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by Seller of its obligations under this Agreement, and, to Seller's knowledge, Seller's use thereof does not infringe on the intellectual property rights of third parties.

(l) Seller has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of the Products except as provided herein.



(m) The Facility is located in the State of California.

(n) Seller will be responsible for obtaining all permits necessary to enter into this Agreement and operate the Facility and Seller will be the applicant on any CEQA documents.

## **ARTICLE XI DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE**

**Section 11.1 Default.** Each of the following events or circumstances shall constitute a “*Default*” by the responsible Party (the “*Defaulting Party*”):

(a) **Payment Default.** Failure by a Party to make any payment under this Agreement when and as due (other than payments disputed in good faith) that is not cured within thirty (30) days after receipt of notice thereof from the other Party (which amount shall include payment of interest from the due date at the Interest Rate).

(b) **Performance Default.** Failure by a Party to perform any of its duties or obligations under this Agreement (other than any failure that is separately listed as a Default of Seller under this Section 11.1) that is not cured within thirty (30) days after receipt of notice thereof from the other Party; *provided* that if such failure is curable, but cannot be cured within such thirty (30) day period despite reasonable commercial efforts and such failure is not a failure to make a payment when due, such Party shall have up to sixty (60) additional days to cure.

(c) **Breach of Representation and Warranty.** Any representation, warranty, certification or other statement made by a Party in this Agreement that is false or inaccurate at the time made and materially and adversely affects the Party’s ability to perform its obligations hereunder; *provided* that no Default shall exist if such falsity or inaccuracy is remedied within thirty (30) days after receipt of notice thereof from another Party; and further provided that if such falsity or inaccuracy is curable, but cannot be cured within such thirty (30) day period despite reasonable commercial efforts, such Party shall have up to sixty (60) additional days to cure.

(d) **Bankruptcy.** Bankruptcy of Buyer or Seller.

(e) **Insurance Default.** The failure of Seller to maintain and provide acceptable evidence of the required Insurance for the required period of coverage as set forth in Appendix E that is not cured within five (5) Business Days after receipt of notice of such failure from Buyer.

(f) **Fundamental Change.** Except as permitted by Section 12.7, a Party makes an assignment of its rights or delegation of its obligations under this Agreement.

(g) **Casualty.** Seller fails to meet its obligations under Section 12.19(d).

(h) **Adverse Regulatory Determination Default.** The Parties recognize that Seller requires regulatory approval from FERC to sell and deliver power from the South Feather

Power Project for periods extending beyond the date of termination of Seller's annual license for the Project. The Parties also recognize that the ten-year term for this Agreement is necessary for Buyer to receive the full benefit of this Agreement. Accordingly, Seller must receive by March 31, 2022, either (1) a new FERC license for the South Feather Power Project for a term at least exceeding the Initial Delivery Term of this Agreement, or (2) FERC approval of this Agreement under Section 22 of the Federal Power Act. Seller has applied for both. Failure to receive one of these approvals by March 31, 2022 shall constitute a Default. The Parties recognize that they cannot predict the timing in which FERC will act, and that FERC action could cure the Default. If Seller continues to operate under a new annual license after March 31, 2022, Seller shall have until December 31, 2022 to cure the Default. Further extensions to the time period for curing the Default may be agreed by the Parties. In the event that such an Adverse Regulatory Determination Default is not cured, no Termination Payment shall be due to either Party.

### **Section 11.2 Default Remedy.**

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may, at its option, suspend performance hereunder or continue to provide services pursuant to its obligations under this Agreement; *provided* that nothing in this Section 11.2(a) shall affect Seller's rights and remedies set forth in this Section 11.2. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 12.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 12.3 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity including a termination of this Agreement pursuant to Section 11.3. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including termination of this Agreement pursuant to Section 11.3. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power by Buyer.

### **Section 11.3 Termination for Default.**

(a) If a Default occurs, the Party that is not the Defaulting Party (the “**Non-Defaulting Party**”) may, for so long as the Default is continuing and, to the extent permitted by applicable law, without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice by it (“**Termination Notice**”) to the Defaulting Party (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) (“**Early Termination Date**”) on which this Agreement shall terminate, and (ii) withhold any payments due in respect of this Agreement; *provided*, upon the occurrence of any Default of the type described in Section 11.1(d), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall appoint a qualified independent third party to calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Termination Payment. The Gains, Losses and Costs relating to the Products that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer would have paid for the Products under this Agreement to the equivalent quantities and relevant market prices, either quoted by one or more bona fide third party offers, or which are reasonably expected by the Non-Defaulting Party to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice, adjusted to account for differences in transmission, if any. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from dealers in Energy contracts and bona fide third party offers. The Non-Defaulting Party shall not be required to enter into any such replacement agreement in order to determine its Gains, Losses and Costs or the Termination Payment.

(c) For purposes of the Non-Defaulting Party’s determination of its Gains, Losses and Costs and the Termination Payment, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term (i) Facility Energy in an amount equal to the Assumed Daily Deliveries, (ii) the Environmental Attributes associated therewith, and (iii) all other components of the Products. The “**Assumed Daily Deliveries**” shall be an amount equal to the average daily amount of Facility Energy forecasted to be delivered during an average hydrological period by Seller, during the Delivery Term, if any.

(d) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment, which notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is a positive number, the Defaulting Party shall, within ten (10) Business Days after receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, together with interest accrued at the Interest Rate from the Early Termination Date until paid.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation of the Termination Payment shall be submitted to the dispute resolution process provided in Section 12.3.

Following resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment (if any) as determined by such resolution as and when required, but no later than thirty (30) days following the date of such resolution, together with all interest, at the Interest Rate, that accrued from the Early Termination Date until the date the Termination Payment is paid.

(f) For purposes of this Agreement:

(i) “**Gains**” means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(ii) “**Losses**” means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(iii) “**Costs**” means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace this Agreement, excluding attorneys’ fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party’s Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(v) The Present Value Rate shall be used as the discount rate in all present value calculations required to determine Gains, Losses and Costs.

(g) At the time for payment of any amount due under this Section 11.3 each Party shall pay to the other Party, all additional amounts, if any, payable by it under this Agreement (including any amounts withheld pursuant to Section 11.3(a)).

(h) Notwithstanding the forgoing provisions of Section 11.3, in no event shall a termination payment be due to a Defaulting Party.

## ARTICLE XII MISCELLANEOUS

**Section 12.1 Authorized Representative.** Each Party shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an “**Authorized Representative**”), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternates if

designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement. To the extent that an Authorized Representative's contact information is not provided in Appendix F, at the time a Party designates such Authorized Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative's contact information.

**Section 12.2 Notices.** With the exception of billing invoices pursuant to Article 9 and day-to-day ordinary course and operational communications, all notices, requests, demands, consents, approvals, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Appendix F, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt or rejection in the case of delivery in person, by reliable overnight courier, or by registered or certified mail. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, approvals, waivers and other communications through alternate methods, such as electronic mail.

### **Section 12.3 Dispute Resolution.**

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 12.3) (a "**Dispute**"), either Party (the "**Notifying Party**") may deliver to the other Party (the "**Recipient Party**") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "**Dispute Notice**"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute, or, in the case of Seller, authorized to recommend settlement to Seller's Board of Directors, during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall, within five (5) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute, or, in the case of Seller, authorized to recommend settlement to the Seller's Board of Directors. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 12.3(a) and Section 12.3(b) by the expiration of the thirty (30) day period set forth in Section 12.3(a), then a Party may pursue any legal remedy available to it in accordance with the provisions of Section 12.12 and Section 12.13 of this Agreement.

(d) In addition to the Dispute resolution process set forth in this Section 12.3, the Parties shall comply with California law governing claims against public entities and presentment of such claims, if applicable.

#### **Section 12.4 Further Assurances; Change in Electric Market Design.**

(a) Each Party agrees to execute and deliver all further instruments and documents, and take all further actions not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

(b) If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then either Party may submit issues pertaining to changes to this Agreement to the Dispute resolution process set forth in Section 12.3. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure.

**Section 12.5 No Dedication of Facilities.** Any undertaking by one Party to the other Party under any provisions of this Agreement shall not constitute the dedication of the Facility or any portion thereof of either Party to the public or to the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

#### **Section 12.6 Force Majeure.**

(a) A Party shall not be considered to be in Default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is prevented by a Force Majeure that, despite the exercise of due diligence, such Party is unable to prevent or mitigate, *provided* the Party has given a written detailed description of the full particulars of the Force Majeure to the other Party reasonably promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial occurrence of the claimed Force Majeure event) (the "***Force Majeure Notice***"), which notice shall include information with respect to the nature, cause and date and time of commencement of such event, and the anticipated scope and duration of the delay. The Party providing such Force Majeure Notice shall be excused from fulfilling its obligations under this Agreement until such time as the Force Majeure has ceased to prevent performance or other remedial action is taken, at which time such Party shall promptly notify the other Party of the resumption of its obligations under this Agreement. If Seller is unable to deliver, or Buyer is unable to receive, Facility Energy due to a Force Majeure, then Buyer shall have no obligation to pay Seller for Facility Energy not delivered or received by reason thereof. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses,

expenses or liabilities that Seller or such other Person may sustain as a consequence of any Force Majeure.

(b) The term “*Force Majeure*” means any act of God (including fire, flood, earthquake, extremely severe storm, lightning strike, tornado, volcanic eruption, hurricane or other natural disaster), labor disturbance, pandemic, strike or lockout of a national scope, act of the public enemy, war, insurrection, riot, explosion, terrorist activities or any order, regulation or restriction imposed by Governmental Authority, military or lawfully established civilian authorities, or other occurrence that (i) prevents one Party from performing any of its obligations under this Agreement, (ii) could not reasonably be anticipated as of the date of this Agreement, (iii) is not within the reasonable control of, or the result of negligence, willful misconduct, breach of contract, intentional act or omission or wrongdoing on the part of the affected Party (or any subcontractor or Affiliate of that Party, or any Person under the control of that Party or any of its subcontractors or Affiliates, or any Person for whose acts such subcontractor or Affiliate is responsible), and (iv) by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided*, nothing in clause (iv) above shall be construed so as to require a Party to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of a Force Majeure shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Force Majeure. The relief from performance shall be of no greater scope and of no longer duration than is required by the Force Majeure. Without limiting the generality of the foregoing, a Force Majeure does not include any of the following (each an “*Unexcused Cause*”): (1) any requirement to comply with a RPS Law or any change (whether voluntary or mandatory) in any RPS Law, or other Change in Law, that may affect the value of the Products; (2) events arising from the failure by Seller to operate or maintain the Facility in accordance with this Agreement; (3) any increase of any kind in any cost; (4) delays in or inability of a Party to obtain financing or other economic hardship of any kind; (5) Seller’s ability to sell any Facility Energy at a price in excess of those provided in this Agreement or Buyer’s ability to purchase Product or any part thereof at a price lower than those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service, including public safety power shutoff’s by the Transmission Provider; (7) failure of third parties to provide goods or services essential to a Party’s performance; (8) Facility or equipment failure of a kind that is not caused by Force Majeure; or (9) any changes in the financial condition of Buyer or Seller affecting the affected Party’s ability to perform its obligations under this Agreement.

(c) Buyer may terminate this Agreement if (i) a Force Majeure event occurs that diminishes the production of the Facility by more than fifty percent (50%) of the Contract Capacity for a period of eighteen (18) consecutive months, or (ii) the Facility is rendered inoperable and an independent engineer that is mutually acceptable to both Parties determines that the Facility cannot be repaired or replaced within a period not to exceed twenty four (24) months following the date of the occurrence of the Force Majeure event.

(d) Seller may terminate this Agreement if a Force Majeure event occurs that renders Buyer’s facilities that are used to Schedule and dispatch the Facility inoperable for a period of eighteen (18) consecutive months.

(e) Any termination of this Agreement under Section 12.6(c) or Section 12.6(d) shall be “no-fault” and neither Party shall have any liability or obligation to the other Party arising out of such termination. Notwithstanding the foregoing, upon any such termination, each Party shall pay the other Party for any and all amounts hereunder that may be owing, or other outstanding payments due in the ordinary course that occurred prior to the termination. The exercise by Buyer of its right to terminate the Agreement shall not render Buyer or Seller liable for any losses or damages incurred by the other Party whatsoever.

**Section 12.7 Assignment of Agreement.** Except as otherwise set forth in this Agreement, a Party shall not assign any of its rights, or delegate any of its obligations, in or under this Agreement, without the prior written consent of the other Party, and such consent not to be unreasonably withheld. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect.

**Section 12.8 Ambiguity.** The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

**Section 12.9 Attorneys’ Fees & Costs.** Both Parties agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorneys’ fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement.

**Section 12.10 Voluntary Execution.** Both Parties acknowledge that they have read and fully understand the content and effect of this Agreement and that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

**Section 12.11 Entire Agreement; Amendments.** This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party; provided, however, Appendix C contains detailed principles, descriptions and procedures for Scheduling and operation of the Facility, and Appendix C may be amended from time to time upon mutual written consent of the Authorized Representative of each Party.



**Section 12.12 Governing Law.** This Agreement was made and entered into in the County of Placer, California and shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

**Section 12.13 Venue.** All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Placer or the County of Butte in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts and waive any defense of forum non conveniens.

**Section 12.14 Execution in Counterparts.** This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

**Section 12.15 Effect of Section Headings.** Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

**Section 12.16 Waiver; Available Remedies.** The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Except to the extent this Agreement expressly provides an exclusive remedy for a breach, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies hereunder, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief, or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief; provided that where this Agreement provides an exclusive remedy, then specific performance and injunctive relief are not available. The rights granted herein are cumulative except where otherwise provided herein.

**Section 12.17 Relationship of the Parties.** This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

**Section 12.18 Third Party Beneficiaries.** The provisions of this Agreement are solely for the benefit of the Parties. Nothing in this Agreement, whether express or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third party

beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement or any covenant, condition, provision, duty, obligation or undertaking contained or established herein. This Agreement shall not be construed in any respect to be a contract in whole or in part for the benefit of any Person that is not a party hereto.

**Section 12.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.**

(a) **Indemnification by Seller.** Seller undertakes and agrees to indemnify and hold harmless Buyer, Participating Members, and all of their respective commissioners, officers, agents, employees, advisors, and Authorized Representatives and assigns and successors in interest (collectively, “*Buyer Indemnitees*”) and, at the option of Buyer, to defend such Buyer Indemnitees from and against any and all suits and causes of action (including proceedings before administrative agencies), claims, charges, damages, demands, judgments, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Seller’s employees and agents, or third persons, or damage or destruction to any property of either Party or third persons, in any manner arising by reason of any breach of this Agreement by Seller, any failure of a representation, warranty or guarantee of Seller hereunder to be true in all material respects, the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of the Seller’s officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of any such Seller Indemnitee. Any liability of Seller shall be limited to the extent of actual coverage and coverage limits of the insurance policies described in Appendix E.

(b) **Indemnification by Buyer.** Buyer undertakes and agrees to indemnify and hold harmless Seller, and all of its respective officers, agents, employees, directors, advisors, and Authorized Representatives and assigns and successors in interest (collectively, “*Seller Indemnitees*”) and, at the option of Seller, to defend such Seller Indemnitees from and against any and all suits and causes of action (including proceedings before administrative agencies), claims, charges, damages, demands, judgments, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including Buyer’s employees and agents, or third persons, or damage or destruction to any property of either Party or third persons, in any manner arising by reason of any breach of this Agreement by Buyer, any failure of a representation, warranty or guarantee of Buyer hereunder to be true in all material respects, the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Buyer, or any of the Buyer’s officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of any such Buyer Indemnitee. Any liability of Buyer shall be limited to the lesser of the extent of actual coverage and coverage limits of Buyer’s insurance policies or the minimum insurance requirements for Seller described in Appendix E.

(c) **Notice.** The Parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or proceeding covered by the provisions of this Section 12.19.

(d) **Damage or Destruction.** If there is a casualty event or other event causing the destruction of the Facility that renders the Facility incapable of generating 50% or more of the Contract Capacity, Seller shall, within four (4) months of such event, enter into a contract for the design of a replacement facility designed to be capable of satisfying the obligations of Seller under this Agreement.

(e) **Insurance.** Seller shall obtain and maintain the Insurance coverages listed in Appendix E.

(f) **Condemnation or Other Taking.** Throughout the Agreement Term, Seller shall immediately notify buyer of the institution of any proceeding for the condemnation or other taking of the Facility, the Facility assets, or any portion thereof, including the occurrence of any hearing associated therewith. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined.

(g) **Limitation of Liability.** EXCEPT TO THE EXTENT INCLUDED IN THE LIQUIDATED DAMAGES, INDEMNIFICATION OBLIGATIONS RELATED TO THIRD PARTY CLAIMS, OR OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, IN NO EVENT SHALL EITHER PARTY OR ITS INDEMNITEES, BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR OTHER COSTS, BUSINESS INTERRUPTION DAMAGES RELATED TO OR ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER STATUTE, CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY OF LIABILITY AT LAW OR IN EQUITY. 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 OF SUCH DAMAGES, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT, CONTRIBUTORY, CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

(h) To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, and that the liquidated damages constitute a reasonable approximation of the anticipated harm or loss.

(i) Regardless of the indemnitees provided in Section 12.19(a) of this Agreement, Seller shall defend and indemnify Buyer regarding the Scheduling and dispatch actions performed by Buyer in accordance with Article VI and Appendix C of this Agreement.

**Section 12.20 Severability.** In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions

of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

### **Section 12.21 Confidentiality.**

(a) The Parties will keep confidential all confidential or trade secret information made available to them in connection with this Agreement, to the extent possible, consistent with applicable laws, including the California Public Records Act. Confidential or trade secret information shall be marked or expressly identified as such ("**Confidential Information**").

(b) Notwithstanding the foregoing or any other provision of this Agreement, the Parties acknowledges that Buyer and Seller are subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et seq. ("**CPRA**") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("**Brown Act**").

(c) If a Party ("Receiving Party") receives a request from a Third Party for access to, or inspection, disclosure or copying of, any of the other Party's (the "Supplying Party") confidential data or information ("Disclosure Request"), then the Receiving Party shall provide notice and a copy of the Disclosure Request to the Supplying Party within three (3) Business Days of receipt of the Disclosure Request. Within three (3) Business Days of receipt of such notice, the Supplying Party shall provide notice to the Receiving Party either:

(i) that the Supplying Party believes there are reasonable legal grounds for denying or objecting to the Disclosure Request, and the Supplying Party requests the Receiving Party to deny or object to the Disclosure Request with respect to identified confidential information. In such case, the Receiving Party shall deny the Disclosure Request and the Supplying Party shall defend the denial of the Disclosure Request at its sole cost, and it shall indemnify the Receiving Party for all costs associated with denying or objecting to the Disclosure Request. Such indemnification by the Supplying Party of the Receiving Party shall include all of the Receiving Party's costs reasonably incurred with respect to denial of or objection to the Disclosure Request, including but not limited to costs, penalties, attorney's fees awarded against the Receiving Party and the Receiving Party's attorney's fees; or

(ii) the Receiving Party may grant the Disclosure Request without any liability by the Receiving Party to the Supplying Party.

**Section 12.22 Mobile-Sierra.** The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of Energy under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meanings of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so during the Agreement Term. Notwithstanding any provision of this Agreement, the Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with

respect to the Agreement Term, under Sections 205 and 206 of the Federal Power Act, and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree not to seek, nor support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of this Agreement through application or complaint to FERC or any other state or federal agency, board, court or tribunal, related in any manner as to whether such rates, terms or conditions are just and reasonable or in the public interest under the Federal Power Act, absent prior written agreement of the Parties. The Parties also agree that, absent prior agreement in writing by the Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this Section is unenforceable or ineffective as to such Party), a non-party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review that requires FERC to find an “unequivocal public necessity” or “extraordinary circumstances where the public will be severely harmed” to modify a contract, as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 at 550-51 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Comm’n*, 558 U.S. 165 (2010).

Buyer and Seller were represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the dates set forth below, effective as of the Effective Date.

BUYER:

NORTHERN CALIFORNIA POWER  
AGENCY

\_\_\_\_\_  
By: Randy S. Howard  
Its: General Manager  
Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: General Counsel  
Date: \_\_\_\_\_

SELLER:

SOUTH FEATHER WATER AND POWER  
AGENCY

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

Approved as to Form:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: General Counsel  
Date: \_\_\_\_\_

**APPENDIX A  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF [\_\_\_\_], 20[\_\_]  
BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND  
SOUTH FEATHER WATER AND POWER AGENCY**

**CONTRACT PRICE**

Buyer shall compensate Seller for the Product in accordance with this Appendix A.

For the period beginning on the Initial Delivery Date through 11:59 pm on December 31, 2021, the Contract Price of the Product shall be equal to \$35.00/MWh.

For the Delivery Term after 11:59 pm on December 31, 2021, the Contract Price of the Product shall be as described below:

- 1) Contract Price. The Contract Price of the Product shall be equal to the Fixed Monthly Payment plus the Variable Output Monthly Payment, as further described herein:
  - i. The Fixed Monthly Payment (“**Fixed Monthly Payment**”) Buyer shall pay to Seller each calendar month during the Delivery Term, subject to the terms of this Agreement, shall be equal to RA Capacity Monthly Payment (“**RA Capacity Monthly Payment**”) plus Base Output Monthly Payment, calculated as follows:

1. RA Capacity Monthly Payment = Facility Monthly Net Qualifying Capacity \* RA Capacity Rate

Where RA Capacity Rate is \$6.25 per kW-month

2. Base Output Monthly Payment

For each full Contract Year, Buyer shall pay to Seller Six Million Seven Hundred Twenty Six Thousand Seven Hundred Twenty Dollars (\$6,726,720.00) (“**Base Output Compensation**”) in twelve equal monthly installments (“**Base Output Monthly Payment**”). The Base Output Monthly Payment represents Buyer’s prepayment for the initial 192,192.00 MWh of Facility Energy plus Deemed Generated Energy (“**Base Output**”) produced by the Facility during each Contract Year. Base Output is assumed to be produced each calendar month as shown in Table A below (“**Monthly Base Output**”):



**Table A – Base Output**

<b>Calendar Month</b>	<b>Monthly Base Output (MWh)</b>	<b>Base Output Monthly Payment</b>
January	16,016.00	\$ 560,560.00
February	16,016.00	\$ 560,560.00
March	16,016.00	\$ 560,560.00
April	16,016.00	\$ 560,560.00
May	16,016.00	\$ 560,560.00
June	16,016.00	\$ 560,560.00
July	16,016.00	\$ 560,560.00
August	16,016.00	\$ 560,560.00
September	16,016.00	\$ 560,560.00
October	16,016.00	\$ 560,560.00
November	16,016.00	\$ 560,560.00
December	16,016.00	\$ 560,560.00
<b>Total</b>	<b>192,192.00</b>	<b>\$ 6,726,720.00</b>

- ii. The Variable Output Monthly Payment (“**Variable Output Monthly Payment**”) Buyer shall pay to Seller each calendar month during the Delivery Term, subject to the terms of this Agreement, shall be calculated as follows:

- 1. Variable Output Monthly Payment

During each full Contract Year, Buyer shall compensate Seller for each MWh of Facility Energy produced in excess of Base Output (“**Variable Output**”) multiplied by the Variable Output Rate. For example, if during a full Contract Year the Facility produced 477,369.00 MWh of Facility Energy, Buyer would pay to Seller \$9,690,314.46 ((477,369.00 MWh – 192,192.00 MWh) \* \$33.98/MWh) for Variable Output produced for that full Contract Year. Buyer and Seller acknowledge that actual month Facility production is variable, whereby the amount of Facility Energy produced each calendar month may be greater than, or less than, Monthly Base Output; therefore, Buyer and Seller shall calculate the Variable Output Monthly Payment amount adjusted for a monthly true-up calculation to account for actual monthly Facility Energy production, as follows:

Variable Output Monthly Payment = Facility Monthly Variable Output \* Variable Output Rate; where:

- a. Variable Output Rate is \$33.98 per MWh; and
- b. Facility Monthly Variable Output (“**Facility Monthly Variable Output**”) is equal to the amount of Facility Energy produced each calendar month that is in excess to the amount of Monthly Base Output anticipated to be produced for the same calendar month, as reflected in Table A of this Appendix A; provided, however, if the amount of Facility Energy produced during a calendar month is less than the amount of Monthly Base Output anticipated to be produced for the same calendar month, as reflected in Table A of this Appendix A, Monthly Variable Output shall be zero MWh, and the amount of Monthly Base Output that is greater than the amount of Facility Energy produced during a calendar month shall be “rolled forward” and added to the amount of Monthly Base Output anticipated to be produced in the next succeeding calendar month (“**Variable Output True-up**”), for the purpose of calculating Facility Monthly Variable Output for the next succeeding calendar month. For the purpose of clarity, the following examples of the Variable Output True Up calculation are provided below:

**Variable Output True-Up Example A**

Calendar Month	Facility Energy (MWh)	Monthly Base Output (MWh)	Deemed Generated Energy (MWh)	Variable Output True-Up (MWh)	Facility Monthly Variable Output (MWh)	Variable Output Rate (\$/MWh)	Facility Output Monthly Payment
January	30,000.00	16,016.00	-	-	13,984.00	\$ 33.98	\$ 475,176.32
February	15,000.00	16,016.00	-	1,016.00	-	\$ 33.98	\$ -
March	30,000.00	17,032.00	-	-	12,968.00	\$ 33.98	\$ 440,652.64
April	30,000.00	16,016.00	-	-	13,984.00	\$ 33.98	\$ 475,176.32

**Variable Output True-Up Example B**

Calendar Month	Facility Energy (MWh)	Monthly Base Output (MWh)	Deemed Generated Energy (MWh)	Variable Output True-Up (MWh)	Facility Monthly Variable Output (MWh)	Variable Output Rate (\$/MWh)	Facility Output Monthly Payment
January	30,000.00	16,016.00	-	-	13,984.00	\$ 33.98	\$ 475,176.32
February	15,000.00	16,016.00	-	1,016.00	-	\$ 33.98	\$ -
March	15,000.00	17,032.00	-	2,032.00	-	\$ 33.98	\$ -
April	30,000.00	18,048.00	-	-	11,952.00	\$ 33.98	\$ 406,128.96

**Variable Output True-Up Example C**

Calendar Month	Facility Energy (MWh)	Monthly Base Output (MWh)	Deemed Generated Energy (MWh)	Variable Output True-Up (MWh)	Facility Monthly Variable Output (MWh)	Variable Output Rate (\$/MWh)	Facility Output Monthly Payment
January	30,000.00	16,016.00	-	-	13,984.00	\$ 33.98	\$ 475,176.32
February	30,000.00	16,016.00	-	-	13,984.00	\$ 33.98	\$ 475,176.32
March	30,000.00	16,016.00	-	-	13,984.00	\$ 33.98	\$ 475,176.32
April	30,000.00	16,016.00	-	-	13,984.00	\$ 33.98	\$ 475,176.32

A final annual true-up credit (“**Annual True-Up Credit**”) will be calculated at the end of each Calendar Year and paid by Seller to Buyer to account for any outstanding Variable Output True-Up amount, if any, as follows:

Annual True-Up Credit = Outstanding Variable Output True-Up amount \* Variable Output Rate

For the purpose of clarity, an example of the Annual True-Up Credit calculation is provided below:

**Annual True-Up Credit Example**

Calendar Month	Facility Energy (MWh)	Monthly Base Output (MWh)	Deemed Generated Energy (MWh)	Variable Output True-Up (MWh)	Facility Monthly Variable Output (MWh)	Variable Output Rate (\$/MWh)	Facility Output Monthly Payment
November	30,000.00	16,016.00	-	-	13,984.00	\$ 33.98	\$ 475,176.32
December	15,000.00	16,016.00	-	1,016.00	-	\$ 33.98	\$ -

Annual True-Up Credit = 1,016.00 MWh \* \$33.98 = \$34,523.68

Notwithstanding the Monthly Variable Output True-Up and Annual True-Up described in this Appendix A, if the Facility produces a total amount of Facility Energy during a Calendar Year that is less than Base Output, Buyer’s obligation to pay Seller total Base Output Compensation in a Calendar Year shall not be reduced.

**APPENDIX B  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF [\_\_\_\_], 20[\_\_]  
BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND  
SOUTH FEATHER WATER AND POWER AGENCY**

**FACILITY DESCRIPTION**

The Facilities of the South Feather Power Project are located in Butte County on the South Feather river and include:

1. Name of Facility: South Feather Power Project
2. Location:  
 Kelly Ridge Powerhouse: 39° 31'54.4"N 121° 29'28.6"W  
 Forbestown Powerhouse: 39° 33'03.4"N 121° 16'43.3"W  
 Woodleaf Powerhouse: 39° 33'14.0"N 121° 12'15.0"W  
 Sly Creek Powerhouse: 39° 34'49.5"N 121° 07'10.1"W
3. Description of Facilities:

Facility Name	Contract Capacity (MW)	CAISO Resource ID	PNode	CEC RPS ID
Forbestown	37.5	FORBST_7_UNIT 1	FORBSTWN_7_B1	N/A
Kelly Ridge	11.0	KELYRG_6_UNIT	KELLYRDG_7_B1	60266
Sly Creek	13.0	SLYCRK_1_UNIT 1	SLYCREEK_7_B1	60267
Woodleaf	60.0	WDLEAF_7_UNIT 1	WOODLEAF_7_B1	N/A

2. Owner: South Feather Water and Power Agency
3. Operator: Seller
4. Scheduling Coordinator: Buyer
4. Point of Interconnection: The Point of Interconnection for each Facility shall mean the point, as set forth in this Appendix B and the Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Providers Transmission System. The Point of Interconnection for each Facility is further described herein:

**WOODLEAF POWERHOUSE, SLY CREEK POWERHOUSE, AND FORBESTOWN POWERHOUSE POINTS OF INTERCONNECTION**

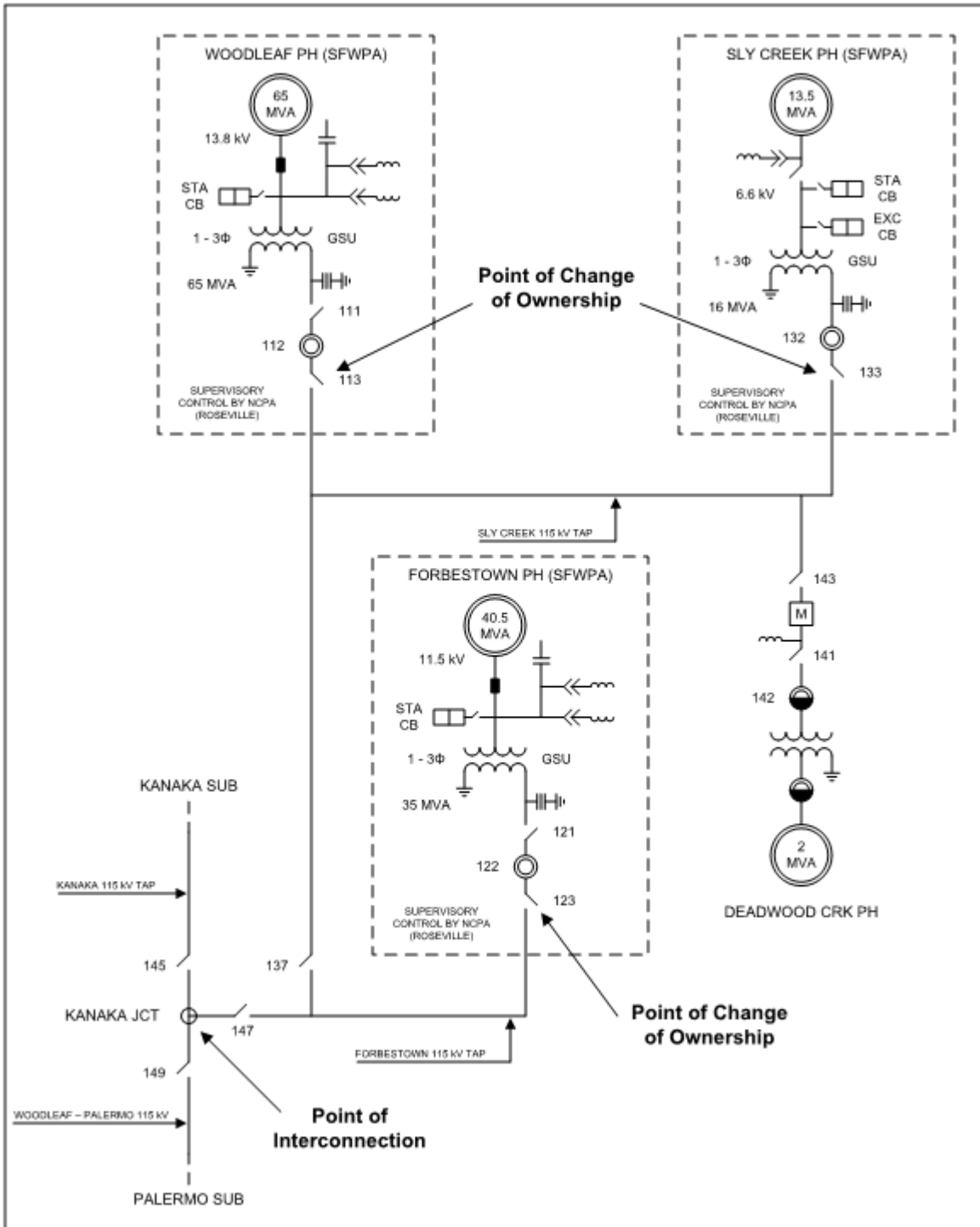


Figure 1. 115 kV Single Line Diagram

## KELLY RIDGE POWERHOUSE POINTS OF INTERCONNECTION

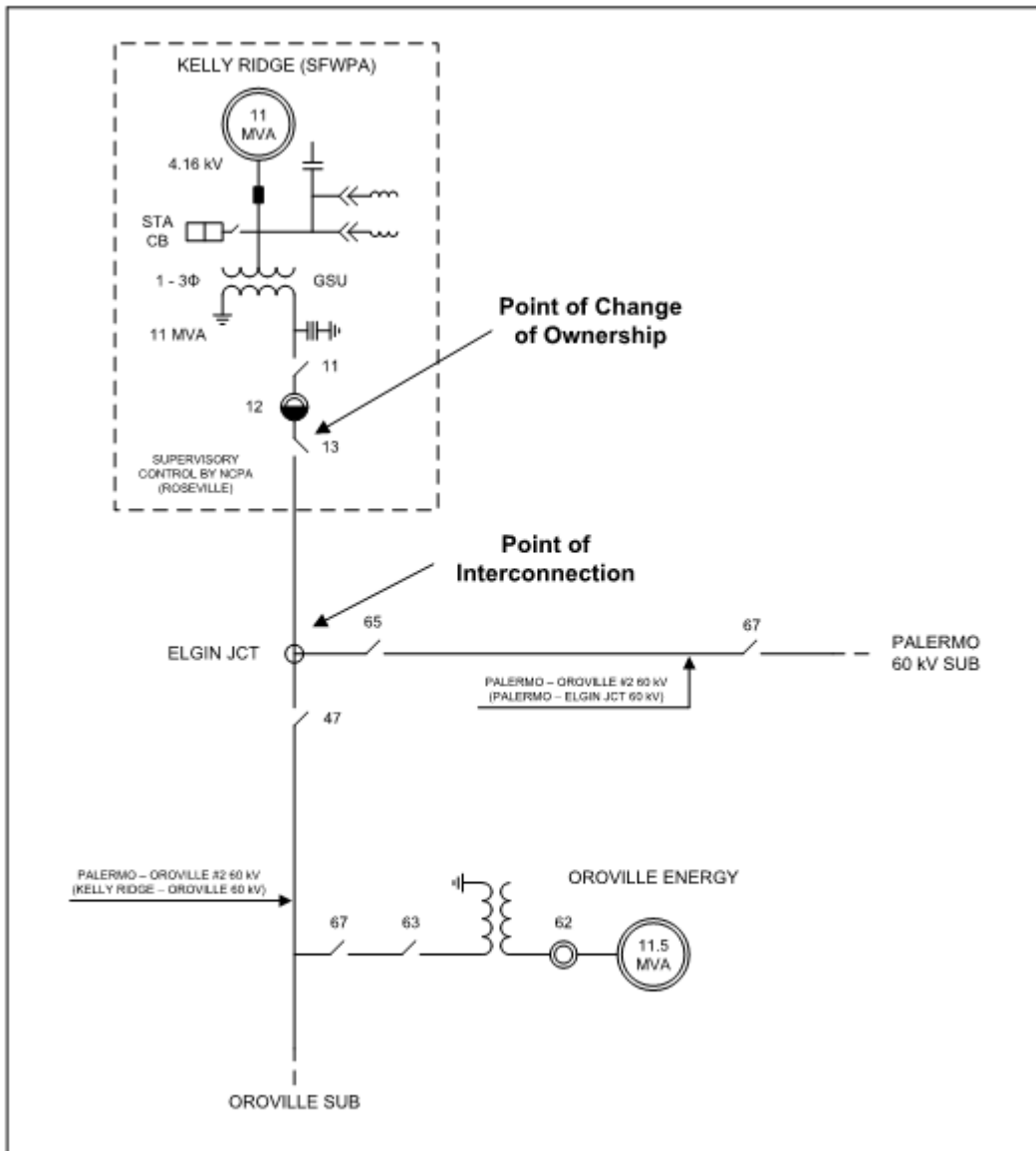


Figure 2. 60 kV Single Line Diagram

**APPENDIX C  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF [\_\_\_\_], 20[\_\_]  
BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND  
SOUTH FEATHER WATER AND POWER AGENCY  
SCHEDULING AND OPERATING PROCEDURES**

1. Scheduling and Operating Procedures

The Scheduling and operating procedures are separately attached to this Appendix C, and are listed below:

SFPP-PM-101 – Voice and Data Communications

SFPP-PM-102 – Outage Management and Operational Reliability Data

SFPP-PM-104 – Dispatch Center Switching and Clearance Procedure

SFPP-PM-107 – Event Reporting Operating Plan

SFPP-PM-108 – Operating Instructions and Emergency Assistance

SFPP-PM-302 – Voltage Control, Automatic Voltage Regulator and Power System Stabilizer Operations

SFPP-PM-304 – Project Operations and Control

SFPP-PM-401 – Scheduling and Bidding

**APPENDIX D  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF [\_\_\_\_], 20[\_\_]  
BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND  
SOUTH FEATHER WATER AND POWER AGENCY**

**FORM OF ATTESTATION**

\_\_\_\_\_ (Seller) \_\_\_\_\_ **Environmental Attribute Attestation and Bill of Sale**

\_\_\_\_\_ (“Seller”) hereby sells, transfers and delivers to Northern California Power Agency (“Buyer”) the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation from the Facility described below:

Facility name and location:

Fuel Type:      Capacity (MW): \_\_\_\_\_      Operational Date:  
As applicable: CEC Reg. no. \_\_\_\_\_      Energy Admin. ID no. \_\_\_\_\_      Q.F. ID no. \_\_\_\_\_

<u>Dates</u>	<u>MWhs generated</u>
_____ 20__	_____
_____ 20__	_____
_____ 20__	_____

in the amount of one Environmental Attribute or its equivalent for each MWh generated.

Seller further attests, warrants and represents as follows:

- i) the information provided herein is true and correct;
- ii) its sale to Buyer is its one and only sale of the Environmental Attributes and associated Environmental Attribute Reporting Rights referenced herein;
- iii) the Facility generated and delivered to the grid the Energy in the amount indicated as undifferentiated Energy; and
- iv) Seller owns the Facility and each of the Environmental Attributes and Environmental Attribute Reporting Rights associated with the generation of the indicated Energy for delivery to the grid have been generated and sold by the Facility.

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

Contact Person/telephone: \_\_\_\_\_



**APPENDIX E  
TO POWER PURCHASE AGREEMENT,  
DATED AS OF [\_\_\_\_], 20[\_\_]  
BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND  
SOUTH FEATHER WATER AND POWER AGENCY**

**INSURANCE**

**I. GENERAL REQUIREMENTS**

Within ten (10) days after the Effective Date, Seller shall furnish Buyer evidence of commercial automobile liability, commercial general liability, excess liability, and workers' compensation coverage meeting the requirements set forth in this Appendix E from insurers acceptable to Buyer and in a form acceptable to the risk management of Buyer or acceptable to Buyer's agent for this purpose. Such insurance shall be maintained by Seller at Seller's sole cost and expense.

Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not by reason of its inclusion under these policies incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance is primary for purposes under this Agreement despite any conflicting provision in Seller's policies to the contrary.

Such insurance shall not be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail to General Manager, Northern California Power Agency.

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with the same limits, terms and conditions of the expiring policy, or that an extended discovery period has been purchased on the expiring policy at least for the contract under which the work was performed.

## **II. SPECIFIC COVERAGES REQUIRED**

### **A. Commercial Automobile Liability**

Seller shall provide Commercial Automobile Liability insurance which shall include coverages for liability arising out of the use of owned (if applicable), non-owned, and hired vehicles for performance of the work by Seller or its officers, agents, or employees, as required, to be licensed under the California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall have not less than \$1,000,000.00 combined single limit per occurrence, with a self-insured retention or deductible of no more than \$100,000, and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its members, and their officers, agents, and employees while acting within the scope of their employment, as additional insureds with Seller, and shall insure against liability for death, bodily injury, or property damage resulting from the performance of this Agreement by Seller or its officers, agents, or employees. The evidence of insurance shall be a form acceptable to Buyer's risk manager.

### **B. Commercial General Liability**

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire, Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than \$10,000,000.00 combined single limit per occurrence. Should the policy have an aggregate limit, such aggregate limits should not be less than double the Combined Single Limit. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be a form acceptable to Buyer's risk manager, and shall provide for the following:

1. Include Buyer and its members, and their respective officers, agents, and employees as additional insureds with the Named Insured for the activities and operations of Seller and its officers, agents, or employees under this Agreement.
2. Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."
3. A description of the coverages included under the policy.

### **C. Excess Liability**

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule

and to identify the underlying policies on an endorsement to the policy acceptable to Buyer's risk management agent. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability, or other applicable insurance coverages.

**D. Workers' Compensation/Employer's Liability Insurance**

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work is to be performed and including Employer's Liability insurance and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than \$1,000,000.00 each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall be a form of Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's risk management agent. Workers' Compensation/Employer's Liability exposure may be self-insured *provided* that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's risk manager by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

**APPENDIX F**  
**TO POWER PURCHASE AGREEMENT,**  
**DATED AS OF [\_\_\_\_], 20[\_\_]**  
**BETWEEN**  
**NORTHERN CALIFORNIA POWER AGENCY**  
**AND**  
**SOUTH FEATHER WATER AND POWER AGENCY**

**AUTHORIZED REPRESENTATIVES;**  
**BUYER AND SELLER BILLING, NOTIFICATION AND**  
**SCHEDULING CONTACT INFORMATION**

1. **Authorized Representative.** The initial Authorized Representatives of Buyer and Seller pursuant to Section 14.1 are as follows:

1.1 Buyer:

Northern California Power Agency  
c/o: General Manager  
651 Commerce Drive  
Roseville, CA 95678

Telephone: 916-781-3636  
Facsimile: 916-783-7693  
Email: \_\_\_\_\_

1.2 Seller:

RESERVED

2. **Billings.** Billings and payments pursuant to Article IX and Appendix A shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Northern California Power Agency  
Attention: Settlements  
Telephone: 916-781-3636  
Facsimile: 916-781-4255  
Email: [settlements@ncpa.com](mailto:settlements@ncpa.com); [acctspayable@ncpa.com](mailto:acctspayable@ncpa.com)

2.2 If Payment to Buyer:

Northern California Power Agency  
Attention: Accounts Payable

Telephone: 916-781-4211  
Facsimile: 916-781-4255  
Email: [Acctspayable@ncpa.com](mailto:Acctspayable@ncpa.com)

2.3 If Payment or Billing to Seller:

RESERVED

3. **Notices.** Unless otherwise specified by Buyer all notices (other than Scheduling notices, curtailment notices, and Deemed Generated Energy notices):

If to Buyer:

Northern California Power Agency  
Attention: General Counsel  
Telephone: 916-781-3636  
Facsimile: 916-783-7693  
Email: \_\_\_\_\_

If to Seller:

RESERVED

4. **Schedulers.** Unless otherwise specified by Buyer, all notices related to Scheduling of the Facility shall be sent to the following address:

If to Buyer:

Northern California Power Agency

**Pre-scheduling:** Generation schedules are to be provided to NCPA Pre-Scheduling contacts.

<u>Name</u>	<u>Phone</u>	<u>Email</u>
NCPA Preschedulers	916-786-0123 916-786-0124	<a href="mailto:Preschedulers@ncpa.com">Preschedulers@ncpa.com</a>
Facsimile:	916-781-4239	

**Schedule Coordination:** NCPA Schedule Coordinator contacts.

<u>Name</u>	<u>Phone</u>	<u>Email</u>
NCPA SC	916-781-4237	<a href="mailto:SC2@ncpa.com">SC2@ncpa.com</a>
Facsimile:	916-781-4226	

**Outage Coordination:** All Planned and/or Forced Outages of generation facilities are to be provided to NCPA Dispatch and NCPA SC.

<u>Name</u>	<u>Phone</u>	<u>Email</u>
NCPA Dispatch	916-786-3518	<a href="mailto:Dispatch@ncpa.com">Dispatch@ncpa.com</a>
NCPA SC	916-781-4237	<a href="mailto:SC2@ncpa.com">SC2@ncpa.com</a>
Facsimile:	916-781-4226	

If to Seller:

RESERVED

5. **Curtailments.** All notices related to curtailments of the Facility pursuant to Section 6.5 shall be sent to the following address:

If to Buyer:

Northern California Power Agency  
(see above)

If to Seller:

RESERVED

6. **Deemed Generated Energy.** Unless otherwise specified by Buyer, all notices related to calculations of Deemed Generated Energy shall be sent to the following address:

If to Buyer:

Northern California Power Agency  
Attention: Settlements  
Telephone: 916-781-3636  
Facsimile: 916-781-4255  
Email: [settlements@ncpa.com](mailto:settlements@ncpa.com)

If to Seller:

RESERVED

Either Party may update its contact information in this Appendix F by delivering a notice to the other Party pursuant to Section 12.2 of the Agreement, and such change shall not be considered to be an amendment purchase to Section 12.11 of the Agreement.