



STAFF REPORT

DATE: MARCH 20, 2012
TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: ROD FOSTER, CITY MANAGER/GENERAL MANAGER
PREPARED BY: DAVID X. KOLK, ELECTRIC UTILITY DIRECTOR
SUBJECT: APPROVE LA PAZ SOLAR TOWER POWER SALES AGREEMENT

A handwritten signature in blue ink, appearing to read "Rod Foster".

RECOMMENDED ACTION

It is recommended that the City Council introduce for first reading and pass by title only, Ordinance O-04-12, an Ordinance of the City Council of the City of Colton to approve the Power Sales Agreement between the City and Southern California Public Power Authority for the La Paz Solar Tower Project.

GOAL STATEMENT

The proposed action will support the City's goal to provide safe, reliable, affordable, and environmentally sustainable electric service.

BACKGROUND

A number of California state laws, including AB 32 and SBX 1-2 (SB 2), require all electricity load serving entities within California to acquire at least 20% of their retail load requirements from renewable energy sources over the period 2011 – 2013. This percentage increases over time to 33% by 2020. At this time, the Colton Electric Utility (CEU) only has about 7% of its retail requirements met by renewable energy resources.

By 2020, the Renewable Portfolio Standards (RPS) requirements would be equivalent to approximately 15 megawatts (MW) of base load energy for Colton.

ISSUES/ANALYSIS

Acquiring cost-effective renewable resources has become a difficult task for small municipal utilities that are attempting to avoid rate increases associated with meeting RPS requirements. The Southern California Public Power Authority (SCPPA) has conducted an extensive Request for Proposal process on behalf of its members and determined that one of the most cost-effective resources is the La Paz Solar Tower, located in Southwest Arizona.

The La Paz project is a 3,000 foot high tower that collects air from the surrounding enclosed area and then directs it upwards at about 40 mph to drive wind turbines at the base of the tower. The total capacity of the project will be 200 MW of which SCPA will contract for 34% of the total output. The tower will be the second tallest structure in the world, more than twice the height of the Empire State Building.

SCPPA members that anticipate participating in the La Paz project include the cities of Colton (5 MW), Anaheim (10 MW) Azusa (2 MW) Banning (2 MW) Burbank (27 MW) Glendale (12 MW) and Pasadena (10 MW). Colton would receive approximately 19,685 megawatt hours (MWh) of energy annually from this project.

There are a number of advantages to Colton of participating in the La Paz project:

- The cost is \$95.50/MWh, fixed for the first 15 years of the Power Sales Agreement. The cost of \$95.50 is compared against bids to SCPA from renewable and non-renewable developers in Attachment 1. The attachment shows that the price is less than all resources except wind and small hydroelectric projects, generation sources that generally are difficult to find and acquire;
- The City would only pay for the energy that it receives from the project. There are no minimum pay obligations. If the project doesn't generate energy then there are no costs to the City;
- The project generates from roughly 9 am to 8 pm daily, creating little or no off-peak surplus energy that the City might have to sell at a loss.
- Energy generated from the project would help meet about 17% of Colton's 2020 renewable resource obligations and meeting some of the more stringent requirements established by the State on where new renewable resources can be located.

SCPPA is anticipating executing the Purchase Power Agreement for the project in March 2012, or as soon as each participating city executes a Power Sales Agreement with SCPA for its share of the project. The La Paz Solar Tower is expected to be commercially available by late-2015 or early 2016.

The Colton Utilities Commission, at its Regular Meeting on February 13, 2012, voted unanimously to recommend that the City Council approve Colton's participation in the La Paz Solar Tower Project under the terms and conditions of the Purchase Power Agreement between SCPA and La Paz Solar Tower LLC.

FISCAL IMPACTS

The Project is expected to be operational in the FY15-16 budget year. If the Project generates at its full capacity for all hours of the year (a 45% annual capacity factor) Colton would pay as much as \$1.88 million for renewable energy supplies. The price is fixed at \$95.50/MWh per MWh for the first 15 years and then would escalate at a rate of \$1/MWh per year thereafter.

Funds will be budgeted in the Electric Utility's Purchased Power expense account, 520-8000-8006-2330-0555-000 when the project is operational. This project does not require a capital investment from the City of Colton in order to purchase electricity from the facility.

The Project will likely result in an increase in future retail rates due to the high cost of renewable resources compared to traditional fossil fuel resources. The size of any future rate increase will depend upon Colton's growth and future natural gas and energy costs but is estimated to be around 3 to 5% in the 2016 time period. However, Colton is required to acquire renewable resources to meet California State Law SB 2 and this Project has been judged to have one of the smallest impacts on rates of possible alternatives. Staff continues to research operational efficiencies in order to keep rates competitive and as low as possible.

ALTERNATIVES

1. City Council may provide alternate direction to staff.

ATTACHMENTS

SCPPA Renewable Resource Cost Comparison
Ordinance No. O-04-12
SCPPA-La Paz Solar Tower LLC Power Purchase Agreement
SCPPA-Colton Power Sales Agreement

Staff Report to the Mayor and City Council
La Paz Solar Tower
March 20, 2012

ATTACHMENT 1

SCPPA RENEWABLE RESOURCE COST COMPARISON

Renewable Projects Price Range

Offered to SCPPA

<u>Project/Technology</u>	<u>2009/10 RFPs</u>	<u>2011 RFPs</u>
La Paz Solar Wind Project	\$95/MWh	
Wind Projects	\$55 to \$115	\$63 to \$102
Small Hydrogeneration	\$50 to \$100	
Solar Thermal Projects	\$180 to \$200	
Photovoltaic	\$115 to \$210	\$81 to \$160
Energy Storage	\$90 to \$120	
Biomass Generation	\$100 to \$150	\$82 to \$108
Geothermal	\$70 to \$135	\$90 to \$110
<u>Conventional Generation</u>		
Simple Cycle Turbine (Peaking)	\$230 to \$250	
Combined Cycle	\$75 to \$145	

Staff Report to the Mayor and City Council
La Paz Solar Tower
March 20, 2012

ATTACHMENT 2

ORDINANCE O-04-12

1 electric capacity and energy and the acquisition and development of solar energy and related
2 facilities in order to provide a long-term supply of renewable energy to meet a portion of the
3 electrical generation needs of the Project Participants while also helping them meet policy and
4 regulatory goals for increasing the amount of electricity obtained from renewable energy
5 resources; and

6 **WHEREAS**, SCPPA and the Project participants have identified a solar energy facility
7 known as the La Paz Solar Tower Project (the “Project), that will be owned by EnviroMission
8 (USA), Inc., a Delaware corporation (“EnviroMission”) and an affiliate of EnviroMission
9 Limited. The Project is to have a nameplate capacity of 200 MW and is to be located in western
10 La Paz County, Arizona. The Project will include the siting, construction and installation of the
11 solar tower facility containing, among other things, thirty-two 6.25 MW pressure-staged turbine
12 generators. SCPPA desires to acquire a major portion of the electric capacity and energy of the
13 Project from EnviroMission, and each Project Participant desires to obtain electric capacity and
14 associated energy and environmental attributes of the Project from SCPPA pursuant to a La Paz
15 Solar Tower Sales Agreement between SCPPA and such Project Participant (the “Power Sales
16 Agreement”); and

17 **WHEREAS**, the Power Purchase Agreement also provides for SCPPA and
18 EnviroMission to enter into an Option Agreement providing SCPPA with options to purchase a
19 percentage ownership interest in the Project equivalent to the percentage of the capacity of the
20 Project purchased by SCPPA under the Power Purchase Agreement. Exhibits to the Option
21 Agreement include the forms of a Participation Agreement (the “Participation Agreement”) and a
22 Project Operation and Maintenance Agreement (the “Project O&M Agreement”) which are to be
23 entered into by SCPPA with EnviroMission if SCPPA exercises its purchase option. The
24 Participation Agreement and the Project O&M Agreement provide for the management and
25 operation of the Project by SCPPA and EnviroMission as co-owners; and

1 or useful for purposes of firming, shaping, regulating, transmitting and delivering to the City's
2 electric system the Project energy purchased by the City from SCPPA.

3 **SECTION 4:** Should the City Manager of the City of Colton be absent or otherwise not
4 available to execute and deliver the agreements, documents or instruments or to carry out the
5 other responsibilities provided by or authorized in this Ordinance, the he or she may designate, in
6 writing, a representative to act in his or her stead.

7 **SECTION 5:** If any part of this Ordinance is held to be invalid for any reason, such
8 decision shall not affect the validity of the remaining portion of this Ordinance, and this City
9 Council hereby declares that it would have passed the remainder of this Ordinance, if such invalid
10 portion thereof has been deleted.

11 **SECTION 6:** Pursuant to Section 54241 of the Government Code of the State of
12 California, this Ordinance is subject to the provisions for referendum applicable to the City.

13 **SECTION 7:** The City Council shall certify to the enactment of this Ordinance and shall
14 cause this Ordinance to be published in accordance with Section 54242 of the Government Code
15 of the State of California.

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1 **SECTION 8:** Unless a petition shall be filed requiring that this Ordinance be submitted to
2 referendum, thirty (30) days from and after its enactment, this Ordinance shall take effect and be
3 in full force, in the manner provided by law.

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5 **PASSED, APPROVED, AND ADOPTED** this 20th day of March, 2012.

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SARAH S. ZAMORA, Mayor

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9 ATTEST:

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EILEEN C. GOMEZ, CMC
City Clerk

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STATE OF CALIFORNIA)

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COUNTY OF SAN BERNARDINO) ss.

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CITY OF COLTON)

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I, EILEEN C. GOMEZ, City Clerk of the City of Colton, do hereby certify that foregoing Ordinance No. O-04-12 was duly and regularly adopted by the City Council of the City of Colton at a regular meeting thereof on the 20th day of March, 2012 and that the same was passed and adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Eileen C. Gomez, City Clerk

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SUMMARY

On March 6, 2012 the Colton City Council will consider adopting an ordinance approving the Power Sales Agreement between the City and Southern California Public Power Authority for the La Paz Solar Tower Project.

The City Council meets at 6:00 p.m. in the Council Chambers in the Colton City Hall, located at 650 North La Cadena Drive, Colton, CA 92324. The City Clerk's office is located in City Hall near the Council Chambers.

Staff Report to the Mayor and City Council
La Paz Solar Tower
March 20, 2012

ATTACHMENT 3

SCPPA-LA PAZ SOLAR TOWER LLC POWER PURCHASE AGREEMENT

01/01/12

POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
LA PAZ SOLAR TOWER LLC

DATED AS OF DECEMBER 1, 2011

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POWER PURCHASE AGREEMENT

PARTIES

THIS POWER PURCHASE AGREEMENT ("*Agreement*") is dated for convenience as of the 1st day of DECEMBER, 2011 by and between SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Section 6500 *et seq.*) ("*Buyer*"), and La Paz Solar Tower LLC ("*Seller*"), a limited liability company organized and existing under the laws of the State of Delaware. Each of Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together they are referred to as the "*Parties*".

RECITALS

WHEREAS, the members of Buyer have adopted "Renewable Portfolio Standards" designed to increase the amount of energy each provides to its retail customers from renewable power sources; and

WHEREAS, Buyer issued a request for proposals to acquire renewable resources; and

WHEREAS, EnviroMission (USA), Inc. responded to the request for proposals regarding its ownership and operation of a solar thermal electric energy generating facility; and

WHEREAS, Upon completion of negotiations of this Agreement and as set forth in a letter agreement, dated October 19, 2011, by Buyer and EnviroMission (USA), Inc, EnviroMission (USA), Inc. in order to comply with the proposed terms of this Agreement entered into a corporate restructuring which included the creation of La Paz Solar Tower LLC as the successor-in-interest to EnviroMission (USA), Inc. and an affiliate of EnviroMission Limited; and

WHEREAS, La Paz Solar Tower LLC, as Seller, is entering into this Agreement with Buyer; and

WHEREAS, Buyer desires to purchase the SCPPA Facility Energy (as defined herein) from Seller, and Seller desires to sell the SCPPA Facility Energy to Buyer; and

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

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the Parties agree as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

Section 1.1 Definitions. The following capitalized terms in this Agreement and the Appendices shall have the following meanings:

“Additional Facility” has the meaning set forth in Section 11.8.

“Additional Facility Capacity” means an amount of MW of the Facility Capacity and associated Facility Energy in excess of the SCPPA Facility Capacity.

“Additional Facility Capacity Purchase Agreements” means an agreement entered into by Seller with a Person providing for the purchase by such Person of Additional Facility Capacity, provided that (i) such agreement shall be for a term of at least twenty (20) years, and (ii) such Person shall have a long-term credit rating (corporate or long term senior unsecured debt) of BBB1 or higher by Moody’s or BBB+ or higher by S&P.

“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 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” means this Power Purchase Agreement and its Appendices (including the Option Agreement), as may be amended, supplemented or otherwise modified from time to time hereafter in accordance with its terms.

“Agreement Term” has the meaning set forth in Section 2.2.

“Ancillary Documents” means the Option Agreement and any agreements or other documents included in either the Milestone Security or the Performance Security and all other instruments, agreements, certificates and documents executed or delivered by or on behalf of Buyer or any Seller Party pursuant to or in connection therewith.

“Appendices” means the documents attached to this Agreement and labeled Appendix A through Appendix N.

“ASME” means American Society of Mechanical Engineers and any successor thereto.

“Assumed Daily Deliveries” has the meaning set forth in Section 12.3(c).

“ASTM” means American Society for Testing and Materials and any successor thereto.

“Authorized Auditors” means representatives of Buyer or Buyer’s Agents 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 13.1.

“Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains load-interchange generation balance within a Balancing Authority area, maintains energy schedules and interchange service with other Balancing Authority areas, and supports interconnection frequency in real time.

“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 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 sixty (60) days.

“Bouse Substation” means Western Area Power Administration’s substation of the same name located in the State of Arizona.

“Brown Act” has the meaning set forth in Section 13.21(c).

“Business Day” means any calendar 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 City, New York.

“Buyer” has the meaning set forth in the introductory paragraph.

“Buyer’s Agent” means each member of Buyer authorized or designated by Buyer in a notice to Seller to receive SCPPA Facility Energy at a Point of Delivery or to make the determination or perform, carry out or provide the service or action, as provided in this Agreement.

“Buyer’s Undivided Interest” means a ratio, expressed as a percentage of the SCPPA Facility Capacity to the total Facility Capacity.

“CAMD” means the Clean Air Markets Division of the United States Environmental Protection Agency, any successor agency 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 or any of the foregoing of Environmental Attributes.

“Capacity Factor” means the decimal amount (expressed as a percentage) obtained by dividing: (a) the total, actual SCPPA Facility Energy produced and delivered to the respective Points of Delivery in a Contract Year (in MWhs), and (b) an amount calculated as the product of (i) 8,760 hours, and (ii) the SCPPA Facility Capacity (in MW).

“Capacity Rights” means the rights, whether in existence as of the Effective Date or arising hereafter during the Agreement Term, to capacity, resource adequacy, associated

attributes and/or reserves or any of the foregoing associated with the electric generating capability of the SCPA Facility Capacity, including the right to resell such rights.

“CEC” means the California Energy Commission and any successor agency thereto.

“CEC Performance Standard” means, at any time, the applicable greenhouse gas emissions performance standard in effect at such time for baseload electric generation facilities owned or operated (or both) by local publicly owned electric utilities, as established by the CEC or other Governmental Authority having jurisdiction over Buyer.

“CEQA” means the California Environmental Quality Act, as amended from time to time, and any successor statute.

“Closing” has the meaning set forth in the Option Agreement.

“Closing Date” has the meaning set forth in the Option Agreement.

“Commercial Operation” means the date on which Seller shall have demonstrated to the reasonable satisfaction of Buyer that all of the following have occurred:

(a) Construction of the Facility has been completed in accordance with the terms and conditions of this Agreement and the Facility possesses all of the characteristics, and satisfies all of the requirements, set forth for the Facility in this Agreement;

(b) The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirement of Law to be completed prior to full commercial operations;

(c) Seller has obtained the Permits required for the construction, operation and maintenance of the Facility in accordance with this Agreement (including those identified in Appendix B), and all such Permits are final and non-appealable;

(d) The Facility is both authorized and capable of generating Energy continuously and reliably. The capability of the Facility to generate Energy continuously and reliably shall be demonstrated by its operation, without experiencing any abnormal operating conditions, at a net energy output of at least eighty percent (80%) of the Facility Capacity for at least forty (40) hours in a period of twenty (20) consecutive days; provided that such period shall be extended on a day for day basis to account for any such day or days during the period in which sunlight is inadequate for generation;

(e) Seller has obtained Insurance coverage for the Facility as required by Appendix F;

(f) Seller has acquired and has entered into contractual arrangements for the Lease and all related property and other rights and interests necessary for the operation of the Facility and the delivery of Facility Energy to the respective Points of Delivery, all in accordance with the terms and provisions of this Agreement; and

(g) Seller has applied to, and obtained from, the Western Area Power Administration, or such other appropriate transmission provider as may be applicable, arrangements for Transmission Services, including rights to transmission capacity, from the Point of Interconnection to each respective Point of Delivery adequate for the delivery, net of Transmission Losses, to such Point of Delivery of the SCPPA Energy Delivery Share (as set forth for such Point of Delivery in Appendix K) of the SCPPA Facility Energy.

“Commercial Operation Date” means the date on which Commercial Operation shall have occurred.

“Confidential Information” has the meaning set forth in Section 13.21(a).

“Consent and Agreement” has the meaning set forth in Section 13.7(f).

“Contract Year” means each twelve-month period beginning on the Commercial Operation Date and ending on the anniversary of the Commercial Operation Date throughout the Delivery Term.

“Costs” has the meaning set forth in Section 12.3(f).

“CPRA” has the meaning set forth in Section 13.21(c).

“Default” has the meaning set forth in Section 12.1.

“Defaulting Party” has the meaning set forth in Section 12.1.

“Delivery Term” has the meaning set forth in Section 2.2.

“Dispute” has the meaning set forth in Section 13.3(a).

“Dispute Notice” has the meaning set forth in Section 13.3(a).

“Dow Jones Palo Verde Electricity Price” means the price determined in accordance with the Dow Jones Palo Verde Electricity Price Index, as published by Dow Jones & Company, provided that such price shall not exceed the Excess Energy price per MWh as provided in Appendix A for the Contract Year in which such determination is made. Determination of the price of Energy according to the Dow Jones Palo Verde Electricity Price Index shall be made by reference to whether such Energy was generated during On-Peak or Off-Peak hours (each as defined therein).

“Downgrade Event” means (i) with respect to a Qualified Issuer issuing a letter of credit in accordance with Section 3.5 or Section 5.4 or a guarantee in accordance with Section 5.4, the failure to maintain the credit rating or organization status of a Qualified Issuer as set forth in Section 3.5 or Section 5.4, as applicable, or (ii) the commencement by a Qualified Issuer of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding (whether under any present or future statute, law or regulation).

“Early Termination Date” has the meaning set forth in Section 12.3(a).

“EEI” means Edison Electric Institute and any successor thereto.

“Effective Date” means the date Buyer executes this Agreement, so long as the conditions precedent set forth in Section 2.1 have been met by such date.

“Electric Metering Device(s)” means all meters, metering equipment, and data processing equipment used to measure, record, or transmit data relating to the Energy output from the Facility. Such Electric Metering Devices shall be revenue quality meters.

“Energy” means electrical energy.

“EnviroMission Limited” means EnviroMission Limited, a company incorporated under the laws of Australia that is an Affiliate of Seller.

“Environmental Attributes” means any and all 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 Governmental Authority or other Person and (b) that are attributable to (i) generation of Energy by the Facility, or generation of Replacement Energy by another facility as permitted under Section 13.19(b), during the Delivery Term which is required to be delivered by Seller to Buyer during the Delivery Term and (ii) the emissions or other environmental characteristics of such generation or its displacement of conventional or other types of Energy generation. Environmental Attributes include, without limitation, 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, but not limited to, California Assembly Bill 32 (Global Warming Solutions Act of 2006)) or any similar international, federal, state or local program or crediting “early action” with a view thereto, or 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 shall not include tax benefits of any nature associated with the construction, ownership or operation of the facility or any credits, grants or reductions applicable to a state or federal tax obligation. Environmental Attributes for purposes of this definition are separate from the Energy produced from the Facility.

“Environmental Attribute Reporting Rights” means the rights to report ownership of the Environmental Attributes to any Person, 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 Documents” has the meaning set forth in Section 3.1(a).

“EPA” means Environmental Protection Agency and any successor thereto.

“EPS Compliant,” when used with respect to the Facility or any other facility at any time, 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 as implemented and amended from time to time, or any successor laws or regulations in the State of California.

“Excess Energy” means, for any period, the positive difference, if any, between the amount of SCPPA Facility Energy (calculated so as not to include any Energy provided or to be provided pursuant to Generator Imbalance Service and to exclude any SCPPA Facility Energy subject to sale or disposition pursuant to Generator Imbalance Service) delivered at all Points of Delivery and the amount of such SCPPA Facility Energy that would have been delivered at all Points of Delivery if the Facility, during such period, had operated at a Capacity Factor of sixty three percent (63%).

“Facility” means the solar thermal electric generating facility, with an installed nameplate capacity of 200MW, including, but not limited to (a) the transmission and other facilities and equipment necessary to interconnect the generating facility at the Point of Interconnection, (b) all property interests and related transmission and other facilities, and (c) the rights and interests under agreements for Transmission Services, all as described in Appendix B.

“Facility Capacity” means 200MW, the nameplate capacity of the Facility.

“Facility Construction Milestone” has the meaning set forth in Appendix I.

“Facility Construction Milestone Date” has the meaning set forth in Appendix I.

“Facility Construction Milestone Security Amount” has the meaning set forth in Section 3.5(e).

“Facility Debt” means the payment obligations of Seller that are in compliance with the provisions of Section 13.7 of this Agreement and that are otherwise permitted under this Agreement which are owed to Facility Lenders pursuant to any financing documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or reconstruction, or benefit monetization swap or interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

“Facility Energy” means the Energy generated by the Facility, net of Energy self-generated and concurrently consumed by the Facility, which is delivered, net of any transformation or transmission losses, to the Point of Interconnection.

“Facility Equity” means the aggregate amount, from time to time, of equity investment of the Seller in the Facility, whether such investment is in the form of capital contributions, tax equity contributions, cash, intangibles or other property or assets as set forth on the Seller’s balance sheet prepared in accordance with GAAP. The phrase “percentage of Facility Equity” shall mean the ratio, expressed as a percentage, of the Facility Equity to the sum of (x) all indebtedness described in clauses (i) – (iv) of paragraph (bb) of the definition of “Special Purpose Entity,” (and which is required to be set forth on a balance sheet in accordance with GAAP) and (y) the amount of Facility Equity.

“Facility Lender” means any lender providing senior or subordinated construction, interim or long-term debt or financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

“Facility Ownership Interest” has the meaning set forth in Exhibit 1.1 of the Option Agreement.

“FERC” means the Federal Energy Regulatory Commission and any successor thereto.

“Financing Milestone” has the meaning set forth in Appendix I.

“Financing Milestone Date” has the meaning set forth in Appendix I.

“Financing Milestone Security Amount” has the meaning set forth in Section 3.5(b).

“Firm Transmission” means transmission that cannot be curtailed for economic reasons or for higher priority transmission.

“Fitch” means Fitch Ratings, a majority-owned subsidiary of Fimalac, S.A, or its successor.

“Force Majeure” has the meaning set forth in Section 13.6(b).

“Force Majeure Notice” has the meaning set forth in Section 13.6(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.

“GAAP” means Generally Accepted Accounting Principles which are accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants applicable to a government-owned utility applying all statements and interpretations issued by the Governmental Accounting Standards Board (GASB) and statements and pronouncements of the Financial Accounting Standards Board which are not in conflict with the statements and interpretations issued by the

GASB or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, that are applicable to the circumstances as of the date of determination.

“Gains” has the meaning set forth in Section 12.3(f).

“Generator Imbalance Service” means, in the event there shall be a difference between the actual amount of SCPPA Facility Energy generated and delivered by the Facility and the amount thereof Scheduled for such delivery at Points of Delivery, (i) the delivery by Seller or on behalf of Seller by or through a Balancing Authority or a third party of Energy which, when added to the delivery of such SCPPA Facility Energy, will cause the total amount of such Energy actually delivered to match the amount of such SCPPA Facility Energy Scheduled for delivery, or (ii) the sale or disposition of an amount of such SCPPA Facility Energy by or on behalf of Seller to or through a Balancing Authority or a third party so that the amount of SCPPA Facility Energy delivered shall match the amount of such SCPPA Facility Energy Scheduled for delivery.

“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, or any Person acting as a delegate or agent of any Governmental Authority.

“Guaranteed SCPPA Energy” means, commencing on the first day of the third (3rd) Contract Year, the number of MWh of SCPPA Facility Energy which is the product of: (a) SCPPA Facility Capacity (in MW); multiplied by (b) 8,760 hours; multiplied by (c) forty eight percent (48%), which must be delivered, net of station power requirements and net of Transmission Losses, by Seller and received by Buyer at the respective Points of Delivery each Contract Year, subject to adjustment for Energy not delivered by reason of Force Majeure or Buyer’s Default under this Agreement.

“IEEE” means Institute of Electrical and Electronics Engineers and any successor thereto.

“Independent Manager” means a manager who is not at the time of initial appointment, or at any time while serving as Independent Manager, and has not been at any time during the preceding five (5) years: (a) a member, stockholder, equityholder, director, manager (except as such Independent Manager of Seller), officer, employee, partner, attorney or counsel of Seller, any member of Seller, or any Affiliate of Seller; (b) a customer, supplier or other Person who derives any of its purchases or revenues from its activities with Seller, any member of Seller, or any Affiliate of Seller (other than for serving as Independent Manager of Seller); (c) a Person controlling or under common control with any such stockholder, equityholder, director, partner, manager, customer, supplier or other Person, or (d) a member of the immediate family of any such member, stockholder, equityholder, director, officer, employee, manager, partner, customer, supplier or other Person.

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

“Interconnection Milestone” has the meaning set forth in Appendix I.

“Interconnection Milestone Date” has the meaning set forth in Appendix I.

“Interconnection Milestone Security Amount” has the meaning set forth in Section 3.5(d).

“Interest Rate” has the meaning set forth in Section 10.3.

“Investment Grade Rating” means a most recent credit rating of at least “Baa3” from Moody’s, “BBB-” from S&P, or “BBB-” from Fitch, or the equivalent rating under any successor to Moody’s S&P or Fitch.

“IPT” means (a) when used with respect to a Retail Seller for any year for which an incremental procurement target has been set for the Retail Seller by the PUC under the RPS Law, the incremental procurement target so set, and (b) when used with respect to a Retail Seller for any year for which an incremental procurement target has not been set for the Retail Seller by the PUC under the RPS Law, the incremental procurement target last set for the Retail Seller by the PUC under the RPS Law, and (c) when used with respect to Buyer for any year, means the renewable energy portfolio standard or procurement target requirements as established by law or by the governing body of each member of Buyer who is purchasing Energy generated by the Facility for the year in which this Agreement is entered into and as in effect on the date this Agreement is entered into.

“ISA” means Instrument Society of America and any successor thereto.

“Lease” means, collectively, the land lease agreements, easement agreements or other agreements between Seller and property owners leasing or otherwise conveying interests in real property that are part of the Site, each as amended, supplemented or otherwise modified from time to time.

“Lessor” means the lessor under any Lease.

“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 an option, of any other Person in or with respect to any real or personal property.

“Losses” has the meaning set forth in Section 12.3(f).

“Major Maintenance Blockout” has the meaning set forth in Section 4.5(d).

“Marketplace Substation” means the substation of the same name located in the State of Nevada.

“Mead Substation” means the substation of the same name located in the State of Nevada.

“Milestone” has the meaning set forth in Section 3.4.

“Milestone Date” has the meaning set forth in Section 3.4.

“Milestone Security” has the meaning set forth in Section 3.5(a).

“Moody’s” means Moody’s Investor Services, Inc., or its successor.

“Mortgage” has the meaning set forth in Section 5.5(a).

“MW” means megawatt.

“MWh” means megawatt-hours.

“NEPA” has the meaning set forth in Section 3.1(a).

“NERC” means the North American Electric Reliability Corporation and any successor thereto.

“New Facility” has the meaning set forth in Section 11.6.

“Non-Consolidation Opinion” means a reasoned opinion of legal counsel to Seller, reasonably acceptable to Buyer, addressed to Buyer and in form and substance acceptable to Buyer, as to the non-consolidation of Seller in a bankruptcy proceeding of Seller’s parent company.

“Non-Defaulting Party” has the meaning set forth in Section 12.3(a).

“Notice of Exemption” has the meaning set forth in Section 3.1(d).

“Notifying Party” has the meaning set forth in Section 13.3(a).

“Option Agreement” means that certain Option Agreement of even date herewith in the form set forth in Appendix J, as amended, supplemented or otherwise modified from time to time.

“OSHA” means Occupational Safety & Health Administration and any successor thereto.

“Outside Commercial Operation Date” has the meaning set forth in Section 2.4(d).

“Pacific Prevailing Time” means the local time in Los Angeles, California.

“Party” or **“Parties”** has the meaning set forth in the introductory paragraph.

“Performance Security” means the performance security described in Section 5.4.

“Performance Security Amount” has the meaning set forth in Section 5.4.

“Permit” means applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or

maintained by Seller 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 and delivery of Facility Energy, or Replacement Energy, as applicable, 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 those described in Appendix B.

“Permit Milestone” has the meaning set forth in Appendix I.

“Permit Milestone Date” has the meaning set forth in Appendix I.

“Permit Milestone Security Amount” has the meaning set forth in Section 3.5(c).

“Permitted Encumbrances” means (a) any Lien granted to a Facility Lender and either (i) in existence on the Effective Date or (ii) in effect after the Effective Date and which does not result in Seller having Facility Equity of less than thirty percent (30%), the Mortgage, and any other Lien approved by Buyer in a writing separate from this Agreement which expressly identifies such Lien as a Permitted Encumbrance, (b) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, *provided* that such proceedings end by the expiration of the Agreement Term, (c) suppliers’, vendors’, mechanics’, workman’s, repairman’s, employees’ or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts, the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, *provided* that such proceedings end by expiration of the Agreement Term, and (d) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations listed on Schedule B of the title insurance policy insuring the Mortgage, and *provided further* that in the case of Liens being contested under subsections (b) or (c), Seller has provided additional security of a letter of credit substantially in the form attached hereto as Appendix E or such other form as is acceptable to Buyer and the Facility Lender jointly in an amount equal to or greater than the amount of such Lien multiplied by 1.25.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision. The use of the phrase “any other Person” shall mean any Person other than either Party.

“Points of Delivery” means each of the points for the delivery of SCPPA Facility Energy or Replacement Energy as provided in or pursuant to Appendix K and, in the case of the delivery of Replacement Energy, any other point or points of delivery if and as elected pursuant to Section 7.1(b), or such other delivery point or points designated by Seller or Seller’s Scheduler and approved by Buyer in connection with the provision of Generator Imbalance Service.

“Point of Interconnection” means at or near the Bouse Substation.

“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.

“Project Purchase Option” means the right, but not the obligation, of Buyer, in its sole discretion, to purchase the Purchased Assets and certain related assets from Seller in accordance with the provisions of, and otherwise subject to the terms and conditions of, the Option Agreement.

“Prudent Utility Practices” means those practices, methods, and acts, that are commonly used by a significant portion of the electric generation industry, including those applicable to wind and solar projects, in prudent engineering and operations to design and operate electric equipment (including wind and solar powered facilities, as applicable) lawfully and with safety, dependability, reliability, efficiency, and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC and all applicable Requirements of Law.

“Public Utilities Code” means the Public Utilities Code of the State of California.

“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 baseload electric generation facilities owned or operated (or both) by load-serving entities and not local publicly-owned electric utilities, as established by the PUC or other Governmental Authority under the EPS Law.

“Purchased Assets” means Buyer’s Undivided Interest in the Purchased Assets as defined in Exhibit 1.1 to the Option Agreement.

“Qualified Issuer” means a financial institution either organized under the laws of the United States or a State therein or a United States branch of a foreign financial institution, in each case, that has a current long-term credit rating (corporate or long-term senior unsecured debt) of (i) “A2” or higher by Moody’s and (ii) “A” or higher by S & P or (ii) in the sole discretion of SCPPA is an entity having a current long term credit rating provided by another entity which in the sole determination of SCPPA is equal to that set forth in (i) and (ii) above.

“Quality Assurance Program” has the meaning set forth in Section 5.3.

“Recipient Party” has the meaning set forth in Section 13.3(a).

“RECs” or “Renewable Energy Certificates” means all existing and future tradable environmental commodities that represent proof that one (1) MWh of Energy was generated from an eligible resource (or RPS compliant source of energy). These certificates can be sold and traded. While a REC, in and of itself, is not Energy, the owner of RECs bundled with

Energy can claim to own renewable Energy. RECs are also commonly known as renewable energy credits and green tags.

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

“Replacement Energy” means the electrical energy delivered by Seller to Buyer in accordance with Section 13.19(b), which is generated by a facility other than the Facility and is, at the time such Replacement Energy is delivered to Buyer, both RPS Compliant and EPS Compliant.

“Requirements of Law” means federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

“Retail Seller” means an “electrical corporation” (as defined in Section 218 of the Public Utilities Code) that is a “retail seller” as defined in Section 399.12(b) of the California Public Utilities Code as amended from time to time and any successor law.

“RPS Compliant,” when used with respect to the Facility or any other facility at any time, means (a) that all Energy generated by that facility at that time would, if purchased by a Retail Seller together with the associated Environmental Attributes, be eligible to be credited against the IPT of the Retail Seller for the year during which the Energy is purchased, and (b) that all Energy generated by that facility at that time would, if purchased by Buyer together with the associated Environmental Attributes, be eligible to be credited against the IPT of Buyer.

“RPS Law” means Sections 399.11 to 399.20 of the Public Utilities Code, as implemented and amended from time to time, and any successor law.

“S&P” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.), or its successor.

“Sales Price” has the meaning set forth in Section 6.3.

“SCPPA Energy Delivery Share” means, with respect to a particular Point of Delivery, the proportionate share (expressed as a percentage) as set forth in Appendix K, that the SCPPA Facility Energy or Replacement Energy as delivered at such Point of Delivery bears to all the SCPPA Facility Energy or Replacement Energy, as applicable, as delivered at all the Points of Delivery.

“SCPPA Facility Capacity” means sixty-eight (68) MW of Facility Capacity. The amount of SCPPA Facility Capacity may be revised in accordance with Section 6.1(b).

“SCPPA Facility Capacity Share” means the ratio (expressed as a percentage) of the SCPPA Facility Capacity to the Facility Capacity.

“SCPPA Facility Energy” means (i) the SCPPA Facility Capacity Share of the Facility Energy, or (ii) as used with respect to the delivery thereof to any one or more Points of Delivery, except where the context otherwise provides, the SCPPA Facility Energy as defined in (i) above, as adjusted to include the supply of Energy and to exclude any sale or disposition of Energy, as applicable, pursuant to Generator Imbalance Service.

“Schedule, Scheduling or Scheduled” means the actions of Seller and Buyer or their respective Authorized Representatives or designees, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity of Energy to be delivered hourly (or sub-hourly if applicable) at the respective Points of Delivery on any given date during the Delivery Term.

“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 4.5(d).

“Scheduler” means the Persons doing Scheduling for each Party and shall include Seller’s designee referred to in Section 4.5. The contact information for Buyer’s Scheduler and Seller’s Scheduler at the Effective Date is set forth in item 4, Appendix C, which will be revised by the Parties as needed.

“Seller” has the meaning set forth in the introductory paragraph.

“Seller Party(ies)” means Seller and all other Persons executing any Ancillary Document, including, without limitation, any Affiliate of Seller providing Performance Security, now or hereafter in effect, but excluding (i) Buyer and (ii) any Qualified Issuer providing Milestone Security or Performance Security that is not an Affiliate of Seller.

“Site” means the real property (including all fixtures and appurtenances thereto) and related physical and intangible property generally identified in Appendix B as owned or leased by Seller where the Facility is located or will be located, and including all or the prorated portion, as applicable, of easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines and/or roadways servicing such Site or the Facility located (or to be located) thereon and any other related physical or intangible property necessary for the continual development, operation or maintenance of the Facility.

“Site Control” means that Seller (a) owns the Site; or (b) is the lessee of, or holder of other real property rights for, the Site under a Lease or other real property document which permits Seller to perform its obligations under this Agreement and the Ancillary Documents.

“Special Purpose Entity” means a limited liability company which at all times prior to, on and after the date hereof:

(a) shall not (i) engage in any dissolution, liquidation or consolidation or merger with or into any other business entity, (ii) acquire by purchase or otherwise all or substantially all of the business or assets of or beneficial interest in any other entity, (iii) transfer, lease or sell, in one transaction or any combination of transactions, all or substantially all of its

properties or assets except to the extent permitted herein, (iv) modify, amend or waive any provisions of its organizational documents related to its status as a Special Purpose Entity, or (v) terminate its organizational documents or its qualifications and good standing in any jurisdiction;

(b) was, is, and will be organized solely for the purpose of acquiring, developing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Facility, entering into this Agreement with Buyer and transacting lawful business that is incident, necessary and appropriate to accomplish the foregoing;

(c) has not been, is not, and will not be engaged in any business unrelated to the acquisition, development, ownership, management or operation of the Facility;

(d) has not had, does not have, and will not have, any assets other than those related to the Facility;

(e) has held itself out and will hold itself out to the public as a legal entity separate and distinct from any other entity, and has not failed and will not fail to correct any known misunderstanding regarding the separate identity of such entity;

(f) has maintained and will maintain its financial statements, bank accounts, accounts, books, resolutions, agreements and records separate from any other Person, and has filed and will file its own tax returns (except to the extent treated as a “disregarded entity” for tax purposes and is not required to file tax returns under applicable law);

(g) has held itself out and identified itself and will hold itself out and identify itself as a separate and distinct entity under its own name or in a name franchised or licensed to it by a Person other than an Affiliate of Seller and not as a division, department or part of any other Person;

(h) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;

(i) has not made and will not make loans or advances to any Person, hold evidence of indebtedness issued by any other Person (other than cash and investment-grade securities issued by a Person that is not an Affiliate of, or subject to common ownership with, such Person), or made any gifts or fraudulent conveyances to any Person;

(j) has not identified and will not identify its members, or any Affiliate of any member, as a division or department or part of it, and has not identified itself and shall not identify itself as a division or department of any other Person;

(k) has not entered into or been a party to, and will not enter into or be a party to, any transaction with its members or Affiliates, except in the ordinary course of its business and on terms which are intrinsically fair and commercially reasonable, and are no less favorable to it than would be obtained in a comparable arm’s length transaction with an unrelated Person;

(l) has not had and will not have any obligation to indemnify, and has not indemnified and will not indemnify its officers, managers or members, as applicable, other than the Independent Manager.

(m) has considered and shall consider the interests of its creditors in connection with all limited liability company actions;

(n) does not have and will not have any of its obligations guaranteed by any Affiliate, and will not hold itself out as being responsible for the debts or obligations of any other Person;

(o) has complied and will comply with all of the terms and provisions contained in its organizational documents including the provision requiring that there be an Independent Manager at all times, and has done or caused to be done and will do all things necessary to preserve its existence;

(p) has not commingled, and will not commingle, its funds or assets with those of any Person, and has not participated and will not participate in any cash management system with any other Person;

(q) has held and will hold its assets in its own name, and has conducted and will conduct all business in its own name;

(r) has maintained and will maintain its financial statements, accounting records and other entity documents separate from any other Person, and has not permitted and will not permit its assets to be listed as assets on the financial statement of any other Person except as required by GAAP; *provided, however*, that any such consolidated financial statement shall contain a note indicating that its separate assets and liabilities are neither available to pay the debts of the consolidated Person nor constitute obligations of the consolidated Person;

(s) has paid and will pay its own liabilities and expenses, including the salaries of its own employees, out of its own funds and assets, and has maintained and will maintain a sufficient number of employees in light of its contemplated business operations;

(t) has observed and will observe all limited liability company formalities;

(u) has not assumed or guaranteed or become obligated for and will not assume or guarantee or become obligated for the debts of any other Person, and has not held out and will not hold out its credit as being available to satisfy the obligations of any other Person except as permitted pursuant to this Agreement;

(v) has not acquired and will not acquire obligations or securities of its members or of any Affiliate;

(w) has allocated and will allocate fairly and reasonably any overhead expenses that are shared with any Affiliate, including, but not limited to, paying for shared space and services performed by any employee of an Affiliate;

(x) has maintained and used, now maintains and uses, and will maintain and use separate stationery, invoice and checks bearing its name; such stationery, invoices and checks utilized by it or utilized to collect its funds or pay its expenses have borne and shall bear its own name and have not borne and shall not bear the name of any other Person unless such Person is clearly designated as being its agent;

(y) except in connection with the Mortgage or a financing with a Facility Lender related to the development, construction, operation or ownership of the Facility on the terms and conditions permitted by this Agreement has not pledged and will not pledge its assets for the benefit of any other Person;

(z) has had, now has, and will have organizational documents, including articles of organization, a certificate of formation and an operating agreement, that provide that it will not: (i) dissolve, merge, liquidate or consolidate; (ii) sell, transfer, lease or otherwise convey all or substantially all of its assets, except as provided under this Agreement or the Option Agreement; (iii) engage in any other business activity; (iv) amend any of such organizational documents with respect to the matters set forth in this definition without the affirmative vote of its Independent Manager or in any manner which adversely affects its ability to comply with Section 11.4; or (v) without the affirmative vote of its Independent Manager, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial ownership interest;

(aa) has been, is and intends to remain solvent, and has paid and intends to continue to pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from its assets as the same shall have or become due, and has maintained, is maintaining and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; and

(bb) has no and will have no indebtedness other than (i) the loan made by the Facility Lender providing construction financing for the Facility and any loan in replacement or substitution thereof, (ii) Taxes and Insurance premiums, (iii) liabilities incurred in the ordinary course of business relating to its ownership, leasing, maintenance, and operation of the Facility and its routine administration, which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are paid when due, and which amounts are normal and reasonable under the circumstances, and in any event not in excess of \$500,000 in the aggregate, and (iv) such other liabilities that are permitted pursuant to this Agreement.

“Successor Entity” has the meaning set forth in Section 12.1(o).

“System Emergency” means an emergency condition or abnormal interconnection situation which in Buyer’s sole judgment affects the ability of Buyer or Buyer’s Transmission Provider to receive Energy at any of the Points of Delivery.

“Target Commercial Operation Date” means February 1, 2015.

“Target Commercial Operation Date Security Amount” has the meaning set forth in Section 3.5(f).

“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 12.3(a).

“Termination Payment” has the meaning set forth in Section 12.3(d).

“Transmission Losses” means the transformation and transmission losses associated with the delivery of SCPPA Facility Energy from the Point of Interconnection to each respective Point of Delivery calculated in accordance with the Transmission Provider’s tariff applicable to the associated Transmission Services.

“Transmission Provider” means the Person(s) operating the Transmission System(s) providing Transmission Services to or from the Point of Delivery.

“Transmission Services” means the transmission and other services required to transmit SCPPA Facility Energy from the Point of Interconnection to each of the respective Points of Delivery or from each such Points of Delivery.

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

“UCC” means the Uniform Commercial Code as enacted and in effect in the state where the Facility is located (and as it may from time to time be amended); *provided, however*, that if, by reason of Requirements of Law, any or all of the attachment, perfection or priority of, or remedies with respect to, Buyer’s Lien on the Facility is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the state where the Facility is located, the term “UCC” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for the purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

“Unexcused Cause” has the meaning set forth in Section 13.6(b).

“WECC” means the Western Electricity Coordinating Council and any successor entity thereto.

“Western OATT” means the Western Area Power Administration’s Open Access Transmission Tariff, as may be amended, supplemented or otherwise modified from time to time.

“Western TIP Program” means the Western Area Power Administration’s Transmission Infrastructure Program, as may be amended, supplemented or otherwise modified from time to time.

“WREGIS” means the Western Renewable Energy Generation Information System, and any successor; *provided* that said successor is capable of performing substantially similar functions and is acceptable to Buyer.

“**WREGIS Certificates**” has the meaning set forth in Section 8.4.

“**WREGIS Operating Rules**” means the rules describing the operations of the Western Renewable Energy Generation Information System, as published by WREGIS and as may be amended, supplemented or otherwise modified from time to time.

Other terms defined herein have the meanings so given them in this Agreement.

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

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person’s successors and assigns but, in case of a Party, 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;
- (c) reference to any gender includes the other;
- (d) reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended, supplemented or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (e) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as applicable, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;
- (f) “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;
- (g) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term;
- (h) 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”; and
- (i) reference to time shall always refer to Pacific Prevailing Time; and reference to any “day” shall mean a calendar day unless otherwise indicated.

ARTICLE II
EFFECTIVE DATE, TERM, AND EARLY TERMINATION

Section 2.1 Effective Date. Subject to Section 3.1(d), this Agreement is effective as of the Effective Date. On or prior to the Effective Date, each of the following has occurred:

- (a) Buyer received the Non-Consolidation Opinion;
- (b) Buyer and Seller executed and delivered the Option Agreement;
- (c) A memorandum of option in the form required by Section 2.5 of the Option Agreement was recorded in the Official Records of La Paz County, Arizona;
- (d) Buyer received copies of all requisite resolutions and incumbency certificates of each Seller Party and any other documents evidencing all actions taken by each Seller Party to authorize the execution and delivery of this Agreement and all Ancillary Documents requiring execution by such Seller Party, such resolutions to be certified as of the Effective Date by an authorized representative of such Seller Party;
- (e) Buyer received an executed original of a written legal opinion of counsel for Seller, reasonably acceptable to Buyer, concerning this Agreement, the Ancillary Documents and related matters, in form and substance satisfactory to Buyer and its counsel, dated as of the Effective Date and addressed to Buyer;
- (f) EnviroMission Limited and Seller shall have:
 - (i) entered into an agreement with Buyer under which EnviroMission Limited agrees to apply for and cause to be issued to Buyer the respective letters of credit (or alternative financial devices which, in the sole determination of Buyer provide the type of security and serve the purpose of a letter of credit and which are acceptable to Buyer in the sole discretion of Buyer) at the times and as otherwise provided under Section 3.5; and
 - (ii) entered into an agreement with Buyer under which EnviroMission Limited agrees to apply for and cause to be issued to Buyer letters of credit (or alternative financial devices which, in the sole determination of Buyer provide the type of security and serve the purpose of a letter of credit and which are acceptable to Buyer in the sole discretion of Buyer) at the times and as otherwise provided under Section 5.4, or enter into an agreement with Buyer and Seller under which EnviroMission Limited agrees to cause to be issued to Buyer guarantees at the times and as otherwise provided under Section 5.4.
- (g) The letter of credit (or alternative financial devices which, in the sole determination of Buyer provide the type of security and serve the purpose of a letter of credit and which are acceptable to Buyer in the sole discretion of Buyer) evidencing the Milestone Security in the amount required under Section 3.5 to be issued on the Effective Date has been executed and delivered to Buyer; and
- (h) Buyer may waive one or more of the above requirements or a portion of the above requirements, on terms specified by Buyer, in order for this agreement to become

effective. However, notwithstanding anything to the contrary herein, such a waiver shall be in writing and the terms of any such waiver shall be strictly construed and shall not constitute a waiver on any other terms than set forth in such waiver and shall not constitute a waiver of any other provision of this Agreement or any other requirement of Seller under this Agreement.

Section 2.2 Agreement Term and Delivery Term. This Agreement shall have a delivery term (the “*Delivery Term*”) commencing on the Commercial Operation Date and ending on the last day of the thirtieth (30th) Contract Year, unless sooner terminated in accordance with the terms of this Agreement. The term of this Agreement (the “*Agreement Term*”) shall commence on the Effective Date and shall end upon the expiration or earlier termination of this Agreement in accordance with the terms hereof.

Section 2.3 Survivability. The provisions of this Article II, Article XII, Article XIII, Section 13.19 and Section 13.21 shall survive for a period of one (1) year following the termination of this Agreement. The provisions of Article XI 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 Section 11.6 shall survive for a period of five (5) years after any termination described therein. The provisions of Article V, Article VI, and Article VIII shall continue in effect after termination to the extent necessary to provide for final billing and adjustments related to the 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 12.3;

(c) *Early Termination for Failure to Achieve Milestones.* In accordance with Section 3.5 and Section 12.1(h), Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if Seller fails to achieve any Milestone by the applicable Milestone Date, (providing that Seller has thirty (30) days from the date of the termination notice to remedy) as set forth in Appendix I;

(d) *Early Termination for Failure to Achieve Outside Commercial Operation Date.* Buyer, in its sole discretion, may terminate this Agreement effective upon notice to Seller if Seller fails to achieve Commercial Operation on or before July 1, 2015 (the “*Outside Commercial Operation Date*”), without exception, suspension or extension for reasons of Force Majeure or otherwise;

(e) *Exercise of Project Purchase Option.* In the event Buyer elects to exercise the Project Purchase Option, this Agreement shall terminate effective upon the Closing under the Option Agreement unless sooner terminated as otherwise herein provided;

(f) *Early Termination by Buyer Regarding Additional Facility Capacity.* In the event that Seller fails to enter into an Additional Facility Capacity Purchase Agreement or

Agreements for at least 100 MW of Additional Facility Capacity by the Commercial Operation Date, Buyer may, at its option, terminate this Agreement;

(g) *Early Termination Due to Force Majeure Event.* This Agreement may be terminated in accordance with Section 13.6(d);

(h) *Termination Notice and Termination Date.* Notwithstanding any provision in this Section 2.4 or Section 12.3 or in any other provision of this Agreement (except the provisions of Section 3.5), Buyer may provide to Seller its notice of the termination of this Agreement arising from any event, occurrence or failure of Seller, as set forth above in this Section 2.4, at any time within ninety (90) days following such event, occurrence or failure and such notice shall specify the date on which such termination shall take effect which shall be not later than sixty (60) days following the date of such notice unless Buyer shall state in such notice that it intends to exercise its Project Purchase Option as provided for under Section 2.2 of the Option Agreement in which event such notice shall specify the date such termination shall take effect which shall be on or prior to the date of the Closing under the Option Agreement; and

(i) *Effect of Termination.* Any termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

ARTICLE III DEVELOPMENT OF THE FACILITY

Section 3.1 In General.

(a) *Permitting.* Seller, at its sole cost and expense, shall timely take all steps necessary to obtain, on or before the Permit Milestone Date, all Permits required to construct, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law, including, but not limited to, the timely preparation of all environmental documents required to review the Facility under applicable environmental laws (the “*Environmental Documents*”) except any permit not yet required to be obtained but which can reasonably be expected to be obtained when required. Seller acknowledges and agrees that the Facility will be subject to environmental review pursuant to the National Environmental Policy Act of 1969 (“*NEPA*”) and/or pursuant to State of Arizona laws requiring preparation of a document containing essentially the same points of analysis as in an environmental impact report prepared under CEQA, and that the Facility will therefore be statutorily exempt from CEQA pursuant to Title 14 California Code of Regulations, Section 15277;

(b) *Project Design.* Seller shall determine the proposed location, design, configuration and capacities of the Facility as it deems appropriate, subject only to the requirements of this Agreement and all applicable Requirements of Law, including but not limited to the characteristics and other requirements for the Facility set forth in Appendix B, and also subject to any conditions which are imposed by any responsible agency (including, but not limited to Buyer) as part of any applicable environmental or siting review of the Facility and which Seller deems acceptable;

(c) *Meetings With Governmental Authorities.* Seller shall represent the Facility as necessary in all meetings with and proceedings before all Governmental Authorities;

(d) *Determinations.* The Parties acknowledge and agree that Seller shall have no obligation to sell and Buyer shall have no obligation to purchase any Energy under this Agreement unless and until all of the following occur:

(i) Each of the agencies conducting an environmental review of all or part of the Facility as contemplated by Section 3.1(a) shall, where applicable, have completed a final environmental study (or equivalent environmental document) for the Facility;

(ii) A notice of exemption pursuant to Title 14, California Code of Regulations, Section 15277 (a "*Notice of Exemption*"), has been duly filed in the appropriate states and counties; and

(iii) The applicable period for any legal challenges to any action by any such agency or any other Person, including the statute of limitations pertaining to the filing of the Notice of Exemption, shall have expired without any such challenge having been filed or, in the event of any such challenge, the challenge shall have been determined adversely to the challenger by final judgment or settlement.

Seller acknowledges and agrees that Buyer shall have the right to participate in the environmental review(s) of the Facility, including, but not limited to, presenting its concerns, commenting on any agency's notice of preparation, consulting with any agency during preparation of any EA/EIS, and commenting on the draft Environmental Documents. Seller further acknowledges and agrees that Buyer shall have the full discretion to consider such Environmental Documents in order to reach its own decisions about the Facility. Seller acknowledges and agrees that Buyer therefore retains its full authority under the Environmental Documents to: (i) adopt feasible mitigation measures and/or alternatives in order to avoid or lessen significant environmental impacts resulting from the Facility; (ii) determine that any significant impacts that cannot be mitigated are acceptable due to overriding concerns; and/or (iii) decide to terminate this Agreement due to the Facility's significant adverse environmental impacts. The Parties acknowledge and agree that any modifications to the Facility or its operations resulting from the environmental review process may necessitate amendments to this Agreement in a mutually acceptable manner.

(e) *Ownership and Operation of the Facility.* Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. The Facility shall be owned by Seller during the Agreement Term, subject however to any Permitted Encumbrances. Seller shall develop, operate and maintain the Facility, at its sole risk and expense, and in compliance with the requirements of this Agreement, all applicable Requirements of Law, Prudent Utility Practices, and applicable manufacturer's and operator's specifications and recommended procedures, *provided* that meeting these requirements shall not relieve Seller of its other obligations under this Agreement. Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) on any portion of the Facility or any other property or assets which are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer.

The Facility shall be operated during the Delivery Term by the party listed as the operator on Appendix B, or such other Person as Buyer shall approve in the exercise of its reasonable discretion; and

(f) *Site Confirmation.* Seller agrees and acknowledges that Seller's agents and representatives have visited, inspected and are familiar with the Site in particular, its physical condition relevant to the obligations of Seller pursuant to this Agreement, including surface conditions, normal and usual soil conditions, roads, utilities, and topographical, solar radiation, air and water quality conditions; that Seller is or will become familiar with relevant local conditions which may be material to Seller's performance of its obligations under this Agreement (including, transportation, seasons and climate, access, weather, handling and storage of materials and equipment; and availability and quality of labor and utilities); and that based on the foregoing, the Site constitutes an acceptable and suitable site for the construction and operation of the Facility in accordance herewith. Any failure by Seller to take the actions described in this Section 3.1 will not relieve Seller from any responsibility for estimating properly the difficulty and cost of successfully constructing, maintaining or operating the Facility in accordance with this Agreement or from proceeding to construct, maintain and operate the Facility successfully without any additional expense to Buyer.

Section 3.2 Certification of Commercial Operation Date. Seller shall provide Buyer with a notice when all conditions precedent to achieving Commercial Operation of the Facility as specified in the definition of "Commercial Operation" in Section 1.1 have been satisfied.

Section 3.3 Other Information. Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations, of Seller, its subcontractors or the Facility, financial or otherwise, and other data concerning Seller, its subcontractors or the Facility as Buyer may, from time to time, reasonably request. Until the Commercial Operation Date, Seller shall provide to Buyer quarterly written reports describing permitting and development activities in the previous quarter, including but not limited to the acquisition of transmission service, efforts to achieve an interconnection agreement, and efforts to purchase Generator Imbalance Service, and anticipated progress and activities for the upcoming quarter on the same subjects. Buyer shall be permitted to inspect the Facility from time to time upon reasonable notice to Seller and during reasonable business hours.

Section 3.4 Milestone Schedule. Seller has provided, as set forth on Appendix I, a milestone schedule with deadlines related to the development and construction of the Facility through the Commercial Operation Date (each, a "*Milestone*"). Seller shall provide Buyer a quarterly report setting forth the status of each Milestone, including any slippage in any deadline. Seller shall achieve each Milestone by the date specified therefor, subject to extensions for Force Majeure delays, or such extensions that Buyer may grant in its sole discretion (each such date as so extended (if at all), a "*Milestone Date*").

Section 3.5 Milestone Security.

(a) *Milestone Security.* On each of the dates specified below, Seller shall cause to be issued to Buyer, as the beneficiary thereunder, and thereafter maintain and replace, in

accordance with this Section 3.5, a letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) issued by a Qualified Issuer, substantially in the form attached hereto as Appendix E or such other form as is acceptable to Buyer (the “*Milestone Security*”), in the respective amounts specified below for each Milestone which shall secure Seller’s obligation to pay liquidated damages under this Section 3.5 and shall comply with the following:

(i) If a Downgrade Event shall occur with respect to the financial institution that shall have issued a letter of credit in accordance with this Section 3.5, then Seller shall cause to be issued to Buyer a replacement letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) that meets the requirements of this Section 3.5 within thirty (30) days following such Downgrade Event;

(ii) At least forty-five (45) days prior to the expiration date of a letter of credit delivered in accordance with this Section 3.5, Seller shall cause to be delivered to Buyer a replacement letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) that meets the requirements of this Section 3.5 or written evidence acceptable to Seller that the expiration date of the letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) then in effect has been extended; and

(iii) In addition to any of the Buyer’s other rights to demand payment on a letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) issued under this Section 3.5, in the event that a replacement letter of credit is not delivered in accordance with this Section 3.5 or the letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) then in effect is not extended in accordance with this Section 3.5, Buyer shall also have the right to demand payment of the full amount of the letter of credit and retain such amount in order to secure Seller’s obligations under this Section; provided that if and to the extent such amount shall be in excess of the amounts of Seller’s payment and performance obligations under this Section 3.5, Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement shall have been paid or performed.

(b) *Financing Milestone Date.* On the Effective Date, Seller shall cause to be issued to Buyer the Milestone Security in an amount (the “*Financing Milestone Security Amount*”) equal to the product of \$750,000 multiplied by the SCPPA Facility Capacity Share. If Seller fails to achieve the Financing Milestone by the Financing Milestone Date, Buyer shall have the right by notice to Seller to immediately terminate this Agreement in accordance with Section 12.1 and draw from the Milestone Security an amount equal to the Financing Milestone Security Amount as liquidated damages for Seller’s failure to achieve the Financing Milestone

Date, and in addition, shall have all other rights and remedies available to it for a Default under this Agreement;

(c) *Permit Milestone.* On the Financing Milestone Date, unless this Agreement is terminated by Buyer in accordance with Section 3.5(b), Seller shall cause the amount of the Milestone Security to be increased to an amount (the “*Permit Milestone Security Amount*”) equal to the product of \$1,000,000 multiplied by the SCPA Facility Capacity Share. If Seller fails to achieve the Permit Milestone by the Permit Milestone Date, Buyer shall have the right by notice to Seller to immediately terminate this Agreement in accordance with Section 12.1 and draw from the Milestone Security an amount equal to the Permit Milestone Security Amount as liquidated damages for Seller’s failure to achieve the Permit Milestone Date, and in addition, shall have all other rights and remedies available to it for a Default under this Agreement;

(d) *Interconnection Milestone.* On the Permit Milestone Date, unless this Agreement is terminated by Buyer in accordance with Section 3.5(c), Seller shall cause the amount of the Milestone Security to be increased to an amount (the “*Interconnection Milestone Security Amount*”) equal to the product of \$3,000,000 multiplied by the SCPA Facility Capacity Share. If Seller fails to achieve the Interconnection Milestone by the Interconnection Milestone Date, Buyer shall have the right by notice to Seller to immediately terminate this Agreement in accordance with Section 12.1 and draw from the Milestone Security an amount equal to the Interconnection Milestone Security Amount as liquidated damages for Seller’s failure to achieve the Interconnection Milestone Date, and in addition, shall have all other rights and remedies available to it for a Default under this Agreement;

(e) *Facility Construction Milestone.* On the Interconnection Milestone Date, unless this Agreement is terminated by Buyer in accordance with Section 3.5(d) Seller shall cause the amount of the Milestone Security to be increased to an amount (the “*Facility Construction Milestone Security Amount*”) equal to the product of \$3,000,000 multiplied by the SCPA Facility Capacity Share. If Seller fails to achieve the Facility Construction Milestone by the Facility Construction Milestone Date, Buyer shall have the right by notice to Seller to immediately terminate this Agreement in accordance with Section 12.1 and draw from the Milestone Security an amount equal to the Facility Construction Milestone Security Amount as liquidated damages for Seller’s failure to achieve the Facility Construction Milestone Date, and in addition, shall have all other rights and remedies available to it for a Default under this Agreement;

(f) *Target Commercial Operation Date.* On the Facility Construction Milestone Date, unless this Agreement is terminated by Buyer in accordance with Section 3.5(e), Seller shall cause the amount of the Milestone Security to be increased to an amount (the “*Target Commercial Operation Date Security Amount*”) equal to the product of \$15,000,000 multiplied by the SCPA Facility Capacity Share. If Seller fails to achieve Commercial Operation by the Target Commercial Operation Date, Seller shall have the option, which shall be exercised by giving immediate notice to Buyer, to extend the Target Commercial Operation Date by paying to Buyer delay damages in an amount equal to \$50,000 per day for each day intervening between the Target Commercial Operation Date and the earlier of (i) the date Commercial Operation is achieved, and (ii) the Outside Commercial Operation Date. Such delay damages shall be paid

monthly to Buyer by Seller in a manner that is consistent with the provisions of Section 10.2(c). In the event that Seller either fails to pay delay damages when due or fails to achieve Commercial Operation by the Outside Commercial Operation Date, Buyer shall have the right by notice to Seller to immediately terminate this Agreement in accordance with Section 12.1(i)3, retain all delay damages previously paid, draw on the Milestone Security in an amount equal to the Target Commercial Operation Date Security Amount and in addition, shall have all other rights and remedies available to it for a Default under this Agreement;

(g) The Milestone Security constitutes security for, but is not a limitation of, Seller's obligations under this Section 3.5 and shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in accordance with this Section 3.5; and

(h) Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Requirements of Law the Milestone Security contemplated by this Section 3.5.

ARTICLE IV OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 Compliance with Electrical Service Requirements. Seller shall, at its sole expense, operate and maintain the Facility (i) in accordance with Prudent Utility Practices, the requirements of this Agreement and all applicable Requirements of Law, and (ii) in a manner that is reasonably likely to maximize the daytime hour (on-peak) output of Energy from the Facility and result in a useful life for the Facility of not less than the Agreement Term.

Section 4.2 General Operational Requirements.

In addition to the requirements set forth in Section 4.1 and elsewhere in this Agreement, Seller shall, at all times:

(a) Employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Agent. Seller shall ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term;

(b) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and Transmission System; and

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

Section 4.3 Operation and Maintenance Plan. 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.

Section 4.4 Environmental Credits. Seller shall, if applicable, obtain in its own name and at its own expense any and all pollution or environmental credits or offsets necessary to operate the Facility in compliance with the Requirements of Law.

Section 4.5 Scheduling of Energy and Scheduled Outages.

(a) Seller or Seller's designee shall be responsible for scheduling the forecast of SCPA Facility Energy, or Replacement Energy, as applicable, to the respective Points of Delivery (or such other point or points of delivery in accordance with Section 7.1(b)), during the Agreement Term, in accordance with the dispatch and scheduling procedures that may be updated from time to time by Buyer or Buyer's Agent;

(b) Seller, or Seller's designee shall:

(i) No later than forty-five (45) days before the beginning of each calendar year, provide, or cause to be provided, a non-binding forecast of each month's average-day deliveries of Energy, by hour, for the following eighteen (18) months;

(ii) Ten (10) Business Days before the beginning of each month, provide, or cause to be provided, a non-binding forecast of each day's average deliveries of Energy, by hour, for the following month;

(iii) On the first (1st) Business Day of each week, provide Buyer and Buyer's Agents with an estimated hourly generation schedule via a spreadsheet for the subsequent two (2) weeks;

(iv) Prior to 12:00 p.m. Pacific Prevailing Time of the Business Day immediately preceding each WECC Prescheduling Day (as defined by WECC) for each hour of the Delivery Day (as defined by WECC) in MW units, in the format shown in Appendix L or another format acceptable to Buyer or Buyer's Agents, provide or cause the Facility's Scheduling coordinator to provide, Buyer and Buyer's Agents with a preschedule plan of generation via email. The pre-scheduled amounts of Energy shall be the good faith estimate of Seller or Seller's designee of the anticipated output of Energy at the time. A forecast provided a day prior to any non-Business Day(s) shall include forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Seller or Seller's designee shall provide Buyer and Buyer's Agents with a copy of any and all updates to such forecast indicating a change in forecasted Energy from the then current forecast. Except for Forced Outages, Seller shall operate the Facility with the objective that, for each hour scheduled, the actual Energy shall be produced in accordance with the preschedule plan submitted to Buyer and Buyer's Agents for use by Buyer and Buyer's Agents to Schedule the SCPA Facility Energy for delivery at or from Points of Delivery; and

(v) In the event that Seller is unable to maintain Energy amounts within plus or minus five percent (5%) of the preschedule plan submitted to Buyer and Buyer's Agents pursuant to clause (iv) above, Seller or Seller's designee shall notify, via phone to the single contact listed in Appendix M, Buyer or Buyer's Agent thirty (30) minutes before the Scheduling deadline of the Buyer's Balancing Authority for the Scheduling hour and promptly provide Buyer and Buyer's Agents with a revised hourly preschedule plan for Energy for the

balance of the Schedule period. This will allow Buyer and Buyer's Agents to make the necessary changes to Buyer and Buyer's Agents Schedules or to create new Schedules before the Buyer and the Buyer's Agents' Balancing Authority deadline. Seller or Seller's designee will follow up with an email to the contacts listed in Appendix M confirming the time the hourly change is for and the reason for the hourly change.

(c) Seller shall be responsible for all costs associated with maintaining firm hourly Schedules at the respective Points of Delivery, including for any imbalance or scheduling charges attributable to within-the-hour Scheduling changes or otherwise for Generator Imbalance Service or other regulation services. Examples illustrating the operation of Seller's responsibilities under this Section and Section 6 are set forth in Appendix N. The Scheduling procedures shall specify Seller's designee and Buyer's Agents for purposes of approving any purchase by Buyer of Facility Energy in excess of the SCPA Facility Energy. Seller or Seller's designee shall submit Schedules, and any updates to such Schedules, to Buyer and Buyer's Agents based on the most current forecast of Energy. All generation Scheduling and transmission services shall be performed in accordance with the applicable tariffs, NERC and WECC operating policies, criteria, and any other applicable guidelines. Seller or Seller's designee shall also fulfill the contractual, metering and interconnection requirements so as to be able to deliver SCPA Facility Energy, or Replacement Energy, as applicable, to the respective Points of Delivery (or otherwise in accordance with Section 7.1(b));

(d) Seller or Seller's designee shall not schedule any Scheduled Outages during certain consecutive or nonconsecutive weeks of each Contract Year (not to exceed twelve (12) weeks per Contract Year) specified by Buyer (such period of time specified by Buyer, the "**Major Maintenance Blockout**") without the prior written consent of Buyer, except as may be required by Prudent Utility Practices. No later than one hundred twenty (120) days prior to the Commercial Operation Date and the commencement of each Contract Year thereafter, Buyer shall provide Seller with its specified Major Maintenance Blockout. No later than sixty (60) days prior to the Commercial Operation Date, and the commencement of each Contract Year thereafter, Seller shall provide Buyer and Buyer's Agents with its non-binding written projection of all Scheduled Outages for the succeeding three (3) years (the "**Scheduled Outage Projection**"). In addition, Seller shall cooperate in good faith with Buyer's maintenance scheduling requests consistent with Prudent Utility Practices; and

(i) The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (1) the anticipated start and end dates of each Scheduled Outage; (2) a description of the maintenance and/or repair work to be performed during the Scheduled Outage; and (3) the anticipated MW capacity, if any, during the Scheduled Outage; and

(ii) Seller, or Seller's designee, must notify Buyer and Buyer's Agents of any changes to the Scheduled Outage schedule, (1) each calendar year no later than July 1st for the following calendar year; and (2) five (5) Business Days prior to such Scheduled Outage.

Seller will use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to the extent feasible and consistent with Prudent Utility Practices, and except where such Scheduled Outages would occur

during Major Maintenance Blockouts, arrange for Scheduled Outages, to the extent feasible, to occur between DECEMBER 1 and March 1 of each year and coincident with planned transmission outages. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(e) Seller, or Seller's designee, must communicate any Forced Outage to Buyer and Buyer's Agents as soon as it occurs. Seller or Seller's designee shall provide detailed information concerning the 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 and/or repair work to be performed during the Forced Outage; and (iv) the anticipated MW 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.

(f) Upon request submitted to Seller by Buyer, Seller shall designate Buyer or Buyer's Agents in accordance with such request as its designee and the Scheduler for the delivery of SCPPA Facility Energy from the Point of Interconnection to the respective Points of Delivery; provided that such designation and the performance by Buyer or Buyer's Agents of such Scheduling shall not affect the responsibility of Seller for Transmission Services, including Scheduling charges and all other costs and charges therefor, with respect to the delivery of SCPPA Facility Energy to the respective Points of Delivery and for the provision of Generator Imbalance Service, all as provided in the Agreement. Such Scheduling by Buyer or Buyer's Agents shall be based on the forecasts and preschedule plans for Energy from the Facility provided by Seller or its designee pursuant to the foregoing provisions of this Section 4.5. Additionally, as provided in this Section 4.5 and as otherwise provided in the Agreement, Buyer and Buyer's Agents shall Schedule the SCPPA Facility Energy for delivery at and from the respective Points of Delivery. Should Buyer determine that laws or regulations will require dynamic scheduling to satisfy the Buyer's Agents' renewable portfolio requirements or should Buyer determine that the dynamic scheduling of SCPPA Facility Energy to the Point of Delivery is necessary to satisfy its renewable portfolio requirements, then at Buyer's direction to Seller in writing, Seller shall dynamically schedule SCPPA Facility Energy to the Point of Delivery.

ARTICLE V COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD

Section 5.1 In General.

(a) *The Facility.* Seller agrees to perform, or cause to be performed, all engineering, design and construction in a good and workmanlike manner and in accordance with Prudent Utility Practices, all applicable Requirements of Law, Seller's Quality Assurance Program, the Milestones and all other requirements of this Agreement. Seller agrees that throughout the Delivery Term: (i) the Facility, its engineering, design and construction, its components and related work, shall be free from material defects caused by errors or omissions in design, engineering and construction, (ii) the Facility will produce the Guaranteed SCPPA Energy; (iii) the Facility will be free and clear of all Liens other than Permitted Encumbrances, and (iv) the Facility will comply with the requirements of this Agreement and all applicable

Requirements of Law. Seller also agrees that throughout the Agreement Term it will monitor the operation and maintenance of the Facility and that said operation and maintenance is, and will be, in full compliance with all applicable standards, Prudent Utility Practices, and Requirements of Law. Seller's Quality Assurance Program, and other provisions of this Agreement. Without limiting the foregoing, Seller shall promptly repair and/or replace, consistent with Prudent Utility Practices, any component of the Facility that may be damaged or destroyed or otherwise not operating properly and efficiently. Seller shall exercise commercially reasonable efforts to undertake appropriate recommended or required updates or modifications to the Facility, its equipment and materials, including procedures, programming and software in a timely manner, *provided* that Seller shall not make any modifications to the Facility which are designed to increase the capacity of the Facility to more than 200 MW without the written approval of Buyer, which shall not be unreasonably withheld, provided, however, Buyer may withhold such approval in its sole discretion if such action may affect the tax exempt status of Buyer's financing of a future exercise of the Project Purchase Option. Seller shall, at its expense, maintain throughout the Agreement Term an inventory of spare parts for the Facility in a quantity that is consistent with manufacturer's recommendations and Prudent Utility Practices;

(b) *Buyer's Right To Monitor In General.* Buyer shall have the right and Seller shall permit Buyer and its representatives, advisors, engineers and consultants to observe, inspect and monitor all operations and activities at the Facility, including the performance of the contractor(s) under the construction contract(s) pertaining to the Facility, the design, engineering, procurement and installation of the equipment, start up and testing, and Commercial Operation;

(c) *Startup and Testing.* Prior to the Commercial Operation Date and as a condition precedent to the achievement of the Commercial Operation Date, Buyer shall have the right to:

(i) review and monitor the contractors' performance and achievement of all initial performance tests and all other tests required under the Facility construction contracts that must be performed in order to achieve completion, with respect to which the construction contracts shall provide that at least ten (10) Business Days before such tests begin the contractors shall deliver to Buyer a schedule for the performance of such tests;

(ii) be present to witness such initial performance tests and review the results thereof; and

(iii) perform such detailed examinations, inspections, quality surveillance and tests as, in the reasonable judgment of Buyer, are appropriate and advisable to determine that the Facility equipment and all ancillary components of the Facility have been installed in accordance with this Agreement and the Facility construction contracts, all applicable standards, Prudent Utility Practices, Requirements of Law, and Seller's Quality Assurance Program.

(d) *Contract Provisions.* Seller shall cause to be included in the Facility construction contract(s) provisions, in form and substance satisfactory to Buyer, whereby the contractor(s) and Seller:

(i) grant to Buyer such rights of access to the Facility at all reasonable times (but subject to reasonable safety precautions) and, subject to Section 13.21, to inspect, make notes about, and to copy all documents, drawings, plans, specifications, permits, test results and other information as Buyer may reasonably request;

(ii) make the personnel of, and consultants to, the contractor(s) and Seller available to Buyer and its agents, representatives and consultants at reasonable times and with prior notice for purpose of discussing any aspects of the Facility including the development, engineering, construction, installation, testing or performance thereof; and

(iii) otherwise cooperate in all reasonable respects with Buyer and its Authorized Representatives, advisors, engineers and consultants in order to allow Buyer to exercise its rights under this Section 5.1.

Section 5.2 Compliance With Standards. Seller shall cause the Facility and all parts thereof to be designed, constructed, tested, operated and maintained to meet all of the requirements of this Agreement, all applicable requirements of the latest revision of the ASTM, ASME, AWS, EPA, EEI, IEEE, ISA, National Electrical Code, National Electric Safety Code, OSHA, as applicable, Uniform Building Code, Uniform Plumbing Code, and the applicable local County Fire Department Standards of the applicable county, and any successors thereto, and other codes and standards and operations and maintenance requirements applicable to the services, equipment, and work as generally shown in this Agreement, as well as all applicable Requirements of Law not specifically mentioned in this Section.

Section 5.3 Quality Assurance Program. Seller agrees to maintain and comply with a written quality assurance policy ("*Quality Assurance Program*") attached hereto as Appendix H, and Seller shall cause all work performed on or in connection with the Facility to comply with said Quality Assurance Program.

Section 5.4 Performance Security.

(a) On and after the Commercial Operation Date, Seller shall cause to be issued to Buyer, as beneficiary thereunder, and thereafter maintain (i) a letter of credit issued by a Qualified Issuer, substantially in the form attached hereto as Appendix E, or such other form as is acceptable to Buyer, or (ii) a guarantee issued by a Qualified Issuer in substantially the form attached hereto as Appendix G. The letter of credit and the guarantee shall each be in an amount (the "*Performance Security Amount*") equal to the product of \$15,000,000 multiplied by the SCPPA Facility Capacity Share, and each shall secure or guarantee Seller's obligations under this Agreement and the Option Agreement (the "*Performance Security*"). If the Performance Security is used to pay damages and other amounts payable by Seller for failure to perform its obligations under this Agreement, or the Option Agreement or otherwise drawn upon by Buyer and, as a consequence thereof, the amount of the Performance Security is less than the Performance Security Amount at any time during the Agreement Term, within ten (10) Business Days after the date of such draw, Seller shall cause the amount of the Performance Security to be increased to the amount of the Performance Security Amount;

(b) Seller shall notify Buyer of the occurrence of any event which, with notice or the passage of time or both, would constitute a Downgrade Event with respect to an issuer of Performance Security, which notice shall be given by Seller within five (5) Business Days of being notified of the occurrence of such event. If at any time there shall occur a Downgrade Event with respect to an issuer of Performance Security, then Buyer may require that Seller cause the Performance Security from the issuer that has suffered the Downgrade Event to be replaced with Performance Security from a Qualified Issuer within ten (10) Business Days of notice from Buyer to Seller requesting such replacement Performance Security;

(c) At least forty-five (45) days prior to the expiration date of a letter of credit delivered in accordance with this Section 5.4, Seller shall cause to be delivered to Buyer a replacement letter of credit that meets the requirements of this Section 5.4 or written evidence acceptable to Seller that the expiration date of the letter of credit then in effect has been extended;

(d) In addition to any of the Buyer's other rights to demand payment on a letter of credit or a guarantee delivered under this Section 5.4, in the event that a replacement letter of credit or a replacement guarantee is not delivered in accordance with Section 5.4(b) or a replacement letter of credit is not delivered or the letter of credit then in effect is not extended in accordance with Section 5.4(c), Buyer shall also have the right to demand payment of the Performance Security Amount of the letter of credit or make demand for the Performance Security Amount on the guarantee, as applicable, and retain such amount in order to secure Seller's obligations under this Section 5.4; provided that if and to the extent such amount shall be in excess of the amounts of Seller's payment and performance obligations under this Section 5.4, Buyer shall refund the excess to Seller promptly after all the obligations of Seller under this Agreement and the Option Agreement shall have been paid or performed;

(e) Seller shall cause to be delivered (which delivery may be effected through posting on an internet page identified by notice to Buyer) in no event later than one hundred twenty (120) days after the end of each fiscal year of the Qualified Issuer, a copy of such Qualified Issuer's audited consolidated financial statements for such fiscal year. Seller shall be deemed to have satisfied such delivery requirement if audited financial statements of the Qualified Issuer are publicly available on the U.S. Securities and Exchange Commission EDGAR information retrieval system or on an internet page maintained by the Qualified Issuer for those fiscal periods that such Qualified Issuer is required to prepare such statements under applicable law and exchange requirements. Seller shall, from time to time as requested by Buyer, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the Ancillary Documents and the rights, Liens and priorities of Buyer with respect to such credit support; and

(f) Notwithstanding any other provisions of this Agreement, the Performance Security contemplated by this Agreement: (i) constitutes security for, but is not a limitation of, performance by Seller of its obligations under this Agreement and the Option Agreement, and (ii) shall not be Buyer's exclusive remedy against Seller for Seller's failure to perform in

accordance with this Agreement and the Option Agreement. The Performance Security described in this Section 5.4 is in addition to the Milestone Security described in Section 3.5.

Section 5.5 Execution and Recordation of Mortgage.

(a) Concurrently with the Financing Milestone date, Seller shall execute and record a valid Lien on the Facility (the "**Mortgage**"), which shall secure all obligations of Seller to Buyer under this Agreement and the Option Agreement, under one or more documents in form and substance satisfactory to Buyer, including without limitation UCC filings and financing statements. Seller agrees to execute and file, as applicable, such UCC financing statements and to take such further action and to execute such further instruments as shall reasonably be required by Buyer to confirm and continue the validity, priority, and perfection of the Mortgage; and

(b) The Parties agree, and Seller shall cause the Facility Lender to agree, and cause any relevant financing documents to provide, (i) that the Lien of the Mortgage shall be subordinate to the Lien of any Facility Lender on terms acceptable to Buyer (and Buyer agrees to coordinate with the Facility Lender with respect to the subordination of the Lien of the Mortgage to the Lien of the Facility Lender), and (ii) that, as long as Buyer is not in material default of its obligations under this Agreement, the Facility Lender and any other Person taking possession of the Facility through the exercise of a Facility Lender's rights and remedies shall remain subject to the terms of this Agreement (including the obligation to reinstate the Mortgage, subject to the terms of this Section 5.5, following any foreclosure by a Facility Lender) and shall assume all of Seller's obligations hereunder, both prospective and accrued, including the obligation to cure any then-existing defaults capable of cure by performance or the payment of money damages. The granting of the Mortgage shall not be to the exclusion of, nor be construed to limit, the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any breach or default by Seller under this Agreement or the Option Agreement or the early termination of this Agreement as provided for herein. The Mortgage shall be discharged and released, and Buyer shall take any steps reasonably required by Seller to effect and record such discharge and release, upon the expiration of the Agreement Term and satisfaction by Seller of all of its obligations hereunder and under the Option Agreement.

Section 5.6 Effect of Review by Buyer. Any review by Buyer of the design, construction, engineering, operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review 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 relieve Seller from any of its obligations under this Agreement. By making any such review, 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 other Person that any such review by Buyer of the Facility, including, but not limited to, any review of the design, construction, operation or maintenance of the Facility by Buyer, 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.

**ARTICLE VI
PURCHASE AND SALE OF POWER**

Section 6.1 Purchases by Buyer.

(a) Prior to the Commercial Operation Date and continuing through the Delivery Term, Seller shall sell and deliver, and Buyer shall purchase and receive, all of the Capacity Rights and all SCPPA Facility Energy and Replacement Energy delivered to the respective Points of Delivery for the respective prices set forth in Appendix A:

(b) Buyer may increase the SCPPA Facility Capacity for the remainder of the Agreement Term to an amount up to the Facility Capacity at any time prior to receipt by Buyer of written notice from Seller that such capacity is no longer available by providing written notice to Seller of the amount of additional capacity to be purchased by Buyer and the Point(s) of Delivery associated with the SCPPA Facility Energy associated with such additional capacity, which shall be included in Appendix K. Upon such increase in SCPPA Facility Capacity, Seller shall within thirty (30) days cause any Milestone Security or Performance Security to be increased as a result of such increase in SCPPA Facility Capacity so as to comply with Section 3.5 or Section 5.4, as the case may be. The SCPPA Energy Delivery Shares in Appendix A shall also be revised so as to account for the increases in the SCPPA Facility Energy associated with such additional capacity that is to be delivered to any of the Points of Delivery as set forth in the abovementioned notice of such additional capacity by Buyer to Seller; and

(c) If the SCPPA Facility Capacity subscribed to by SCPPA under this Agreement is less than the Facility Capacity, and Seller enters into power sales agreement for the subscription of such remaining capacity with another party for a term that is longer than one (1) calendar year, any term offered to such party that is more favorable than the term offered to SCPPA shall also be offered by Seller to SCPPA, and the Parties shall amend this Agreement to reflect such amended term.

Section 6.2 Points of Delivery; Generator Imbalance Service. All SCPPA Facility Energy delivered at the Point of Interconnection shall be dispatched by Seller for delivery to Buyer, and Buyer or Buyer's Agents shall receive from Seller, at each respective Point of Delivery, net of Transmission Losses, the SCPPA Energy Delivery Share (as set forth for such Point of Delivery in Appendix K) of the SCPPA Facility Energy, unless such SCPPA Facility Energy cannot be delivered to such Point of Delivery set forth in or pursuant to Appendix K due to a curtailment or other interruption of Transmission Services. Seller shall deliver such SCPPA Energy Delivery Share of the SCPPA Facility Energy to such Point of Delivery at Seller's cost and expense and Seller shall be responsible for arranging the associated Transmission Services. At Seller's own cost, Seller shall provide for or cause to be provided Generator Imbalance Service at the Points of Delivery therefor. Such Generator Imbalance Service shall be consistent with Seller's Balancing Authority tariff and the Western OATT, if and to the extent applicable, and with any other applicable Balancing Authority regulations or tariff, including any applicable interchange agreement by Seller's Balancing Authority with any other Balancing Authority or Transmission Provider. Unless otherwise agreed, all Replacement Energy shall be delivered by Seller to Buyer, and shall be received by Buyer or Buyer's Agents, at each of the respective

Points of Delivery so that the SCPPA Energy Delivery Share of the Replacement Energy with respect to such Point of Delivery shall be delivered at such Point of Delivery.

Section 6.3 Buyer's Failure. Unless excused by Force Majeure or Seller's failure to perform, if Buyer fails to receive at any Point of Delivery, all or any part of any SCPPA Facility Energy, or Replacement Energy, as applicable, required to be received by Buyer or Buyer's Agents at such Point of Delivery under this Article VI, Buyer shall pay Seller, on the date payment would otherwise be due to Seller, an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the price per MWh which would have been payable by Buyer for the Energy not taken by Buyer. "**Sales Price**" means (i) the price at which Seller, acting in a commercially reasonable manner, resells the Energy and associated RECs, or (ii) if Seller shall not have re-sold the Energy, the price set forth in the Dow Jones Palo Verde Electricity Price Index for such Energy and the market price for associated RECs (determined in a commercially reasonable manner). Seller will provide Buyer prompt written notice of the Sales Price together with back-up documentation.

Section 6.4 Nature of Remedies. The remedy set forth in Section 6.3 is the sole and exclusive remedy of Seller for any failure by Buyer to receive Energy as and when required by this Agreement, and all other remedies and damages for any such failure are hereby waived by Seller.

Section 6.5 Energy to Come Exclusively from Facility. Except for Generator Imbalance Service and as provided in Section 13.19(b), in no event shall Seller have the right to procure Energy other than Replacement Energy from sources other than the Facility for sale and delivery pursuant to this Agreement.

Section 6.6 Sales to Third Parties. Seller may sell to Persons other than Buyer who are outside of the distribution service area of any member of Buyer any SCPPA Facility Energy, Replacement Energy, and associated Environmental Attributes that Seller is required to deliver to Buyer, but which Buyer is excused from receiving, refuses to receive, or otherwise unable to receive, at any Point of Delivery; provided that if Buyer is unable to receive any SCPPA Facility Energy at any particular Point of Delivery set forth in or pursuant to Appendix K due to a curtailment or other interruption of Transmission Services for the delivery of SCPPA Facility Energy from the Point of Interconnection to such Point of Delivery, Seller may sell to Persons other than Buyer such Energy that Buyer is unable to receive but only if the Environmental Attributes associated with such Energy shall be transferred by Seller to Buyer and received by Buyer in the same manner as though transferred and received as provided in Article VIII. Except as provided in the preceding sentence, Seller shall not sell or otherwise transfer any SCPPA Facility Energy, Replacement Energy, Capacity Rights or Environmental Attributes to any Person other than Buyer during the Agreement Term.

**ARTICLE VII
TRANSMISSION AND SCHEDULING; TITLE AND RISK OF LOSS**

Section 7.1 In General.

(a) Except as set forth in Section 7.1(b), Seller shall arrange and be responsible for any Transmission Services required to deliver SCPPA Facility Energy to the respective Points of Delivery set forth in or pursuant to Appendix K, and Seller or its designee shall Schedule or arrange for Scheduling services as provided under Section 4.5 with its Transmission Providers to so deliver the SCPPA Facility Energy to such respective Points of Delivery. Buyer shall arrange and be responsible for Transmission Services at and from such Points of Delivery, and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive Energy at such respective Points of Delivery. Each Party shall designate an authorized Scheduler to effect the Scheduling of all Energy as provided in the Agreement; and

(b) In the event that Seller elects to procure Replacement Energy in accordance with Section 13.19(b), Buyer and Seller may, by mutual agreement, elect one or more points of delivery for such Replacement Energy which may be different from the Points of Delivery (in which case Appendix K shall be revised to provide for such different points of delivery) and arrange for the necessary Transmission Services for such Replacement Energy; *provided, however*, that failure by the Parties to agree on any of such points of delivery shall not negate Seller's obligation to provide Replacement Energy to Buyer.

Section 7.2 Costs. Seller shall be responsible for all costs or charges imposed on or associated with the delivery of SCPPA Facility Energy or Replacement Energy to the respective Points of Delivery as set forth in or pursuant to Appendix K, including, but not limited to, control area services, inadvertent energy flows, transmission losses, charges for overrun of reserved transmission capacity and charges relating to the transmission of SCPPA Facility Energy or Replacement Energy. Seller shall also be responsible for all costs and charges with respect to Generator Imbalance Service imposed on or associated with delivery of SCPPA Facility Energy or Replacement Energy to or at Points of Delivery. Buyer shall be responsible for any costs or charges, (other than any costs and charges with respect to Generator Imbalance Service), imposed on or associated with the delivery of SCPPA Facility Energy or Replacement Energy at and from the Points of Delivery as set forth in or pursuant to Appendix K, including, but not limited to, control area services, inadvertent energy flows, transmission losses and charges relating to the transmission of SCPPA Facility Energy or Replacement Energy.

Section 7.3 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 SCPPA Facility Energy or Replacement Energy prior to the respective Points of Delivery as set forth in or pursuant to Appendix K, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all SCPPA Facility Energy or Replacement Energy at and from such Points of Delivery. Seller warrants that it will deliver all SCPPA Facility Energy or Replacement Energy and associated Environmental Attributes to Buyer free and clear of all Liens created by any Person other than Buyer. Risk of loss as to all SCPPA Facility Energy or Replacement Energy, together with the associated Environmental Attributes, shall pass from Seller to Buyer at the respective Points of Delivery as set forth in or

pursuant to Appendix K; title as to all Environmental Attributes, shall pass from Seller to Buyer at the Point of Interconnection and as to all Replacement Energy at the respective Points of Delivery.

ARTICLE VIII ENVIRONMENTAL ATTRIBUTES; EPS AND RPS COMPLIANCE

Section 8.1 Transfer of Environmental Attributes. For and in consideration of Buyer entering into this Agreement, and in addition to the agreement by Buyer and Seller to purchase and sell SCPPA 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 Agreement Term, when the SCPPA Facility Energy or Replacement Energy, as applicable, is delivered by Seller and received by Buyer at the Point of Interconnection or, in the case of Replacement Energy, at the respective Points of Delivery therefor. 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 that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and covenants that it will not in the future, except as permitted by this Agreement, 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. Buyer and Seller acknowledge and agree that the consideration for the transfer of Environmental Attributes is contained within the relevant prices for the SCPPA Facility Energy or Replacement Energy, as applicable, that is delivered by Seller and received by Buyer.

Section 8.2 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.

Section 8.3 Environmental Attributes. Upon Buyer's request, Seller shall take all actions and execute all documents or instruments necessary under applicable law, 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.

Section 8.4 Use of Accounting System to Transfer Environmental Attributes. In furtherance and not in limitation of Section 8.3, Seller shall use WREGIS or any WREGIS successor system to evidence the transfer of any Environmental Attributes considered RECs under applicable law or any voluntary program ("*WREGIS Certificates*"), associated with SCPPA Facility Energy (or Replacement Energy, as applicable) in accordance with WREGIS reporting protocols, and as such shall register the Facility (or with respect to a facility from which Replacement Energy is generated, ensure such facility is registered) with WREGIS. At Buyer's option, Seller shall (i) transfer WREGIS Certificates using the Forward Certificate Transfer method, as described in WREGIS Operating Rules, from Seller's WREGIS account to up to three WREGIS accounts, as designated by Buyer, or (ii) retire said WREGIS Certificates

into Seller's WREGIS Retirement sub-account on behalf of Seller's requirements (if any); *provided, however*, that Seller must initially select to use either option (i) or (ii) thirty (30) days prior to delivering any Energy to the respective Points of Delivery, *provided further*, if option (i) is selected, Buyer may change to option (ii) at the beginning of any calendar year during the Agreement Term upon thirty (30) days' advance written notice. If option (ii) is selected, then Buyer shall provide Seller the number and vintage of MWh of WREGIS Certificates to be retired by providing written notice to Seller not later than thirty (30) days prior to the desired retirement date. Seller shall be responsible for the WREGIS expenses associated with registering the Facility, maintaining its account, WREGIS Certificate issuance fees, and transferring WREGIS Certificates to Buyer or Buyer's Agent, or any other designees, and Buyer shall be responsible for the WREGIS expenses associated with maintaining its account, or the accounts of its designees, if any, and subsequent transferring or retiring of WREGIS Certificates, or Seller's fees for the retirement of WREGIS Certificates on behalf of Buyer. Forward Certificate Transfers will occur monthly based on the certificate creation time-line established by the WREGIS Operating Rules. As of the Effective Date, the certificate creation time line is established as not later than ninety (90) days following the end of each month. For example, for MWhs generated in January 2009, the certificates will be created in WREGIS not later than April 30, 2009. Seller shall be responsible for, at its expense, validating and disputing data with WREGIS prior to certificate creation each month. In the event that WREGIS is not in operation, or WREGIS does not track Seller's transfer of WREGIS Certificates to Buyer, Buyer's Agent, or its designees for purposes of any RECs attributed, accrued, realized, generated, produced, recognized or validated relative to the SCPPA Facility Energy, or Replacement Energy, as applicable, or Buyer chooses not to use WREGIS for any reason, Seller shall document the production and transfer of RECs under this Agreement by delivering to Buyer, within the time periods and in the manner specified by Buyer, an attestation for the RECs produced by the Facility or the Replacement Energy, as applicable, measured in whole MWh, or by such other method as Buyer shall designate.

Section 8.5 Further Assurances. At Buyer's request, Seller will document the production of Environmental Attributes by delivering to Buyer an attestation for Environmental Attributes produced by the Facility or included with the Replacement Energy, as applicable, in the form of Appendix D, upon a schedule for delivery agreed to by the Parties. At Buyer's request, the Parties shall execute all such documents and instruments and take such other action, within the time periods and in the manner specified by Buyer, in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer's Agents as Buyer may reasonably request. 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 will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to CAMD to effectuate any transfers.

Section 8.6 RPS and EPS Compliance. Seller warrants that, prior to the Commercial Operation Date, and at all times thereafter through the Closing Date (if it occurs), the Facility will be both RPS Compliant and EPS Compliant. From time to time and at any time requested by Buyer Seller will furnish to Buyer or Governmental Authorities or other Persons designated by Buyer all certificates and other documentation and, as requested by Buyer, Seller will designate Buyer or Buyer's Agents as its Scheduler as provided in Section 4.5(f) and take such

other action, all as reasonably requested by Buyer in order to establish compliance with the preceding sentence.

ARTICLE IX CAPACITY RIGHTS

Section 9.1 Purchase and Sale of 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 SCPPA Facility Energy or Replacement Energy, as applicable, on the terms and conditions set forth herein, Seller hereby transfers to Buyer, and Buyer hereby accepts from Seller, all of the Capacity Rights. Buyer and Seller acknowledge and agree that the consideration for the transfer of Capacity Rights is contained within the relevant prices for SCPPA Facility Energy or Replacement Energy, as applicable. 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.

Section 9.2 Representation Regarding Ownership of Capacity Rights. Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and will 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. 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 belong to it.

Section 9.3 Further Assurances. Seller shall execute and deliver such documents and instruments and take such other action as Buyer may reasonably request to effect recognition and transfer of the Capacity Rights to Buyer. Seller shall bear the costs associated therewith.

ARTICLE X BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES

Section 10.1 Billing and Payment. Billing and payment for all SCPPA Facility Energy or Replacement Energy, as applicable, that is delivered by Seller and received by Buyer at the respective Points of Delivery (including but not limited to startup and test Energy), or to such other location in accordance with Section 7.1(b) shall be as set forth in this Article X.

Section 10.2 Calculation of Energy Delivered; Invoices and Payment.

(a) *Delivered Quantity.* For each calendar month during the Agreement Term, commencing with the first calendar month in which Energy is delivered by Seller and received by Buyer under this Agreement, Seller shall calculate the amount of Energy so delivered and received during such calendar month at the respective Points of Delivery in accordance with this Agreement, as determined in the case of Replacement Energy, as evidenced by any documentation related to the purchase and sale of such Replacement Energy, including, without limitation, any bill of sale, attestation, or swap agreement;

(b) *Invoice.* Not later than the tenth (10th) day of each calendar month, commencing with the calendar month next following the calendar month in which Energy is first

delivered by Seller and received by Buyer under this Agreement, Seller shall deliver to Buyer a proper invoice showing (i) the amount of SCPPA Facility Energy (calculated so as not to include any Energy provided or to be provided pursuant to Generator Imbalance Service and to exclude any SCPPA Facility Energy subject to sale or disposition pursuant to Generator Imbalance Service) delivered by Seller and received by Buyer during the preceding calendar month at the respective Points of Delivery (and a separate allocation for any Replacement Energy), together with Seller's computation of the amount due Seller in respect of such SCPPA Facility Energy calculated on the basis of the applicable Energy price set forth in paragraphs 1 or 2 of Appendix A, and (ii) the amount of any Energy provided during the preceding calendar month pursuant to Generator Imbalance Service and received by Buyer, together with Seller's computation of the payment due Seller therefor which shall be settled at the applicable Dow Jones Palo Verde Electricity Price. Buyer shall pay to Seller the amounts due as set forth in (i) and (ii) above. Notwithstanding anything to the contrary herein, SCPPA shall not be required to provide payment at the Energy prices set forth in paragraphs 1 and 2 of Appendix A for SCPPA Facility Energy delivered by Seller and received by Buyer during the preceding calendar month which is not capable of being registered with WREGIS, but shall pay for such SCPPA Facility Energy at the applicable Dow Jones Palo Verde Electricity Price, and Seller's invoice shall show Seller's computation of such amounts due from Buyer. Appendix N illustrates certain of the calculations set forth above. Monthly invoices shall be sent to the address set forth in Appendix C or such other address as Buyer may provide to Seller; and

(i) Monthly invoices shall contain a statement that the representations and warranties set forth in this Agreement remain true and correct as of the date of the invoice, except as otherwise explicitly disclosed by Seller in writing, and that there exists no Default by Seller or any event that, after notice or with the passage of time or both, would constitute a Default. If any such Default or potential Default then exists, Seller shall list, in detail, the nature of the condition or event, the period during which it has existed and the action which Seller has taken, is taking, or proposes to take with respect to each such condition or event; and

(ii) Buyer shall not be required to make invoice payments if the invoice is received more than six (6) months after the billing period. Each invoice shall show the Agreement number, the vendor code number, SCPPA Business Tax Registration Certificate Number, and the identification of material, equipment and/or services covered by the invoices.

(c) *Payment.* Not later than the thirtieth (30th) day after receipt by Buyer of Seller's monthly invoice (or the next succeeding Business Day, if such thirtieth (30th) day is not a Business Day) Buyer shall pay to Seller, by wire transfer of clearing house 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, subject to Section 10.3.

Section 10.3 Disputed Invoices. In the event 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. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 13.3. 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 10.3, “**Interest Rate**” shall mean the lesser of (i) two hundred (200) basis points above the per annum Prime Rate reported daily in *The Wall Street Journal*, or (ii) the maximum rate permitted by applicable Requirements of Law. Buyer may dispute an invoice at any time, *provided* that the disputing Party provides the other Party with a notification of such dispute, setting forth the details of such dispute in reasonable specificity.

Section 10.4 Buyer’s 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, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due Seller or any Seller Party from Buyer under this Agreement, including but not limited to any amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 7.2 if and to the extent paid in the first instance by Buyer.

Section 10.5 Records and Audits. Seller shall maintain, and shall cause Seller’s subcontractors and suppliers as applicable to maintain all records pertaining to the management of this Agreement, related subcontracts, and performance of services pursuant to this Agreement (including all billings, costs, metering, and Environmental Attributes), in their original form, including but not limited to, reports, documents, deliverables, employee time sheets, accounting procedures and practices, records of financial transactions, and other evidence, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., databases, applications software, database management software, utilities, etc.), sufficient to properly reflect all costs claimed to have been incurred and services performed pursuant to this Agreement. If Seller, Seller’s subcontractors and/or suppliers are required to submit cost or pricing data in connection with this Agreement, Seller must maintain all records and documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. Buyer and the Authorized Auditors shall have the right to discuss such records with Seller’s officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. 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 or the expiration or termination date of this Agreement, whichever is later. Seller shall make said records or to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at the Seller’s offices located at all reasonable times and without charge. The Authorized Auditors will have the right to 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, and Seller’s subcontractors and suppliers, as applicable to the services provided under this Agreement, shall be subject at any time with fourteen (14) calendar days’ prior written notice to audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation, and documentation. Examinations and audits will be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit

standards. If Seller utilizes or is subject to FAR, Part 30 and 31, *et seq.* accounting procedures, or a portion thereof, examinations and audits will utilize such information. To the extent that the 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 will be provided fifteen (15) calendar days to review the Authorized Auditor's examination results or audit and respond thereto prior to the examination's or audit's finalization and public release. If the Authorized Auditor's examination or audit indicates Seller has been overpaid under a previous payment application, the identified overpayment amount shall be paid by Seller to Buyer within fifteen (15) calendar days of notice to Seller of the identified overpayment. Seller shall contractually require all subcontractors performing services under this Agreement to comply with the provisions of this Section by inserting this Section 10.5 in each subcontractor contract and by contractually requiring each subcontractor to insert this Section 10.5 in any of its subcontract contracts related to services under this Agreement. If the audit reveals that the Buyer overpayment to Seller is more than five percent (5.0%) of the billings reviewed, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising out of or related to the examination or audit. Such examination or audit expenses and costs shall be paid by Seller to Buyer within fifteen (15) calendar days of notice to Seller of such costs and expenses.

Section 10.6 Electric Metering Devices.

(a) The SCPPA Facility Energy made available to Buyer or Buyer's Agent by Seller under this Agreement shall be measured using Electric Metering Devices installed, owned, operated and maintained at the sole cost and expense of Seller. Electric Metering Devices at the Point of Interconnection shall be used for determining the amount of SCPPA Facility Energy and Environmental Attributes generated by the Facility, and the payments due for SCPPA Facility Energy hereunder shall be adjusted for Transmission Losses to the respective Points of Delivery. All Electric Metering Devices used to provide data for the computation of Environmental Attributes shall be sealed and Seller or its designee shall only break the seal when such Electric Metering Devices are to be inspected and tested or adjusted in accordance with this Section 10.6. Seller or its designee shall specify the number, type, and location of such Electric Metering Devices. Buyer shall have all reasonable access to relevant meters, associated facilities and meter data, as is necessary for Buyer to validate the output of the Facility. Seller shall provide hourly meter data every month with the billing invoice to Buyer. At the request of Buyer, Seller shall also provide an electronic interface to Buyer to view the meter data provided Buyer shall pay for the associated costs;

(b) Seller or its designee, 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 a representative of Buyer to witness and verify, such inspections and tests. Upon request by Buyer, Seller or its designee 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. Any actual and demonstrable direct, out-of-pocket expenses incurred as a result of any such requested additional inspection or testing shall be borne by Buyer. Seller shall provide copies of any inspection or testing reports to Buyer; and

(c) *Adjustment for Inaccurate Meters.* 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 one percent (1.0%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device for both the amount of the inaccuracy and the period of the inaccuracy. The adjustment period shall be determined by reference to Seller's check-meters, if any, or as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test of the Electric Metering Devices. 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 10.6 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 discretion 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 10.7 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, the Site, or any other assets of Seller, the sale or use of Energy and Environmental Attributes and all Taxes related to Seller's income; *provided, however,* that so long as Seller (i) makes any payment when due, or (ii) possesses adequate reserves in conformity with GAAP such that it is able to make any payment when due, Seller shall have the right to dispute in good faith any Taxes imposed or assessed by appropriate proceedings promptly instituted and diligently conducted so long as such proceedings conclusively operate to stay the sale of all or any portion of the Facility.

ARTICLE XI REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

Section 11.1 Representations and Warranties of Buyer. Buyer makes the following representations and warranties to Seller as of the Effective Date:

(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 each Ancillary Document to which Buyer is a party and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all such Ancillary Documents;

(b) The execution, delivery and performance by Buyer of this Agreement and each Ancillary Document to which Buyer is a party have been duly authorized by all necessary action on the part of each of Buyer's members, and do not and will not require any consent or approval of Buyer's members regulatory/governing bodies, other than that which has been

obtained; *provided* that further authorizations from Buyer and its members will be required for Buyer to exercise the Project Purchase Option; and

(c) This Agreement and each of the Ancillary Documents to which Buyer is a party constitute 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 11.2 Representations, Warranties and Covenants of Seller. Seller makes the following representations, warranties and covenants to Buyer:

(a) Seller is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of its state of incorporation or organization. Seller is qualified to do business in the State of California and the State of Arizona. Seller has the legal power and authority to own and lease its properties, to carry on its business as now being conducted, and to enter into this Agreement. Each Seller Party has the legal power and authority to enter into the Ancillary Documents to which it may be party. Seller and each Seller Party has the legal power and authority to carry out the transactions contemplated under this Agreement and any Ancillary Document and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement and all Ancillary Documents;

(b) The execution, delivery and performance by Seller of this Agreement, and by each Seller Party of each Ancillary Document, has been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained;

(c) The execution and delivery of this Agreement and each Ancillary Document, the consummation of the transactions contemplated hereby and thereby and the fulfillment of and compliance with the provisions of this Agreement and each Ancillary Document, do not and will 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 document, 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). Seller has obtained or shall timely obtain all Permits required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, the Ancillary Documents and all applicable Requirements of Law;

(d) This Agreement and each Ancillary Document constitute the legal, valid and binding obligation of Seller and each Seller Party which is party thereto, 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;

(e) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting any Seller Party before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement or any of the Ancillary Documents;

(f) Neither Seller nor, to the knowledge of Seller, any Seller Party is 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 such Seller Party, or the ability of Seller or such Seller Party to perform any of its obligations under this Agreement or any Ancillary Document;

(g) Seller shall inform all investors in Seller of the existence of this Agreement and all Ancillary Documents on or before the date of such investment in Seller;

(h) Seller is a Special Purpose Entity;

(i) Seller has not entered into this Agreement, and, to the knowledge of Seller, no Seller Party has entered in any Ancillary Document, with the actual intent to hinder, delay or defraud any creditor. Seller and each Seller Party have received reasonably equivalent value in exchange for its respective obligations under this Agreement and each Ancillary Document. No petition in bankruptcy has been filed against Seller or any of the Seller Parties, and neither Seller nor any of the Seller Parties nor any of their respective constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor;

(j) All of the assumptions made in the Non-Consolidation Opinion, including, but not limited to, any exhibits attached thereto, are true and correct. Seller has complied with all of the assumptions made with respect to Seller in the Non-Consolidation Opinion;

(k) Seller has no reason to believe that any of the environmental authorizations or other Permits required to construct, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law will not be timely obtained in the ordinary course of business;

(l) All Tax returns and reports of Seller and each Affiliate of Seller required to be filed by such party have been timely filed, and all Taxes shown on such Tax returns to be due and payable and all assessments, fees and other governmental charges upon such party and upon its properties, assets, income, business and franchises that are due and payable have been paid when due and payable. Seller does not know of any actual or proposed Tax assessment against any Seller or any Affiliate of Seller that has not been paid or is not being actively contested by it in good faith and by appropriate proceeding;

(m) Seller owns or possesses, or will own or possess in a timely manner, all patents, rights to patents, trademarks, copyrights and licenses necessary for the performance by

Seller of this Agreement and the Ancillary Documents and the transactions contemplated thereby, without any conflict with the rights of others; and

(n) Seller's assignment and transfer to Buyer of all or any of Seller's rights, title and interests to the Site, including the Facility, pursuant to the Mortgage or the Option Agreement do not require any approval or consent of any Person which has not been received, provided that such assignment and transfer shall be subject to any Permitted Encumbrances then existing.

Section 11.3 Covenant of Seller Regarding Site Control. As of the Facility Construction Milestone Date, and at all times thereafter, Seller shall maintain Site Control. Seller shall provide Buyer with prompt notice of any change in the status of Seller's Site Control.

Section 11.4 Covenant of Seller Related to Seller's Status as Special Purpose Entity. Seller shall at all times during the Agreement Term comply with the requirements of, and qualify as, a Special Purpose Entity.

Section 11.5 Covenants of Seller Related to Lease.

(a) Seller shall at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Lease, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could impair or tend to impair the rights of Seller under the Lease, or could be grounds for the Lessor to terminate the Lease;

(b) Seller shall give Buyer immediate notice of (i) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under the Lease or of the receipt by Seller of any notice from the Lessor thereof, or (ii) the commencement or threat of any action or proceeding or arbitration pertaining to the Lease. Buyer, at its option, may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under the Lease. Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration;

(c) As long as this Agreement is in effect, there shall be no merger of the Lease or of the leasehold estate created thereby with the fee estate in the property subject to the Lease and Seller will not acquire any interest in such fee estate without the prior written consent of Buyer;

(d) Seller shall not modify, subordinate or amend the Lease in any respect, either orally or in writing, and Seller shall not terminate, cancel, sever or surrender, or permit or suffer the modification, subordination, amendment, termination, cancellation, severance or surrender of, the Lease and shall not waive, excuse, condone or in any way release or discharge the Lessor of or from the obligations, covenants, conditions and agreements by the Lessor to be

kept, performed, observed or complied with thereunder, and any such action taken by Seller without the prior written consent of Buyer shall be void at inception and of no force and effect;

(e) In the event of the termination, rejection, or disaffirmance by Lessor (or by any receiver, trustee, custodian, or other party that succeeds to the rights of the Lessor) under the Lease pursuant to the Bankruptcy Code, Seller hereby presently, absolutely, irrevocably and unconditionally grants and assigns to Buyer the sole and exclusive right to make or refrain from making any election available to lessees under the Bankruptcy Code (including, without limitation, the election available pursuant to Section 365(h) of the Bankruptcy Code, 11 U.S.C. § 365(h), and any successor provision), and Seller agrees that any such election, if made by Seller without the prior written consent of Buyer (which Buyer would not anticipate granting due to the importance of the Lease as security), shall be void at inception and of no force or effect. Without limiting the generality of the foregoing sentence, Seller shall not, without Buyer's prior written consent, elect to treat the Lease or the leasehold estate created thereby as terminated under Section 365 of the Bankruptcy Code, after rejection or disaffirmance of the Lease by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor, and any such election made without such consent shall be void at inception and of no force or effect. At the request of Buyer, Seller will join in any election made by Buyer under the Bankruptcy Code and will take no action in contravention of the rights granted to Buyer pursuant to this Section 11.5;

(f) In the event there is a termination, rejection, or disaffirmance by the Lessor (whether as debtor in possession or otherwise) or by any trustee of the Lessor pursuant to the Bankruptcy Code and Buyer elects to have Seller remain in possession under any legal right Seller may have to occupy the property pursuant to the Lease, then Seller shall remain in such possession and shall perform all acts necessary for Seller to retain its right to remain in such possession, whether such acts are required under the then existing terms and provisions of the Lease or otherwise;

(g) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller and Seller or any trustee of Seller shall decide to reject or disaffirm the Lease pursuant to the Bankruptcy Code (or allow same), Seller shall give Buyer at least ten (10) days prior notice of the date on which application shall be made to the court for authority to reject or disaffirm the Lease or the Lease will be otherwise rejected. Buyer shall have the right, but not the obligation, to serve upon Seller or such trustee within such ten (10) day period a notice stating that (i) Buyer demands that Seller (whether as debtor in possession or otherwise) or such trustee assume and assign the Lease to Buyer pursuant to the Bankruptcy Code, and (ii) Buyer covenants to cure, or to provide adequate assurance of prompt cure of, all defaults (except defaults of the type specified in Section 365(b)(2) of the Bankruptcy Code) and to provide adequate assurance of future performance under the Lease. In the event that Buyer serves any such notice as provided above, neither Seller (whether as debtor in possession or otherwise) nor such trustee shall seek to reject or disaffirm the Lease and Seller (whether as debtor in possession or otherwise) and such trustee shall comply with such demand within thirty (30) days after such notice shall have been given, subject to Buyer's performance of such covenant; and

(h) Upon any payment by Buyer under the Mortgage to cure any default of Seller, as lessee under the Lease, and prevent termination of the Lease or the exercise of any other remedy of the Lessor thereunder arising out of such default, Seller, as such lessee, within

ten (10) days following receipt of notice from Buyer that it made such payment, shall pay the amount of such payment to Buyer plus interest accruing thereon at the Interest Rate, from and including the date of the payment by Buyer to cure such default to the date of such payment by Seller.

(i) Prior to the Commercial Operation Date, the Lessor shall enter into a consent and estoppel and non-disturbance agreement with Buyer and Seller in form and substance satisfactory to Buyer, providing, among other things, cure rights to Buyer under the Lease and the required consent of Lessor to the assignment by Seller of its rights and interests in and to the Lease to Buyer under the Mortgage and, in connection with the purchase of the Facility Ownership Interest by Buyer pursuant to the Option Agreement, the assignment by Seller of such of its rights and interests in and to the Lease as necessary to provide Buyer with undivided leasehold interests therein equal to the Facility Ownership Interest in and to the Lease.

Section 11.6 Covenants of Seller Related to New Facilities. For a period of five (5) years after any termination of this Agreement arising out of a Default by Seller, in the event that Seller develops, constructs, operates or maintains a solar thermal electric generating facility located within fifty (50) miles of the Site (a "*New Facility*"), Buyer shall have a right of first refusal to purchase any Energy generated by such New Facility, on terms and conditions that are comparable to those of this Agreement. Seller shall make the terms and conditions of the proposed New Facility available for review by Buyer. After Seller has made an offer to Buyer pursuant to this Section 11.6, Seller will authorize and permit Buyer and its representatives to have reasonable access during normal business hours, upon reasonable notice, to the New Facility, and such records, operating materials and other information with respect to the New Facility as Buyer may from time to time reasonably request, and to make copies of such records and other documents, and to discuss the New Facility with such other Persons as Buyer reasonably considers necessary or appropriate for purposes of familiarizing itself with the New Facility, obtaining any necessary approvals of or permits for the transaction contemplated by this Section 11.6, and conducting an evaluation of the New Facility. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Section 11.6 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 Section 11.6 or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief.

Section 11.7 Covenant of Seller Related to Facility Expansion. At any time during the Agreement Term, neither Seller nor any Affiliate of Seller shall, without the prior written consent of Buyer, which Buyer may withhold in its sole discretion, install equipment on the Site in addition to the equipment included in the original Facility for the purpose of increasing the capacity of the Facility to more than two hundred (200) MW.

Section 11.8 Covenant of Seller Related to an Additional Facility. During the first five (5) years of the Agreement Term, Buyer may request that Seller, or any Affiliate of Seller, develop, construct, operate and maintain one (1) additional 200 MW nameplate electric generating facility (such facility and all related tangible and intangible rights, property, equipment, data, records, plans and other information are referred to as the "*Additional Facility*"). Seller agrees to use its best efforts in the normal course of business to secure a new

site conveniently accessible to Buyer's Balancing Authority Area (as defined by NERC) and to develop, construct, operate and maintain the Additional Facility using Seller's most up to date know-how and design. Seller agrees to sell all of the energy from the Additional Facility to Buyer on terms that are comparable to those associated with the Facility, adjusted as necessary for actual and demonstrable increases in cost for development, transmission, construction, operation and financing. Seller shall make the terms and conditions of the proposed Additional Facility available for review by Buyer and will authorize and permit Buyer and its representatives to have reasonable access during normal business hours, upon reasonable notice, to the Additional Facility, and such records, operating materials and other information with respect to the Additional Facility as Buyer may from time to time reasonably request, and to make copies of such records and other documents, and to discuss the Additional Facility with such Persons as Buyer reasonably considers necessary or appropriate for purposes of familiarizing itself with the Additional Facility, obtaining any necessary approvals of or permits for the transaction contemplated by this Section 11.8, and conducting an evaluation of the Additional Facility. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Section 11.8 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 Section 11.8 or to prevent any violation hereof. Seller hereby waives any objection specific performance of injunctive relief.

ARTICLE XII

DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 12.1 Default. Each of the following events or circumstances shall constitute a "*Default*" by the responsible Party (the "*Defaulting Party*"):

(a) *Buyer Payment or Performance Default.* Failure by Buyer to make any payment or perform any of its other duties or obligations under this Agreement or any of the Ancillary Documents (except for Buyer's obligations to receive Energy as and when required by this Agreement, the exclusive remedy for which is provided in Section 6.3) when and as due which is not cured within thirty (30) calendar days after receipt of notice thereof from Seller;

(b) *Seller Payment or Performance Default.* Failure by any Seller Party to make any payment or perform any of its other duties or obligations under this Agreement or any of the Ancillary Documents when and as due (other than any failure described in Section 12.1(k)) which is not cured within thirty (30) calendar days after receipt of notice thereof from Buyer;

(c) *Buyer Breach of Representation and Warranty.* Inaccuracy in any material respect at the time made or deemed to be made of any representation, warranty, certification or other statement made by Buyer herein or in any Ancillary Document, the effect of which inaccuracy cannot be or is not eliminated within thirty (30) days;

(d) *Seller Breach of Representation and Warranty.* Inaccuracy in any material respect at the time made or deemed to be made of any representation, warranty, certification or other statement made by any Seller Party in this Agreement or any Ancillary Document, the effect of which inaccuracy cannot be or is not eliminated within thirty (30) days;

(e) *Buyer Bankruptcy.* Bankruptcy of Buyer;

(f) *Seller Party Bankruptcy.* Bankruptcy of any Seller Party;

(g) *Mortgage Default.* A default shall have occurred under the Mortgage or the Mortgage shall fail to be in full force and effect in accordance with the terms of this Agreement or Buyer shall not have or shall cease to have a valid and perfected Lien in the collateral purported to be covered by the Mortgage, or Seller or any other Person shall contest the validity or enforceability of the Mortgage or any provision thereof in writing or deny that it has any further liability thereunder;

(h) *Milestone Defaults.* The failure by Seller to achieve any of the following if in connection with such failure Buyer shall terminate this Agreement as provided in Section 3.5: (i) the Financing Milestone by the Financing Milestone Date, (ii) the Permit Milestone by the Permit Milestone Date, (iii) the Interconnection Milestone by the Interconnection Milestone Date or (iv) the Facility Construction Milestone by the Facility Construction Milestone Date; or the failure of Seller to achieve Commercial Operation by the Target Commercial Operation Date (unless extended by Seller in accordance with Section 3.5(f)) if in connection with such failure Buyer shall terminate this Agreement as provided in Section 3.5;

(i) *Outside Commercial Operation Date Default.* Seller shall have failed to achieve Commercial Operation by the Outside Commercial Operation Date;

(j) *Milestone Security Failure.* The failure of Seller to cause to be issued and thereafter to be maintained and replaced any Milestone Security in compliance with Section 3.5, including, among other requirements thereunder, (1) in the case of a Downgrade Event, the failure of Seller to cause the replacement of the Milestone Security as provided in Section 3.5 or (2) with respect to the expiration date of the letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) constituting Milestone Security, the failure of Seller to cause a replacement letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) to be delivered prior to such expiration date or to cause such expiration date to be extended, all as provided in Section 3.5, unless payment on such Milestone Security shall have been made upon demand by Buyer as provided in Section 3.5; or the failure of Seller to cause a replacement letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) to be provided within ten (10) Business Days after written notice to Seller of the occurrence of any of the following:

(i) the failure of the Qualified Issuer to honor a drawing or make a payment thereunder;

(ii) there shall have occurred a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of the Qualified Issuer;

(iii) the Milestone Security shall fail to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller in accordance with Section 3.5; or

(iv) the Qualified Issuer shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its Milestone Security and in any such event, Seller fails to provide replacement Milestone Security complying with Section 3.5.

(k) *Performance Security Failure.* The failure of Seller to cause to be issued and thereafter to maintain and replace any Performance Security in compliance with Section 5.4, including, among other requirements thereunder, (1) in the case of a Downgrade Event, the failure of Seller to cause the replacement of the Performance Security as provided in Section 5.4 or (2) with respect to the expiration date of a letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) which constitutes Performance Security, the failure of Seller to cause a replacement letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) to be delivered prior to such expiration date or to cause such expiration date to be extended, all as provided in Section 5.4, unless payment on such Performance Security shall have been made upon demand by Buyer as provided in Section 5.4; or the failure of Seller to cause a replacement letter of credit (or alternative financial device which, in the sole determination of Buyer provides the type of security and serves the purpose of a letter of credit and which is acceptable to Buyer in the sole discretion of Buyer) to be provided within ten (10) Business Days after written notice to Seller of the occurrence of any of the following:

(i) the failure of Qualified Issuer to honor a drawing or make a payment thereunder;

(ii) there shall have occurred a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of the Qualified Issuer;

(iii) the Performance Security shall fail to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement, the Option Agreement and each of the Ancillary Documents; or

(iv) the Qualified Issuer shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its Performance Security and in any such event, Seller fails to provide replacement Performance Security complying with Section 5.4.

(l) *Material Adverse Effect.* There shall have occurred a material adverse effect on the business, assets, or operations, condition (financial or otherwise) or prospects of any Seller Party;

(m) *Lease Default.* The Lease fails to be in effect or a default under the Lease has occurred or the Lease is terminated for any reason or amended in any material respect;

(n) *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 F;

(o) *Fundamental Change.* Any Seller Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person (the “*Successor Entity*”) fails to assume all the obligations of such Seller Party under this Agreement and the Ancillary Documents to which it or its predecessor was a party by operation of law or pursuant to an agreement satisfactory to Buyer; or such Successor Entity has a long-term unsubordinated debt rating that is lower than the rating of such Seller Party immediately prior to such consolidation, amalgamation, merger or transfer; and

(p) *Repeated Failure to Deliver Guaranteed SCPPA Energy.* The failure of Seller to deliver the Guaranteed SCPPA Energy for two (2) consecutive Contract Years.

Section 12.2 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 deliveries to Buyer and sell output to other Persons to mitigate damages, or continue to provide services pursuant to its obligations under this Agreement; *provided* that nothing in this Section 12.2(a) shall affect Seller’s rights and remedies set forth in this Section 12.2. 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 13.3 has been invoked or completed, bring an action in any court of competent jurisdiction seeking injunctive relief in accordance with applicable rules of civil procedure, subject to Section 13.12 and Section 13.13;

(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 the right to terminate this Agreement pursuant to Section 12.3. 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 (i) application of all amounts available under the Milestone Security and the Performance Security against any amounts then payable by Seller to Buyer under this Agreement, (ii) termination of this Agreement pursuant to Section 12.3, (iii) exercise its rights under the Mortgage, subject to the provisions of this Agreement and such subordination and other intercreditor arrangements as it may have agreed to with the Facility Lender, and (iv) exercise of

the Project Purchase Option. 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;

(e) If a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may exercise the Project Purchase Option in accordance with the provisions of the Option Agreement; and

(f) Subject to Buyer's exercise of its rights and remedies under this Article XII, if this Agreement is terminated by Buyer for Seller's failure to meet a Milestone Date pursuant to Section 12.1(h), Seller shall not, for a period of five (5) years commencing on the date of such termination: (i) use, or otherwise allow any other Person to use, any Permit obtained in conjunction with the Facility; (ii) use, or allow any other Person to use, any interconnection request, transmission rights, transmission facilities or transmission related studies associated with the Facility or the Site; or (iii) use, or allow any other Person to use, the Site for any purpose related the generation of Energy.

Section 12.3 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 without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice ("*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 ninety (90) 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 12.1(e) or Section 12.1(f), 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 calculate in a commercially reasonable manner its Gains, Losses and Costs (each as defined below) resulting from the termination of this Agreement. The Gains, Losses and Costs relating to the SPPA Facility Energy or Replacement Energy, as applicable, and associated Environmental Attributes which 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 therefor under this Agreement to the amounts Buyer reasonably expects 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. It is expressly agreed that 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) SCPPA Facility Energy or Replacement Energy, as applicable, in an amount equal to the Assumed Daily Deliveries, and (ii) the Environmental Attributes associated therewith. The “*Assumed Daily Deliveries*” is an amount equal to the greater of (x) the quotient of the Guaranteed SCPPA Energy divided by 365, and (y) the average daily deliveries of SCPPA Facility Energy or Replacement Energy, as applicable, during the Delivery Term, if any;

(d) The Non-Defaulting Party shall aggregate its Gains, Losses and Costs as so determined into a single net amount (the “*Termination Payment*”) and notify the Defaulting Party thereof. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Non-Defaulting Party’s aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party will, within ten (10) Business Days of receipt of such notice, pay the net amount to the Non-Defaulting Party, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, the amount of the Termination Payment shall be zero;

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 13.3(a). Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party as and when required by this Agreement, subject to the Non-Defaulting Party refunding, with interest, at the Interest Rate, any amounts determined to have been overpaid;

(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 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; and

(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, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement.

ARTICLE XIII MISCELLANEOUS

Section 13.1 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) calendar days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate 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.

Section 13.2 Notices. With the exception of billing invoices pursuant to Section 10.2(b) and invoices prepared pursuant to Section 3.5(f), all notices, requests, demands, consents, waivers and other communications which are required under this Agreement shall be in writing and shall be 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 C. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

Section 13.3 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 13.3) (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 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. 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 13.3(a) and Section 13.3(b) by the expiration of the thirty (30) day period set forth in Section 13.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of this Agreement; and

(d) *Claims Presentment under California Law.* As stated in Section 13.12, this Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the Dispute resolution process set forth in this Section, the Parties must comply with California law governing claims against public entities and presentment of such claims.

Section 13.4 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further action not inconsistent with the provisions of this Agreement that may be reasonably necessary to effectuate the purposes and intent of this Agreement.

Section 13.5 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 system 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 13.6 Force Majeure.

(a) Subject to the provisions of Section 13.19(b), 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) (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 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 the 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, SCPPA Facility Energy due to a Force Majeure, Buyer shall have no obligation to pay Seller for the SCPPA Facility Energy not delivered or received by reason thereof. The foregoing provisions shall not excuse any of Seller's obligations with respect to Replacement Energy, whether or not caused by Force Majeure. 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. The Parties agree to rely on historical data and other good faith reasonable estimates to determine the amount of SCPPA Facility Energy that was not generated due to a Force Majeure;

(b) The term “*Force Majeure*” means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, or any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities (i) which prevents one Party from performing any of its obligations under this Agreement, (ii) which could not reasonably be anticipated as of the date of this Agreement, (iii) which 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) which by the exercise of due diligence the affected Party is unable to overcome or avoid or cause to be avoided; *provided* nothing in this clause (iv) shall be construed so as to require either 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 or apply to any of the following (each an “*Unexcused Cause*”): (1) any requirement to meet a renewable portfolio standard or any change (whether voluntary or mandatory) in any renewable portfolio standard that may affect the value of the Energy purchased hereunder; (2) events arising from the failure by Seller to construct, operate or maintain the Facilities 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 Energy at a price in excess of those provided in this Agreement; (6) curtailment or other interruption of any Transmission Service except as otherwise expressly provided in Section 13.6(c); (7) failure of third parties to provide goods or services essential to a Party’s performance except to the extent caused by a Force Majeure affecting such third party; (8) Facility or equipment failure not the result of Force Majeure; (9) the provision of Generator Imbalance Service in accordance with the Agreement, including payments required to be made by or on behalf of Seller for all costs and charges with respect to delivery of any Energy or the sale or disposition of any SCPPA Facility Energy, pursuant to Generator Imbalance Service; or (10) any changes in the financial condition of Buyer, any Seller Party, the Facility Lender or any subcontractor or supplier affecting the affected Party’s ability to perform its obligations under this Agreement;

(c) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment or other interruption of Transmission Services for any Energy at any time unless (i) such Party has contracted for Firm Transmission to be provided for such Energy at the time, (ii) no portion of such Energy shall be sold by Seller except as provided in Section 6.6, and (iii) the curtailment or interruption is due to “force majeure” or “uncontrollable force” or a similar term(s) as defined under the Transmission Provider’s tariff; *provided* the existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 13.6(b) has occurred; and

(d) If based on a Force Majeure Notice, the unaffected Party reasonably concludes that a Force Majeure or its impact on the affected Party or the Facility will continue (i) for a period of one hundred and twenty (120) or more consecutive calendar days, or (ii) for an aggregate period of one hundred and eighty (180) or more non-consecutive calendar days in the case of any claimed Force Majeure event or series of claimed Force Majeure events, the unaffected Party shall have the right to terminate this Agreement effective upon notice to the affected Party. For purposes of clarity, no claimed Force Majeure shall extend Seller's obligation to achieve Commercial Operation on or before the Outside Commercial Operation Date.

Section 13.7 Assignment of Agreement.

(a) Buyer may from time to time and at any time assign any or all of its rights, and delegate any or all of its obligations under this Agreement in whole or in part to (i) a member of Buyer, or (ii) an entity with an Investment Grade Rating from either Moody's, S&P, or Fitch, without the consent of Seller. Upon any such assignment and delegation of obligations by such an assignee, Buyer shall be relieved of and fully discharged from all its obligations hereunder, whether such obligations arose before or after the date of such assignment and delegation;

(b) Except as set forth in this Section 13.7, Seller shall not assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect;

(c) It is specifically agreed that there are no third party beneficiaries of this Agreement, and that, except as provided in this Section 13.7, this Agreement shall not grant any rights enforceable by any Person not a party to this Agreement. Notwithstanding the foregoing, Buyer's consent shall not be required for Seller to collaterally assign this Agreement for the sole purpose of financing exclusively this Facility to any Facility Lender; *provided, however*, that the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement. Seller shall provide Buyer with ninety (90) days prior notice of any such assignment to any Facility Lender. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, except as expressly provided by this Agreement, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Energy, Capacity Rights or Environmental Attributes associated with the SCPPA Facility Energy (not including the proceeds thereof) to any Facility Lender;

(d) To facilitate Seller's obtaining of financing to construct and operate the Facility, Buyer shall provide such consents to assignment (in form and substance satisfactory to Buyer) as may be reasonably requested by Seller or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the development, construction and operation of the Facility; *provided, however* that such consents shall not: (i) relieve Seller of any of its material obligations under this Agreement; (ii) materially decrease the economic benefits, or materially increase the costs, of the transactions contemplated by this Agreement to Buyer; (iii) create materially increased economic or legal risk to Buyer in connection with the transactions contemplated by this Agreement; or (iv) require Buyer to agree to any material

modifications to this Agreement, and *provided further* that the terms of such financing and the documentation relating thereto shall comply with the applicable terms and conditions of this Agreement. In any event following the Commercial Operation Date, the consent of Buyer shall be required for (i) any refinancing of the Facility Debt under any financing documents which results in an increase in the amount of such Facility Debt or (ii) the incurrence of any additional Facility Debt under any financing documents, other than that required for the financing of any capital expenditure for repairs, replacements, reconstruction or additions with respect to the Facility but only to the extent not payable from the insurance proceeds as provided by Section 13.19. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 13.7(d);

(e) In no event shall Buyer be liable to Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, Facility Lender or other transferee, and their successors in interest and assigns, will be bound by the covenants and agreements of Seller in this Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer, such Person will not be entitled to any of the benefits of this Agreement. Any sale or transfer of the Facility by Facility Lender must be made only to an entity that is acceptable to Buyer and has financial qualifications and operating experience equivalent to Seller;

(f) Notwithstanding anything to the contrary in this Agreement, Seller may provide to the Facility Lender as security for its performance under the debt financing agreements a Lien on and security interests in and to the Facility under a deed of trust, mortgage and related documentation but only with the consent by Buyer provided under an agreement by and among Buyer, Seller and the Facility Lender (the "Consent and Agreement") which shall be in form and substance reasonably acceptable to Buyer and may include, among others, provisions for the following:

(i) Notice by Buyer to the Facility Lender of any Default by Seller under this Agreement and the right of the Facility Lender to cure such Default;

(ii) Following a notice by the Facility Lender of foreclosure of the Lien on the Facility (a copy of which shall be furnished to Buyer when given by the Facility Lender), Buyer shall have the right (but not the obligation) to exercise within 120 days from the receipt of such notice of foreclosure (A) an option to purchase the Facility from Seller in accordance with terms and provisions substantially the same as those in the Option Agreement (except that the Closing shall be held no later than 60 days after Buyer furnishes notice of exercise of its option to purchase), or (B) in the event that Seller shall fail to perform its obligations under the Option Agreement with respect to such purchase, an option to purchase the Facility Lender's rights and interests under the debt financing agreements and related collateral and other agreements, in each case, at a purchase price equal to the total amount due and outstanding under the debt financing agreements;

(iii) Notice by Facility Lender to Buyer of any default by Seller under the debt financing agreements and the right of Buyer to cure such default; and

(iv) Compliance with the applicable terms and provisions of this Section 13.7.

(g) In the event that Buyer shall exercise any cure rights provided it under the Consent and Agreement and within ten (10) days following receipt of a notice from Buyer that in exercising such cure rights Buyer paid or expended an amount which shall be specified in such notice, Seller shall pay such amount to Buyer plus interest at the Interest Rate which accrues from and including the date of such payment or expenditure by Buyer to but excluding the date of such payment by Seller.

Section 13.8 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 13.9 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 was represented by its respective legal counsel during the negotiation and execution of this Agreement.

Section 13.10 Voluntary Execution. Both Parties acknowledge that they have read and fully understand the content and effect of this Agreement 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 13.11 Entire Agreement. 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 Person, 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.

Section 13.12 Governing Law. This Agreement 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 13.13 Venue. All litigation arising out of, or relating to this Agreement, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens.

Section 13.14 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 13.15 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 13.16 Waiver. Subject to the terms of the Agreement that provide for an exclusive remedy, the failure otherwise of either Party 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. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from pursuing any available remedies for breaches not rising to the level of a Default, including without limitation recovery of damages caused by the breach of this Agreement and specific performance 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. The rights granted herein are cumulative.

Section 13.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either such 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 13.18 Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any Person other than each Party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

Section 13.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) *Indemnification.* Seller undertakes and agrees to indemnify and hold harmless Buyer and all of Buyer's members, and the officers and employees and board members

of each, and, at the option of Buyer, to defend Buyer and all of Buyer's directors, managers, members, officers, agents, representatives, employees, advisors, assigns and successors in interest and any and all of such member's directors, managers, officers, agents, representatives, employees, advisors, assigns and successors in interest from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, 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 damage or destruction to any property of either Party, or other Persons in any manner arising by reason of any breach of this Agreement by Seller, any failure of a representation of Seller to be true in all material respects or the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of Seller, or any of Seller's officers, agents, employees, or subcontractors of any tier, except to the extent caused by the gross negligence or willful misconduct of Buyer, its members, officers, agents, or employees;

(b) *Damage or Destruction.* In the event of any damage or destruction of the Facility or any part thereof, the Facility or such part thereof shall be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction. Notwithstanding the foregoing, if the damage or destruction occurs in the last two (2) Contract Years of the Delivery Term, Seller may elect, upon written notice to Buyer within thirty (30) days of such damage or destruction, to supply Buyer, for the remainder of the Delivery Term, Replacement Energy in lieu of SCPPA Facility Energy in an amount equal to the Guaranteed SCPPA Energy, together with the associated Environmental Attributes, as provided under Article VIII. Seller shall supply the Replacement Energy within five (5) Business Days of such election and, upon the commencement of delivery of such Replacement Energy, will be released from its restoration obligation to the extent of the election. The Replacement Energy shall be delivered to Buyer on a fixed twenty-four (24) hour per day delivery schedule specified by Buyer. Proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction;

(c) *Insurance.* Seller shall obtain and maintain the Insurance coverages listed in Appendix F on the terms set forth in Appendix F;

(d) *Condemnation Or Other Taking.* For the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility, the Purchased Assets or any portion thereof. Buyer may participate in any such proceeding and Seller will 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. All awards and compensation for the taking or purchase in lieu of condemnation of the Facility, the Purchased Assets or any portion thereof shall be applied toward the repair, restoration, reconstruction or replacement of the Facility; and

(e) *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, neither Party shall be liable to the other Party for special,

incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity.

Section 13.20 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 13.21 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective members, directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by applicable law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to or amounts payable by either Party under this Agreement, and, with respect to documents, that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("**Confidential Information**"). The provisions of this Section 13.21 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement. Notwithstanding the foregoing, information shall not be considered confidential which (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement;

(b) Either Party may, without violating this Section 13.21, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries, affiliates, or parent; and

(ii) to governmental officials and Persons involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including without limitation oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports. If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, order, ruling or other Requirement of

Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(c) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a California joint powers authority, is 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**"). Confidential Information of Seller provided to Buyer pursuant to this Agreement will become the property of Buyer and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer's copying or releasing to any other Person any of the Confidential Information of Seller pursuant to the CPRA or Brown Act. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the Ancillary Documents and the rights, Liens and priorities of Buyer with respect to such credit support; and

(d) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under the CPRA, then Buyer will notify Seller of the request and its intent to disclose the documents. Buyer, as required by the CPRA, will release such documents unless Seller timely seeks to obtain and obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer from and against all suits, claims, and causes of action brought against Buyer for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any such suits, claims, and causes of action brought against Buyer, through and including any appellate proceedings. Seller's obligations to Buyer under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer, as well as all damages or liability of any nature.

Section 13.22 Taxpayer Identification Number (TIN). Seller declares that its authorized TIN is 26 4246401. No payment will be made under this Agreement without a valid TIN number.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties have executed this Agreement as of the date set forth at the beginning of this Agreement.

**SOUTHERN CALIFORNIA PUBLIC POWER
AUTHORITY**

Date: _____

By: _____

Name:

Title:

LA PAZ SOLAR TOWER LLC

Date: _____

By: _____

Name:

Title:

APPENDIX A

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC**

**and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

PAYMENT SCHEDULE

1. **SCPPA Facility Energy Price.** The purchase price for the amount of SCPPA Facility Energy (calculated so as not to include any Energy provided or to be provided pursuant to Generator Imbalance Service and to exclude any SCPPA Facility Energy subject to sale or disposition pursuant to Generator Imbalance Service) which is produced and delivered by Seller and received by Buyer at the respective Points of Delivery at a Capacity Factor which is less or equal to sixty-three percent (63%) in a Contract Year shall be \$95.50 per MWh, which is subject to escalation at a rate of \$1.00 per MWh per Contract Year beginning on the first day of the fifteenth (15th) full Contract Year.
2. **Excess Energy Price Discount.** The purchase price for Excess Energy delivered by Seller and received by Buyer at the respective Points of Delivery per Contract Year shall be reduced by forty percent (40%) of the applicable purchase price in Section 1 above.
3. **Startup and Test Energy Price.** The purchase price for startup and test Energy generated by the Facility and delivered by Seller and received by Buyer at the respective Points of Delivery prior to the Commercial Operation Date is \$95.50 per MWh.
4. **Price for Generator Imbalance Service.** The price for Energy provided or caused to be provided by Seller pursuant to Generator Imbalance Service and received by Buyer or Buyer's Agents at Points of Delivery is the applicable Dow Jones Palo Verde Electricity Price.
5. **Price for SCPPA Facility Energy Not Capable of WREGIS Registration.** The price for SCPPA Facility Energy which is delivered by Seller and received by Buyer, but not capable of receiving WREGIS certified RECs is the applicable Dow Jones Palo Verde Electricity Price.
6. **Replacement Energy Price.** The purchase price for Replacement Energy which is delivered by Seller and received by Buyer at the respective Points of Delivery is \$95.50 per MWh.

APPENDIX B
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
FACILITY

1. Name of Facility: La Paz Solar Tower
2. Location: Along State Route 95 in La Paz County, Arizona
3. Owner: La Paz Solar Tower LLC
4. Operator: La Paz Solar Tower LLC
5. Equipment:
 - (a) Type of Facility: solar thermal tower
 - (b) Capacity: 200 MW
6. Total nominal gross nameplate capacity (under expected average site conditions):
200 MW

Total nominal net capacity (under expected average site conditions):
199.5 MW
7. Target Commercial Operation Date: February 1, 2015
8. Permits:
 - (a) State of Arizona Certificate of Environmental Compliance (if applicable);
 - (b) Section 404 Dredge and Fill Permit;
 - (c) Stormwater Discharge Permit;
 - (d) Any ADWR well permits;
 - (e) La Paz County zoning use permit;
 - (f) La Paz County floodplain permit;
 - (g) La Paz County road crossing or encroachment permit; and
 - (h) Any other relevant permit applicable to the Site.
9. Site:

Property interests and related transmission and other facilities:

- (a) Those approximately three and one-half sections of leased state land associated with and upon which the La Paz Solar Tower Facility is located, out of a total of 9 sections of state land contained within the following state lease, to wit: T7N, R19W, sections 32, 33 & 34, T6N, R19W sections 3, 4, 5, 8, 9 & 10. Note that sections 34, 3 & 10 above all are subject to highway/utility easements running north/south through them and include a small portion of each section on the east side of State Highway 95;
 - (b) the La Paz Solar Tower Facility, including the tower, turbines, base structure and related outbuildings, including any subsurface improvements associated therewith; and
 - (c) the transmission line from the La Paz Solar Tower Facility to the incoming side of the onsite high voltage switchyard, including wires and cables, dampers, insulators, attachment hardware, other appurtenances and hardware protective shields and earthing systems;
10. Physical and intangible property owned or leased by Seller, including any easements, rights-of-way or contractual rights held or to be held by Seller for transmission lines and/or roadways servicing the Site or the Facility:
- (a) 200 MW in contract capacity and all associated right, title and interest in and to a transmission service contract between the Western Area Power Administration and La Paz Solar Tower LLC; and
 - (b) rights to reasonable use of an access road to be constructed from the main access gate of the Facility to the power station. The access road will be capable of taking, carrying and handling the loads of all types of standard commercial vehicles in normal weather conditions during the operation and maintenance of the Facility.

APPENDIX C

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC**

and

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

**BUYER AND SELLER BILLING AND
NOTIFICATION CONTACT INFORMATION**

1. **Authorized Representative.** Correspondence pursuant to Section 13.2 shall be transmitted to the following addresses:

1.1 If to Buyer:

Executive Director
Southern California Public Power Authority
225 S. Lake Avenue, Suite 1250
Pasadena, CA 91101
Telephone: (626) 793-9364
Facsimile: (626) 793-9461

1.2 If to Seller:

Christopher Davey
Vice President
La Paz Solar Tower LLC
1661 East Camelback Road, Suite 115
Phoenix, AZ. 85016
Telephone: (602) 910-6740
Facsimile: (602) 910-6717

2. Billings and payments pursuant to Section 10.1 and Appendix A shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

Finance and Accounting Manager
Southern California Public Power Authority
225 S. Lake Avenue, Suite 1250
Pasadena, CA 91101
Telephone: (626) 793-9364
Facsimile: (626) 793-9461

2.2 If Payment to Buyer:

Christopher Davey
President
La Paz Solar Tower LLC
1661 East Camelback Road, Suite 115
Phoenix, AZ. 85016
Telephone: (602) 910-6740
Facsimile: (602) 910-6717

3. All notices (other than Scheduling notices) required under the Agreement shall be sent by facsimile transmission, reliable overnight courier, and registered or certified mail, postage prepaid, to the address specified below.

If to Buyer:

Executive Director
Southern California Public Power Authority
225 S. Lake Avenue, Suite 1250
Pasadena, CA 91101
Telephone: (626) 793-9364
Facsimile: (626) 793-9461

If to Seller:

Christopher Davey
President
La Paz Solar Tower LLC
1661 East Camelback Road, Suite 115
Phoenix, AZ. 85016
Telephone: (602) 910-6740
Facsimile: (602) 910-6717

APPENDIX D

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN**

**LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

FORM OF ATTESTATION

_____ (Seller) _____ **Environmental Attribute Attestation and Bill of Sale**

_____ (“Seller”) hereby sells, transfers and delivers to Southern California Public Power Authority (“Buyer”) subject to WREGIS requirements 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>
_____ 201_	_____
_____ 201_	_____
_____ 201_	_____

in the amount of one Environmental Attribute or its equivalent for each megawatt hour 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.

By: _____

Name: _____

Title: _____

Telephone: _____

APPENDIX E

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

Southern California Public Power Authority
225 S. Lake Avenue, Suite 1250
Pasadena, CA 91101
Telephone: 626-793-9364
Facsimile: 626-793-9461
Attn: Finance and Accounting Manager

Effective Date: _____, _____
Letter of Credit No.: _____
Expiry Date: _____

At the request of EnviroMission Limited (the "Applicant"), _____ ("Issuer"), hereby issues this irrevocable Letter of Credit No. _____ in the favor of Southern California Public Power Authority (the "Beneficiary") available for an aggregate amount up to the maximum amount of US \$ _____ (_____ United States Dollars) ("Maximum Stated Amount"), effective as of the date first set forth above and expiring at our office located at _____ Attention: _____, (or at any other office which may be designated by us by written notice delivered to you) on the earliest to occur of (i) _____ (the "Stated Expiration Date"), (ii) payment by Issuer hereunder of the Maximum Stated Amount, or (iii) surrender of this original Letter of Credit to us for cancellation.

This Letter of Credit is issued pursuant to the letter agreement (the "L/C Letter Agreement"), dated _____, 2011, entered into by the Beneficiary, the Applicant and La Paz Solar Tower LLC ("Solar Tower") to secure the [payment by Solar Tower of liquidated damages under Section 3.5 of the Power Purchase Agreement, dated as of _____, by and between the Beneficiary and Solar Tower (the "Power Purchase Agreement") [obligations of Solar Tower as provided in Section 5.4 of the Power Purchase Agreement, dated as of _____, by and between the Beneficiary and Solar Tower (the "Power Purchase Agreement)]. However, Issuer assumes no obligations under the Power Purchase Agreement or responsibility or duties thereunder.

Funds under this Letter of Credit are available to you by making a demand for payment by presentation to us at our offices at _____ Attention: _____ (or at any other office which may be designated by us by written notice delivered to you) of your drawing certificate in the form of Annex A attached hereto ("Drawing Certificate"), purportedly signed by your authorized representative, and accompanied by the original of this Letter of Credit. A

presentation under this Letter of Credit may be made only on a day, and only between the hours of 9:00 AM and 5:00 PM, _____ time on which such office is open for business (a "Business Day"). If we receive your Drawing Certificate and the original of this Letter of Credit at such office on any Business Day, all in conformity with the terms and conditions of this Letter of Credit, we will honor the same by making payment in accordance with your payment instructions on the third succeeding Business Day after presentation so long as the amount of the drawing, together with all previous drawings honored pursuant to this Letter of Credit, does not exceed the Maximum Stated Amount. If a drawing fails to conform to the terms and conditions of this Letter of Credit it shall not (i) preclude the Beneficiary from correcting any such errors and resubmitting the request nor (ii) act as a waiver of any rights the Beneficiary has under this Letter of Credit.

Partial and multiple drawings are permitted. All of the banking charges are for Applicant's account.

This Letter of Credit sets forth in full the terms of our undertaking to you (but not any of your duties, obligations or responsibilities to Issuer hereunder or otherwise). Such undertaking to you shall not in any way be modified, amended or amplified by reference to any document or instrument referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates and any such reference shall not be deemed to incorporate herein by reference any document or instrument.

Except as otherwise expressly stated herein, this Letter of Credit is subject to the International Standby Practices 1998, I.C.C. Publication No. 590 ("ISP98") 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. In the event of conflict between the ISP98 and a non-mandatory (variable) provision of such laws, the ISP98 shall govern. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California.

Yours faithfully,

By: _____
Name:
Title:

By: _____
Name:
Title:

ANNEX A
DRAWING CERTIFICATE

Ladies And Gentlemen:

Southern California Public Power Authority (the "Beneficiary") hereby certifies to _____ (the "Issuer"), with reference to the Issuer's Irrevocable Standby Letter of Credit No. _____ (the "Letter of Credit"); that:

Pursuant to the letter agreement (the "L/C Letter Agreement"), dated _____, 2011, entered into by the Beneficiary, EnviroMission Limited and La Paz Solar Tower LLC ("Solar Tower"), in connection with the [payment by Solar Tower of liquidated damages under Section 3.5 of the Power Purchase Agreement, dated as of _____ by and between the Beneficiary and Solar Tower (the "Power Purchase Agreement")] [obligations of Solar Tower as provided in Section 5.4 of the Power Purchase Agreement, dated as of _____, between the Beneficiary and Solar Tower (the "Power Purchase Agreement")], the Beneficiary is making a demand for payment under the Letter of Credit of the sum of \$ _____, which amount, together with all previous drawings honored pursuant to the Letter of Credit, does not exceed US \$ _____ (_____ United States Dollars); and

[NB: Beneficiary to make one of the three following statements:]

[La Paz Solar Tower LLC failed to achieve _____ (used as defined in the Power Purchase Agreement) as provided under Section 3.5 of the Power Purchase Agreement and the undersigned hereby confirms that it has the right to draw on the Letter of Credit in the amount of US \$ _____ .00 (_____ United States Dollars).] [Solar Tower has failed to perform its obligations under the Power Purchase Agreement and/or the Option Agreement, dated as of _____, by and between Buyer and Seller.]

OR

The Issuer has failed to maintain the credit rating or organizational status as required by the Power Purchase Agreement and Beneficiary has not received a replacement letter of credit complying with the requirements of the Power Purchase Agreement; and the Beneficiary hereby confirms that the amount of this drawing is US \$ _____ .00 (_____ United States Dollars).]

OR

Less than 30 days remain prior to the Stated Expiration Date of the Letter of Credit, and the Stated Expiration Date of the Letter of Credit has not been extended as provided in the Power

Purchase Agreement and a replacement letter of credit complying with the requirements of the Power Purchase Agreement has not been received by the Beneficiary; and Beneficiary hereby confirms that the amount of this drawing is US \$ _____ (_____ United States Dollars).

The amount demanded hereby has been calculated in accordance with the terms of the Power Purchase Agreement.

You are hereby directed to pay the amount so demanded to: [Insert wire transfer instruction]

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate as of the _____ day of _____, _____.

Very truly yours,

By: _____
Name:
Title:

APPENDIX F
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
INSURANCE

I. GENERAL REQUIREMENTS

Prior to the start of construction, Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form acceptable to Buyer's Risk Management Section. 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(s) for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance shall be the primary coverage for all purposes despite any conflicting provision(s) in Seller's insurance policies to the contrary.

Said evidence of insurance shall include a certification that each policy of insurance contains a provision that such policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) calendar days prior written notice thereof (ten (10) days for non-payment of premium) by registered mail to Southern California Public Power Authority, 225 S. Lake Avenue, Suite 1250, Pasadena, CA 91101, or such other future address as Buyer shall direct.

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.

Failure by Seller to maintain and provide to Buyer, or in the case of a contractor that Seller has caused to provide coverage in accordance with this Agreement, failure by such contractor to maintain and provide to Buyer, acceptable evidence of the required insurance for the required period of coverage shall constitute a breach of contract, upon which Buyer may immediately terminate or suspend the Agreement.

Seller shall be responsible for all contractors' and subcontractors' compliance with the insurance requirements as provided under this Agreement.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance which shall include coverage for liability arising out of the use of owned, non-owned, and hired vehicles for performance of the work as required to be licensed under California or any other applicable state vehicle code. The Commercial Automobile Liability insurance shall not be for less than \$1,000,000.00 combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer, its members and their boards, 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. The form of evidence of insurance shall be Buyer's Additional Insured Endorsement or an endorsement to the policy acceptable to Buyer's Risk Management Section.

B. Commercial General Liability

Seller shall provide, or cause its contractor to 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 limit should not be less than double the Combined Single Limit and be specific for this contract. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverages shall be on Buyer's Additional Insured Endorsement form or on an endorsement to the policy acceptable to the Buyer's Risk Management Section, and shall provide for the following:

1. Include Buyer and its members, officers, agents, and employees as additional insureds with the Named Insured for the activities and operations under this Agreement. If it is the Seller's contractor providing the Commercial General Liability insurance both the Buyer and Seller shall be named as additional insureds, including their members, officers, agents, and employees for the activities and operations 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, or contractor(s) that Seller has caused to provide coverage in accordance with this Agreement, may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require, or cause any such contractor to require, the carrier for Excess Liability to properly schedule and to identify the underlying policies as provided for Buyer on Buyer Additional Insured Endorsement Form, or on an endorsement to the policy acceptable to Buyer's Risk Management Section. 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 and cause its contractors to provide Workers' Compensation insurance covering all of Seller's and such contractors' 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 in the form of a Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's Risk Management Section. Workers' Compensation/Employer's Liability exposure of Seller 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 Management Section by receipted delivery within sixty (60) days of the state withdrawing authority to self-insure.

E. Professional Liability

Seller shall provide, or cause its general contractor to provide, Professional Liability insurance with contractual liability coverage included covering Seller's or such general contractor's liability arising from errors and omissions made directly or indirectly during performance by Seller under this Agreement or performance by such general contractor under its applicable agreement, and shall provide coverage for the total limits actually arranged by Seller or such general contractor, as applicable, but not less than \$1,000,000.00, combined single limit. Such policy shall be maintained for not less than three (3) years after the date of final acceptance and completion of the work performed under this Agreement. Evidence of such insurance shall be in the form of a special endorsement of insurance and shall include a Waiver of Subrogation in favor of Buyer, its members, officers, agents and employees.

F. Builder's Risk

Builder's Risk insurance shall be of the "all risk" type, shall be written in completed value form, and shall protect Seller and Buyer (and its members, officers, agents and employees) against risks of damage to buildings, structures, and materials and equipment whether on site or in transit from any location worldwide. The amount of such insurance shall not be less than the maximum loss of the work on the Facility at completion as

estimated by an independent engineering consultant selected by Seller and acceptable to Buyer. Buyer shall be an additional insured on the policy. The Builder's Risk insurance shall provide for losses to be payable to Seller and the aforementioned additional insured, as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided, the insurance company shall have no rights of recovery against Seller and the aforementioned additional insured. The Builder's Risk policy shall insure against all risks of direct physical loss or damage to property from any cause including testing, ensuing loss, commissioning, earthquake and flood. The policy shall not exclude coverage for any type of risks or causes, except for risks or causes excluded as mutually agreed to in writing by Buyer and Seller. The policy shall be in full force and effect until Commercial Operation Date or final completion of the Facility whichever date is the later.

G. Property All Risk Insurance

Seller shall procure and maintain an All Risk Physical Damage policy to insure the replacement value of the property of the Facility at least at the maximum loss as estimated by an independent engineering consultant selected by Seller and acceptable to Buyer, all as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials, and/or faulty design. The policy shall not exclude coverage for any type of risks or causes, except for risks or causes excluded as mutually agreed to in writing by Buyer and Seller. This policy shall be in full force and effect at the time of expiration of the Builder's Risk Policy. This policy shall have the same insureds, and all losses shall be payable in the same manner, as provided for the Builder's Risk Policy in Paragraph II.F.

APPENDIX G

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

FORM OF GUARANTEE

This Guarantee dated as of [_____] is made by [_____] (the “*Guarantor*”) in favor of SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a public entity and joint powers agency formed and organized pursuant to the California Joint Exercise of Powers Act (California Government Section 6500 *et seq.*) (the “*Beneficiary*”).

ARTICLE ONE

Section 1.01 Guarantee.

(a) For valuable consideration in connection with [identify PPA, Option Agreement and other Ancillary Documents as appropriate, as each may hereafter be amended, supplemented or otherwise modified from time to time, collectively, the “*Guaranteed Contract*”] with (Counterparty/Seller name and description to the underlying Guaranteed Contract, the “*Counterparty*”) subject to the terms and conditions set forth herein and effective from the date herein, the Guarantor irrevocably and unconditionally guarantees to the Beneficiary, its successors and permitted assigns, the prompt payment on demand, in lawful money of the United States, of any amount due and payable to the Beneficiary arising out of or under the Guaranteed Contract, when the same shall become due, whether at stated maturity, by acceleration, demand or otherwise (including amounts that would become due but for the operation of the automatic stay under Section 362(a) of the Bankruptcy Code) subject to any applicable grace period thereunder and the prompt and proper performance by the Counterparty of all of its other obligations to the Beneficiary pursuant to the Guaranteed Contract (collectively, the “*Guaranteed Obligations*”). This is a guarantee of payment and performance and not merely a guarantee of collection, and the Guarantor is liable as a primary obligor for the amounts and other obligations due hereunder. The Beneficiary shall make demands for payment or performance hereunder, as applicable, by providing the Guarantor with written notice as provided below, and the Guarantor shall make payments or perform, as applicable, within five (5) business days after receipt of any such notice. The Guarantor shall make each payment to the Beneficiary in U.S. Dollars in immediately available funds as directed by the Beneficiary;

(b) The obligations of Guarantor hereunder are irrevocable, absolute, independent and unconditional and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor or surety other than payment in full in cash and performance of the Guaranteed Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees that: (a) Beneficiary may enforce this Guarantee upon the occurrence and during the continuance of a default or early termination event under the

Guaranteed Contracts notwithstanding the existence of any dispute between Counterparty and any Beneficiary with respect to the existence of such event; (b) the obligations of Guarantor hereunder are independent of the obligations of Counterparty under the Guaranteed Contracts and the obligations of any other guarantor of obligations of Counterparty and a separate action or actions may be brought and prosecuted against Guarantor whether or not any action is brought against Counterparty or any of such other guarantors and whether or not Counterparty is joined in any such action or actions; and (c) Guarantor's payment or performance of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge Guarantor's liability for any portion of the Guaranteed Obligations that has not been paid or performed. This Guarantee is a continuing guaranty and shall be binding upon Guarantor and its successors and assigns, and Guarantor irrevocably waives any right (including without limitation any such right arising under California Civil Code Section 2815) to revoke this Guarantee as to future transactions giving rise to any Guaranteed Obligations;

(c) Any interest on any portion of the Guaranteed Obligations that accrues after the commencement of any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Counterparty (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceeding had not been commenced) shall be included in the Guaranteed Obligations because it is the intention of Guarantor and Beneficiary that the Guaranteed Obligations should be determined without regard to any rule of law or order that may relieve Counterparty of any portion of such Guaranteed Obligations;

(d) Upon the failure of Counterparty to pay or perform any of the Guaranteed Obligations when and as the same shall become due, Guarantor will upon demand pay, or cause to be paid, in cash, to Beneficiary an amount equal to the aggregate of the unpaid Guaranteed Obligations, or perform any such outstanding Guaranteed Obligations, as applicable; and

(e) This Guarantee shall terminate only upon the full satisfaction of the Guaranteed Obligations. If, notwithstanding the foregoing, Guarantor shall have any non-waivable right under applicable law or otherwise to terminate or revoke this Guarantee, Guarantor agrees that the termination or revocation shall not be effective until thirty (30) days after a written notice of the termination or revocation is received by Beneficiary and shall not affect the rights and powers of Beneficiary to enforce rights arising prior to receipt of the notice. Any rights arising out of advances or actions by Beneficiary after Guarantor's termination or revocation but prior to receipt of the requisite notice shall be the same as if the termination or revocation had not occurred.

Section 1.02 Guarantee Absolute.

(a) To the extent required hereunder, the Guaranteed Obligations will be paid strictly in accordance with the terms of the Guaranteed Contract, regardless of any bankruptcy or other law affecting any of such terms or the rights of the Beneficiary with respect thereto. The Guarantor's obligations under this Guarantee shall not be impaired by any increase, reduction, extension, rearrangement or subordination of the Guaranteed Obligations, any amendment, supplement, or other modification of the Guaranteed Contracts, any grant or impairment of any

security or support for the Guaranteed Obligations, the failure to give notice of any default or event of default, however denominated, under the Guaranteed Contracts or of the bringing of action to enforce the payment or performance of the Guaranteed Obligations or any other notice of any kind relating to the Guaranteed Obligations, or any other action which affects the Guaranteed Obligations; and

(b) Guarantor further agrees that, to the extent that the Counterparty or the Guarantor makes a payment or payments to the Beneficiary which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside, and/or required to be repaid to the Counterparty or the Guarantor or their respective estate, trustee, receiver, or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then to the extent of such payment or repayment, this guarantee and the advances or part thereof which have been paid, reduced, or satisfied by such amount shall be reinstated and continued in full force and effect as of the date such initial payment, reduction, or satisfaction occurred.

ARTICLE TWO

Section 2.01. Severability.

(a) In case any one or more of the provisions of this Guarantee shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the parties to this Guarantee that such illegality or invalidity shall not affect any other provision hereof, but this Guarantee shall be construed or enforced as if such illegal or invalid provision had not been contained herein unless such a court holds that such provisions are not separable from other provisions of this Guarantee; and

(b) The obligations hereunder are joint and several, and independent of the obligations of Counterparty, and a separate action or actions may be brought and prosecuted against Guarantor, whether or not action is brought against Counterparty or whether or not Counterparty is joined in any such action or actions.

ARTICLE THREE

Section 3.01. Guarantor's Warranties.

Guarantor makes the following representations and warranties to Beneficiary:

(a) (i) this Guarantee is executed at Beneficiary's request; (ii) Guarantor has not and will not without prior written consent of Beneficiary, sell, lease, assign, encumber, hypothecate, transfer or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; and (iii) Guarantor has adequate means of obtaining from Counterparty on a continuing basis financial and other information pertaining to Counterparty's financial condition without relying on Beneficiary therefor;

(b) Guarantor agrees to keep adequately informed from such means of any facts, events or circumstances which Guarantor consider material or which might in any way affect Guarantor's risks hereunder. With respect to information or material acquired in the

normal course of Beneficiary's relationship with Counterparty, Guarantor agrees that Beneficiary shall have no obligation to disclose such information or material to Guarantor;

(c) Guarantor is a [_____], duly organized, validly existing and in good standing under the laws of the State of [_____], 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 Guarantee and effect the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Guarantee;

(d) the execution, delivery and performance by Guarantor of this Guarantee and has been duly authorized by all necessary action, and do not and will not require any consent or approval of Guarantor's managing member or equity holders or other Person other than that which has been obtained;

(e) the execution and delivery of this Guarantee and the fulfillment of and compliance with the provisions of this Guarantee do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any federal, state and local laws, statutes, regulations, rules, codes or ordinances enacted, adopted, issued or promulgated by any federal, state, local or other governmental authority, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Guarantor 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 or encumbrance upon any of the properties or assets of Guarantor; and

(f) this Guarantee constitutes the legal, valid and binding obligation of Guarantor 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.

ARTICLE FOUR

Section 4.01. Waivers.

(a) It shall not be necessary for the Beneficiary, in order to enforce this Guarantee, to exhaust the Beneficiary's remedies against the Counterparty, to enforce any security or support for the payment or performance of the Guaranteed Obligations, or to enforce any other means of obtaining payment or performance of the Guaranteed Obligations. The Guarantor waives any rights under applicable state law related to the foregoing. Until irrevocable payment in full and performance of the Guaranteed Obligations, the Guarantor will not exercise any right of subrogation (including any statutory rights of subrogation under Section 509 of the Bankruptcy Code, 11 U.S.C. § 509, or under applicable state law) or any right to participate in any claim or remedy of the Beneficiary against the Counterparty, but this standstill is not intended as a permanent waiver of the subrogation rights of the Guarantor. To the extent permitted by law, Guarantor waives the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof, and agrees that any payment of any obligation or other act which shall toll any statute of limitations applicable to the obligation shall also operate to toll

such statute of limitations applicable to Guarantor's liability hereunder. The liability of Guarantor hereunder shall be reinstated and revived and the rights of Beneficiary shall continue with respect to any amount paid by Counterparty on account of the obligations guaranteed hereby, which shall thereafter be required to be restored or returned by Beneficiary upon the bankruptcy, insolvency or reorganization of Counterparty or for any other reason, all as though such amount had not been paid. The Guarantor hereby waives notice of acceptance of this Guarantee and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment or performance, protest, notice of dishonor or non-payment or non-performance of any such obligation or liability, suit or the taking of other action by Beneficiary against, and any other notice to, the Counterparty, the Guarantor or others. Any other suretyship defenses are hereby waived by the Guarantor. This Guarantee and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full in cash and performance of the Guaranteed Obligations). The Beneficiary shall not be required to inquire into the capacity or powers of Guarantor or Counterparty or the officers, directors or any agents acting or purporting to act on behalf of any of them;

(b) In addition to the foregoing, Guarantor specifically waives:

(i) any right to require Beneficiary to (A) proceed against any person, including Counterparty; (B) proceed against or exhaust any collateral held from Counterparty, and other endorser or guarantor or any other person; (C) give notice of terms, time and place of any public or private sale of personal property or real property security held from Counterparty or comply with any other provisions of Section 9504 of the California Uniform Commercial Code or sections 2924 through 2924k of the California Civil Code, to the extent allowed by law; (D) pursue any other remedy in Beneficiary's power; or (E) make any presentments, demands for performance, or give any notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any obligations or evidences of indebtedness held by Beneficiary as security, in connection with any obligations or evidences of indebtedness which constitute in whole or in part the obligations guaranteed hereunder, or in connection with the creation of new or additional obligations;

(ii) in accordance with Section 2856 of the California Civil Code, any and all rights and defenses available to it by reason of Sections 2787 to 2855, inclusive, of the California Civil Code;

(iii) any defense arising by reason of (A) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of Counterparty, any other endorser or guarantor or any other person, including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Counterparty from any cause other than payment in full in cash and performance of the Guaranteed Obligations; (B) the cessation from any cause whatsoever, other than payment and performance in full of the obligations of Counterparty, of the liability of Counterparty, any endorser or guarantor or any other person; (C) the application by Counterparty of the proceeds of any obligations for

purposes other than the purpose represented by Counterparty to Beneficiary or intended or understood by Beneficiary or Guarantor; (D) any act or omission by Beneficiary which directly or indirectly results in or aids the discharge of Counterparty or any obligations by operation of law or otherwise; (E) any modification of the obligations, in any form whatsoever, including any modification made after revocation hereof to any obligations incurred prior to such revocation, and including without limitation the renewal, extension, acceleration or other change in time for payment of the obligations, or other change in the terms of the obligations or any part thereof, including increase or decrease of the rate of interest thereon; (F) any defense based upon (i) any principles or provisions of law, statutory or otherwise which provide that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal or that are or might be in conflict with the terms of this Guarantee and any legal or equitable discharge of Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any Lien or any property subject thereto; (G) any defense based upon Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior that amounts to bad faith; (H) any defense based upon notices, demands, presentments, protests, notices of protest, notices of dishonor and notices of any action or inaction, including acceptance of this Guarantee, notices of default or early termination under the Guaranteed Contracts or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto and notices of any extension of credit to Counterparty; and (i) to the fullest extent permitted by law, any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms of this Guarantor;

(iv) any right to enforce any remedy which Beneficiary now has or may hereafter have against Counterparty, any other endorser or guarantor or any other person, and waives any benefit of, or any right to participate in any security whatsoever now or hereafter held by Beneficiary, and waives any rights or benefits which Guarantor might have under California Code of Civil Procedure Sections 580a and 726 (limiting the amount of any deficiency judgment to the difference between the amount of any indebtedness owed and the greater of the fair value of the security or the amount for which the security was actually sold), 580b (barring deficiencies with respect to real property purchase money obligations), and 580d (barring recovery of a deficiency judgment after real property security is sold under a power of private sale) as from time to time amended and Guarantor shall have no right of subrogation;

(v) all rights and defenses arising out of an election of remedies by the Beneficiary, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed the Guarantor's rights of subrogation and reimbursement against the Counterparty by operation of Section 580d of the California Code of Civil Procedure or otherwise; and

(vi) waives all rights and defenses that the Guarantor may have because the Counterparty's debt is secured by real property, which shall allow the Beneficiary to collect from the Guarantor without first foreclosing on any real or personal property collateral pledged by the Counterparty and, if the Beneficiary forecloses on any real property collateral pledged by the Counterparty (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) the Beneficiary may collect from the Guarantor even if the Beneficiary, by foreclosing on the real property collateral, has destroyed any right the Guarantor may have to collect from the Counterparty. The waiver contained in this Section 4.01(b)(vi) is an unconditional and irrevocable waiver of any rights and defenses the Guarantor may have because the Counterparty's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Sections 580a, 580b, 580d or 726 of the California Code of Civil Procedure.

Section 4.02. Guarantor's Understandings With Respect To Waivers.

(a) Guarantor warrants and agrees that Guarantor has had all necessary opportunity to secure any advice which Guarantor desires with respect to each of the waivers set forth above, that such waivers are made with Guarantor's full knowledge of its significance and consequences, and that under the circumstances, the waivers are reasonable and not contrary to public policy or law;

(b) Guarantor acknowledges that Guarantor would or might have a defense to enforcement of this Guarantee if, in the absence of an effective waiver or authorization by Guarantor, Beneficiary were to take any of the actions or exercise any of the remedies (i) that are otherwise authorized by Guarantor herein or (ii) that are described in Sections 4.01 and 4.02 and as to which Guarantor waives any defenses. Without limiting the foregoing, in the absence of an effective waiver, Beneficiary's foreclosure against real property security by power of sale under Section 580d of the California Code of Civil Procedure would destroy Guarantor's subrogation and reimbursement rights against Counterparty and would thus provide Guarantor with a defense to Beneficiary's enforcement of this Guarantee. It is Guarantor's intention in executing this Guarantee to waive all such defenses, including without limitation the defense described in the preceding sentence, in advance;

(c) Until the Guaranteed Obligations are satisfied in full, Guarantor shall withhold exercise of (a) any claim, right or remedy, direct or indirect, that Guarantor now has or may hereafter have against Counterparty or any of its assets in connection with this Guarantee or the performance by Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute (including without limitation under California Civil Code Section 2847, 2848 or 2849), under common law or otherwise and including without limitation (i) any right of subrogation, reimbursement or indemnification that Guarantor now has or may hereafter have against Counterparty, (ii) any right to enforce, or to participate in, any claim, right or remedy that any Beneficiary now has or may hereafter have against Counterparty, and (iii) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary and (b) any right of contribution Guarantor now has or may hereafter have against any other guarantor of any of the Guaranteed Obligations.

Guarantor further agrees that, to the extent the agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification Guarantor may have against Counterparty or against any collateral or security, and any rights of contribution Guarantor may have against any such other guarantor, shall be junior and subordinate to any rights Beneficiary may have against Counterparty, to all right, title and interest Beneficiary may have in any such collateral or security, and to any right Beneficiary may have against such other guarantor; and

(d) Notwithstanding the foregoing, all waivers in this Guarantee shall be effective only to the extent permitted by law.

Section 4.03. Beneficiary's Rights With Respect To Guarantor's Property. In addition to all liens upon, and rights of setoff against the moneys, securities or other property of Guarantor given to Beneficiary by law, Beneficiary shall have a lien upon and a right of setoff against all moneys, securities or other property of Guarantor now or hereafter in possession of or on deposit with Beneficiary, whether held in a general or special account or deposit, or for safekeeping or otherwise, and every such lien and right of setoff may be exercised without demand upon or notice to Guarantor. No lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Beneficiary, or by any neglect to exercise such right to setoff or to enforce such lien, or by any delay in so doing, and every right of setoff and lien shall continue in full force and effect until such right of setoff or lien is specifically waived or released by any instrument in writing executed by Beneficiary.

Section 4.04. Subordination of Counterparty's Debts to Guarantor. Any obligation of Counterparty now or hereafter held by Guarantor is hereby subordinated in right of payment to the Guaranteed Obligations, and any such obligation of Counterparty to Guarantor collected or received by Guarantor after a default or early termination event has occurred and is continuing, and any amount paid to Guarantor on account of any subrogation, reimbursement, indemnification or contribution rights referred to in the preceding paragraph when all Guaranteed Obligations have not been paid in full, shall be held in trust for Beneficiary and shall forthwith be paid over to Beneficiary to be credited and applied against the Guaranteed Obligations. Such obligation of Counterparty to Guarantor is assigned to Beneficiary as security for this Guarantee and the obligation and, if Beneficiary requests, shall be collected and received by Guarantor, as trustee for Beneficiary and paid over to Beneficiary on account of the obligation of Counterparty to Beneficiary but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guarantee. Any such notes now or hereafter evidencing such obligation of Counterparty to Guarantor shall be marked with a legend that the same are subject to this Guarantee, and, if Beneficiary so requests, shall be delivered to Beneficiary. Guarantor will, and Beneficiary is hereby authorized, in the name of Guarantor from time to time to execute and file financing statements and continuation statements and execute such other documents and take such other action as Beneficiary deems necessary or appropriate to perfect, preserve and enforce its rights hereunder.

Section 4.05 Waiver of Authentication of Validity of Certain Acts. Where any one or more of Counterparties are corporations, partnerships, or limited liability companies it is not necessary for Beneficiary to inquire into the power of Counterparties or the officers, directors,

partners, managers, members or agents acting or purporting to act in their behalf, and any obligations made or created in reliance upon the professed exercise of such power shall be guaranteed hereunder.

Section 4.06. Authorizations To Beneficiary. Guarantor authorizes Beneficiary, without notice or demand and without affecting its liability hereunder, from time to time to (a) renew, extend, accelerate or otherwise change the time for payment or performance of, or otherwise change the terms of the obligations or any part thereof, including increase or decrease of the rate of interest thereon; (b) take and hold security for the payment or performance of this Guarantee or the obligations guaranteed, and exchange, enforce, waive and release any such security; (c) apply such security and direct the order or manner of sale thereof, including without limitation, a non-judicial sale permitted by the terms of the controlling security agreement or deed of trust, as Beneficiary in its discretion may determine; and (d) release or substitute any one or more of the endorsers or guarantors of any obligations. Beneficiary may without notice assign this Guarantee in whole or in part.

ARTICLE FIVE

5.01. Miscellaneous.

(a) All notices and other communications between the Guarantor and the Beneficiary provided for in this Guarantee shall be in writing, including facsimile, and delivered or transmitted to the addresses set forth below, or to such other address as shall be designated by the Guarantor in written notice to the other party;

If to the Guarantor:

[Guarantor Name]

[Guarantor Address]

Attn: [_____]

Telephone: [_____]

Facsimile: [_____]

If to the Beneficiary:

Southern California Public Power Authority

225 S. Lake Avenue, Suite 1250

Pasadena, CA 91101

Attn: Executive Director

Telephone: 626-793-9364

Facsimile: 626-793-9461

(b) This Guarantee was made and entered into, 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. All litigation arising out of, or relating to this Guarantee, shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Guarantor hereby irrevocably agrees to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of forum non conveniens;

(c) The provisions of this Guarantee may be waived or amended only in writing signed by both the Guarantor and Beneficiary. This Guarantee shall bind and inure to the benefit of the Guarantor and the Beneficiary and their respective successors and permitted assigns, including without limitation, the trustee, but neither party may assign its rights under this Guarantee without the prior written consent of the other party. The Guarantor may not assign its rights nor delegate its obligations under this Guarantee, in whole or in part, without prior written consent of the Beneficiary, and any purported assignment or delegation absent such consent is void;

(d) The rights, powers and remedies given to Beneficiary by this Guarantee are cumulative and shall be in addition to and independent of all rights, powers and remedies given to Beneficiary by virtue of any statute or rule of law or in the Guaranteed Contracts or any agreement between Guarantor and Beneficiary or between Counterparty and Beneficiary. Any forbearance or failure to exercise, and any delay by Beneficiary in exercising, any right, power or remedy hereunder shall not impair any such right, power or remedy or be construed to be a waiver thereof, nor shall it preclude the further exercise of any such right, power or remedy; and

(e) Guarantor hereby agrees that in any dispute relating to this Guarantee, each party shall be responsible for its own attorneys' fees and costs. Each of Guarantor and Beneficiary was represented by its respective legal counsel during the negotiation and execution of this Guarantee.

Executed as of the date first above written.

[GUARANTOR]

By: _____

Name: _____

Title: _____

APPENDIX H
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
QUALITY ASSURANCE PROGRAM

Seller shall implement a Quality Assurance (“Q/A”) Program to ensure that the performance of the development, design and construction of the Facility fulfills the requirements of this Agreement. The Q/A Program shall provide assurance that design, purchasing, manufacturing, shipping, storage, construction, testing and examination of all equipment, materials, services and maintenance of the Facility will comply with the requirements of this Agreement, all applicable Requirements of Law and the manufacturers and/or suppliers requirements for successful operation of the Facility.

Quality at Seller

What is quality? Seller believes that quality is the unit of measure for assessing fulfillment of project goals. A quality project meets or exceeds the contract requirements and accepted standards of professional and industry practice. Furthermore, high quality projects are those that address client and societal needs more successfully than “low” quality projects. While this may seem like a straightforward definition, the process to ensure quality is much more involved and includes quality management, quality planning, quality control, quality assurance, a quality system, and total quality management.

“Quality assurance” refers to a process that reduces the potential for error throughout the phases of a project. On projects with a Q/A Program, the chances of producing a poor quality deliverable are substantially reduced. Quality control procedures are an integral part of quality assurance. Historically, industry has used the term “quality control” to indicate a checking procedure for verifying the quality of deliverables. This checking commonly occurs at the end of the process, long after an error may have been made and compounded by subsequent work. While quality control checks at the end of a project are an essential exercise, scheduled periodic reviews at each phase of project conceptual and final design are integral to Seller’s Q/A Program. In addition, quality maintenance which meet or exceed manufacturers’ and/or suppliers’ requirements and best industry practices must be an integral part of Sellers’ Q/A Program.

The Quality Management Process

The surest way to achieve satisfactory quality is to adhere to a proven quality process. The term “quality” most accurately refers to a project’s ability to satisfy needs when considered as a whole and each part of the process meets or exceeds the standards of Prudent Utility Practices.

Seller project management team is responsible for proactively planning and directing the quality of the work process, services, and deliverables. Seller project management team targets six areas to monitor quality:

- 1) A written work plan with accompanying Q/A Manual.
- 2) Detailed review of the project design at the planning and conceptual design phase
- 3) Detailed review of project final design prior to construction.
- 4) A quality control program during construction to verify implementation is in compliance with design documents and document any changes.
- 5) Independent engineering review of the entire project process, from design review through commercial operation.
- 6) A written maintenance manual for the Facility for the duration of the commercial operation that complies with the maintenance manuals of the manufacturers and suppliers from whom Sellers have purchased equipment and/or material and best industry practices.

Written Work Plan and Q/A Manual

The idea of a written work plan and Q/A manual is to incorporate quality assurance in all areas of project execution. Seller has found that quality needs to be institutionalized into the project process, not only in the budgeting process, but everywhere. For example, specific tasks and duties need to be allocated to specific individuals; roles and interface points need to be clearly defined; individual assignments need to be realistic; special attention needs to be paid to complex areas within projects; schedules need to be realistic and achievable; and lastly the work culture needs to be enjoyable and open so that employees are empowered to react quickly to symptoms of quality problems before they actually manifest.

Seller's quality program shall be documented in a written work plan and Quality Assurance manual (the "*Q/A Manual*"). The form and the format of the Q/A Manual shall be developed by Seller, but must comply with Prudent Utility Practices and follow manufacturers and suppliers recommendations without deviation. The content of the Q/A Manual shall provide written descriptions of policies, procedures and methodology to accomplish a quality project. Seller shall submit three (3) copies of the Q/A Manual within ninety (90) days after the Effective Date to Buyer or Buyer's Agent. The Q/A Manual shall be kept current by Seller throughout the term of this Agreement through the submittal of revisions, as appropriate, by Seller to Buyer or Buyer's Agent.

The Q/A Manual shall describe the authority and the responsibility of the Persons in charge of the Q/A Program and inspection activities. It shall also provide the plan for detailed review of project conceptual design and final design, hold points, and methodology for document control and comment. Furthermore, it shall provide the plan and strategy for quality control and review during the construction project and for maintenance and operations during commercial operation. The Q/A Manual shall strive; at a minimum, to define control procedures or methods to assure the following:

- (a) The design documents, drawings, specifications, Q/A procedures, records, inspection procedures and purchase documents are maintained to be current, accurate and in compliance with all applicable law;
- (b) The purchased materials, equipment and services comply with the requirements of this Agreement and all applicable Requirements of Law;
- (c) The materials received at the site are inspected for compliance with specifications;
- (d) The subcontracted work is adequately inspected by third parties;
- (e) Proper methods are employed for the qualification of personnel who are performing work for the development, design and construction of the Facility;
- (f) Proper documentation, control and disposition of nonconforming equipment and materials is maintained;
- (g) Proper records are kept and available following project completion to ensure accurate documentation of as-built conditions; and
- (h) Detailed and complete plan for maintenance and operation during commercial operations consistent with manufacturers and suppliers recommendations and best industry practices.

Conceptual Design Review

Seller has a team of professionals who develop and review the project layout and project conceptual design. The team consists of specialists in land-use and planning, permitting, meteorology, engineering, construction, project management, and finance. A preliminary site plan is developed and meetings are held to assess optimization of solar resource, constructability, minimization of cultural and biological impacts, land use restrictions, and landowner requirements. Preliminary road design will also be started and access to the site will be reviewed in detail. When this plan is ready for review, a formal plan and map is created and a final internal review is conducted. Following that is detailed studies for biological, cultural and other types of impacts by third parties. The site plan is then reviewed, modified as necessary, and then used to begin the permitting and public review process. The site plan is further modified based on comments in that process. At that point, the site plan can be issued for construction, and final engineering can commence.

In parallel with this process, preliminary conceptual design is started for the major areas of the project, including the substation, transmission line, underground collection system, communications system, and road and grading is done to develop construction estimates as well as materials specifications. All of these areas of conceptual designs are used to check and verify the assumptions used for development of the site plan.

Final Engineering Design

Following finalization of the site plan, the detailed design is done for the collection system, fiber-optic network, foundations, roads & grading, transmission line, and substation by third party engineering firms licensed to practice in the state in which the project is to be constructed. Each firm has their own quality assurance and checking procedures, however Seller reviews the final work products in detail to check with conformance with this Agreement and provides comments as a second round of quality assurance. When Seller's comments have been incorporated, the design of each area is considered final, that design is then submitted to an independent engineer for review and comment. This ensures that another entity, in addition to Seller, has done a comprehensive review of all project areas and details to ensure conformance with this Agreement.

In parallel with final design and checking activities, final geotechnical studies will be conducted at the site, and a final solar resource assessment will be performed with the issued-for-construction project layout. Any changes based on the assessment would be documented in as-built design drawings and approved in advance by Seller.

Quality Assurance at the Construction Site

Seller will hire a third party general contractor to construct the project. This contractor will be required to have its own quality assurance program in place using its own staff, as well as third party inspectors. The two primary areas of focus at the site are assuring conformance of construction to design drawings, and conformance of materials to specifications. The general contractor will be required to provide third party inspectors and testing for materials including concrete slump testing; rebar and concrete placement; cable trenching, etc. The general contractor will also be required to maintain a set of red-line drawings during the course of construction to document any changes to the design documents. Proposed project changes would be reviewed and approved in the field by Seller construction management team prior to implementation.

Quality assurance of equipment installation is achieved through a combination of procedures and processes. The general contractor will provide rigorous inspection of its installation crew. The equipment supplier will have technical advisors on site to inspect and sign off on any components received, oversee and monitor installation, and approve mechanical completion. In addition, Seller will have its own construction management team on site consisting of a construction manager and quality inspectors who will observe performance of all areas of the work and ensure compliance with design documents. A team consisting of the equipment supplier, Seller, and the general contractor will examine every element of the equipment at mechanical completion to develop a comprehensive punchlist of any un-finished or incorrect work. This punchlist is maintained by the contractor, and is signed off by Seller upon completion of the punchlist items. Lastly, the independent engineer performs periodic audits during construction to oversee critical items, spot checks, confirms construction progress, reports on any perceived issues, and provides independent reporting and assessments to the project stakeholders.

Following completion of the project, the general contractor will be required to provide as-built all design drawings and records of all materials testing conducted at the site. This documentation will be maintained at the project site during operations of the Facility.

Quality Assurance During Commercial Operations

[To Be Supplied by Seller]

APPENDIX I
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

MILESTONE SCHEDULE

1. Seller shall have demonstrated to Buyer's reasonable satisfaction that it has obtained financing for the construction of the Facility, evidenced by a commitment of a lender or lenders to fund the construction of the Facility subject only to reasonable and customary conditions precedent (the "*Financing Milestone*") by June 1, 2012 (the "*Financing Milestone Date*").

2. Seller shall have (i) obtained all of the Permits required for the construction, operation and maintenance of the Facility, including those set forth in Appendix B, except for any Permits not yet required to be obtained but which can reasonably be expected to be obtained when needed, and each such Permit shall be final and non-appealable; (ii) filed in the appropriate state and county a Notice of Exemption, and any deadline for appealing such Notice of Exemption shall have passed, and (iii) received true, correct and complete copies of all of Seller's documents listed in Appendix B relating to the environmental condition of the real property specified in Appendix B, in form, scope and substance reasonably satisfactory to Buyer, including but not limited to any Phase I Environmental Site Assessment prepared relative to that real property (the "*Permit Milestone*"), by August 1, 2012 (the "*Permit Milestone Date*").

3. Seller shall have filed an interconnection request or the equivalent thereof pursuant to the Western OATT or Western TIP Program and cooperated with Western for the purpose of causing to be completed any applicable interconnection or transmission studies with respect to the Facility (the "*Interconnection Milestone*"), by December 1, 2012 (the "*Interconnection Milestone Date*").

4. By March 1, 2013 (the "*Facility Construction Milestone Date*"), Seller shall have:

(a) commenced construction of the Facility, including land clearing and land leveling activities on the Site preceding the physical initiation of construction, which includes the driving of piles; subsurface preparation, installation of foundations; placement of backfill, concrete, or retaining walls within an excavation; or in-place assembly, erection, fabrication or testing;

(b) granted to and perfected in favor of Buyer a valid Lien on the Facility (which Lien may be subordinated to any Facility Lender) (the "*Mortgage*"), and such Mortgage shall have been recorded in the Official Records of La Paz County, Arizona;

(c) received a valid, binding and enforceable ALTA 1970 Form B (or equivalent) mortgage policy of title insurance with respect to the real property subject to the Mortgage issued by a company or companies acceptable to Buyer, in an amount acceptable to Buyer, with reinsurance and endorsements as Buyer may reasonably require, containing no exceptions to title (printed or otherwise) other than Permitted Encumbrances or other exceptions that are acceptable to Buyer, and insuring that such real property is free of Liens or other exceptions to title other than Permitted Encumbrances (or other exceptions that are acceptable to Buyer) and providing full coverage against Liens of all materialmen and mechanics, whether filed or unfiled;

(d) received from the Lessor under the Lease (i) an executed intercreditor agreement, in form and substance satisfactory to Buyer, granting Buyer and the Facility Lender, among other things, cure and step-in rights under the Lease, and (ii) a memorandum of Lease which was recorded in the Official Records of La Paz County, Arizona; and

(e) continue to have in place financing for the construction of the Facility (collectively, with subparagraphs 3(a), 3(b), 3(c) and 3(d), the “***Facility Construction Milestone***”).

5. Seller shall have achieved Commercial Operation by the Target Commercial Operation Date.

APPENDIX J
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
OPTION AGREEMENT

APPENDIX K*
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

SCPPA ENERGY DELIVERY SHARE

**Buyer Agent Shares of SCPPA Facility Capacity and
of SCPPA Facility Energy and Replacement Energy**

**Buyer Agent Share of SCPPA Facility Energy and
Replacement Energy
Delivered to its Designated Point of Delivery**

Points of Delivery for SCPPA Energy Delivery Share

<u>SCPPA Energy Delivery Share**</u>	<u>Buyer Agents</u>	<u>Buyer Agent Share of SCPPA Facility Capacity</u>	<u>Buyer Agent Share of SCPPA Facility Energy and Replacement Energy</u>	<u>Buyer Agent Share of SCPPA Facility Energy and Replacement Energy Delivered to its Designated Point of Delivery***</u>	<u>Points of Delivery for SCPPA Energy Delivery Share</u>
14.7059%	Anaheim	10 MW	14.7059%	100%	230kV Bus at Mead Substation or as mutually agreed between Buyer and Seller.
85.2941%	Azusa Banning Burbank Colton Glendale Pasadena	2 MW 2 MW 27 MW 5 MW 12 MW 10 MW	2.9412% 2.9412% 39.7059% 7.3529% 17.6470% 14.7059%	3.4483% 3.4483% 46.5517% 8.6207% 20.6896% 17.2414%	500kV Bus at Marketplace Substation or as mutually agreed between Buyer and Seller.

* Appendix K may be revised as provided in Section 6.1(b) and Section 7.1(b).

** SCPPA Energy Delivery Share for any Point of Delivery shall be adjusted to take account of all designations by mutual agreement by Buyer and Seller of secondary Points of Delivery.

*** Buyer Agent Share of SCPPA Facility Energy and Replacement Energy Delivered to its designated Point of Delivery shall be adjusted to take account of all designations by mutual agreement by Buyer and Seller of secondary Points of Delivery.

APPENDIX L
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
SCHEDULING TEMPLATE

The scheduling template which shall be utilized by Seller to apprise Buyer and Buyer's Agents of future schedules shall provide sufficient information to Buyer and Buyer's Agents so that Buyer and Buyer's Agents may schedule the Energy received at any Point of Delivery in accordance with all applicable tariffs, rules and regulatory provisions related to Buyer's and Buyer's Agents' scheduling responsibilities. Buyer will provide Seller with the appropriate scheduling template to carry forth these requirements at the time of Commercial Operation

APPENDIX M

**TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC**

**and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY**

SCHEDULING CONTACTS

1. All notices related to scheduling of the Facility shall be sent by email with copies sent in accordance with Section 13.2 to the following addresses:

If to Buyer:

Energy Systems Manager
Southern California Public Power Authority
225 S. Lake Avenue, Suite 1250
Pasadena, CA 91101
Telephone: (626) 793-9364
Facsimile: (626) 793-9461
Email: dwalden@scppa.org

If to Seller:

Christopher Davey
President
La Paz Solar Tower LLC
1661 East Camelback Road, Suite 115
Phoenix, AZ. 85016
Telephone: (602) 910-6740
Facsimile: (602) 910-6717

If to Buyer's Agents:

At the addresses, contacts and contact information for each of Buyer's Agents which Buyer shall furnish Seller for purposes of this Appendix M.

APPENDIX N
TO THE
POWER PURCHASE AGREEMENT
BETWEEN
LA PAZ SOLAR TOWER LLC
and
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

SCHEDULING AND PAYMENT EXAMPLES*

Example 1

Buyer tags 60 MW in a given hour (based on forecast output for that hour) at the Points of Delivery (“PODs”), but actual output of the SCPPA Facility Energy is 58 MW as measured at the Point of Interconnection (“POI”). Thus:

SCPPA Facility Energy = 58 MW at POI and WREGIS certified RECs associated with SCPPA Facility Energy at POI = 58 RECs

Transmission Losses from POI to PODs are assumed for this example to be 0 MW

SCPPA Facility Energy, which is produced and delivered by Seller and received by Buyer at PODs = 58 MW

Buyer pays for 58 MW of SCPPA Facility Energy at the applicable Energy price under Appendix A, even though Buyer receives 60 MW of physical energy at PODs. Seller is responsible for 2 MW of Generator Imbalance Service Energy, provided by the applicable Balancing Authority.

Buyer receives 58 RECs as measured at POI.

Buyer is responsible for paying Seller for 2 MW of “non renewable” Generator Imbalance Energy at the Dow Jones Palo Verde Electricity Price as set forth in Appendix A.

Example 2

Buyer tags 60 MW in a given hour (based on forecast output for that hour) at PODs, but actual output of the SCPPA Facility Energy is 65 MW at POI. Thus:

SCPPA Facility Energy = 65 MW at POI and WREGIS certified RECs associated with SCPPA Facility Energy at POI = 65 RECs

* Buyer tags referred to in the Examples relate to Schedules for delivery of SCPPA Facility Energy that is the responsibility of Buyer under the Agreement and do include Scheduling by Buyer as the designee and Scheduler for Seller as provided under Section 4.5(f) of the Agreement.

Transmission Losses from POI to PODs are assumed for this example to be 0 MW

SCPPA Facility Energy, which is produced and delivered by Seller and received by Buyer at PODs = 60 MW (the scheduled amount)

Buyer pays for 60 MW of SCPPA Facility Energy at the applicable Energy price under Appendix A. Seller receives a payment from the applicable Balancing Authority for 5 MW (65 MW (generation) delivered – 60 MW (physical energy scheduled and delivered)) of Generator Imbalance Service Energy.

SCPPA receives 65 RECs as measured at POI.

Example 3

Buyer tags 60 MW in a given hour (based on forecast output for that hour) at PODs, and the actual output of the Facility is 60 MW at POI. Thus:

SCPPA Facility Energy = 60 MW at POI and WREGIS certified RECs associated with SCPPA Facility Energy at POI = 60 RECs

Transmission Losses from POI to PODs are assumed for this example to be 0 MW

SCPPA Facility Energy, which is produced and delivered by Seller and received by Buyer at PODs = 60 MW

Therefore, Buyer pays for 60 MW of SCPPA Facility Energy at the applicable Energy price under Appendix A. Seller is responsible for 0 MW of Generator Imbalance Service Energy. Buyer receives 60 RECs as measured at POI.

Example 4

Buyer tags 60 MWs in a given hour (forecast output for that hour) at the PODs, and the actual output of SCPPA Facility Energy is 60 MWs at POI, but transmission from POI to such PODs is derated to zero in mid-hour. As a result of the mid-hour derate, output of the Facility is curtailed for the latter half of the hour. Thus:

SCPPA Facility Energy = 30 MWs at POI and WREGIS certified RECs associated with SCPPA Facility Energy at POI = 30 RECs.

Transmission Losses from POI to PODs are assumed for this example to be 0 MWs.

SCPPA Facility Energy which is generated and delivered by Seller and received by Buyer at PODs = 30 MWs (hourly integrated value is ½ of 60 MW due to mid-hour derate).

Therefore, Buyer pays for 30 MWs of SCPPA Facility Energy at the applicable Energy price under Appendix A and Buyer receives 30 RECs as measured at POI.

Seller causes the delivery of 30 MWs of Generator Imbalance Service Energy to Buyer at the Point or Points of Delivery for such Generator Imbalance Service and Buyer receives such Generator Imbalance Service Energy and pays at the Dow Jones Palo Verde Electricity Price for such Energy which is the Generator Imbalance Service price therefor set forth in Appendix A.

Example 5

Buyer tags 60 MW in a given hour (based on forecast output for that hour) at PODs, but actual output of the Facility is 58 MW as measured at POI. Thus:

SCPPA Facility Energy = 58 MW at POI but WREGIS certified RECs at POI associated with SCPPA Facility Energy at POI = 55 RECs

Transmission Losses from POI to PODs are assumed for this example to be 0 MW

SCPPA Facility Energy, which is produced and delivered by Seller and received by Buyer at PODs with the associated RECs = 55 MW as only 55 MW have the associated RECs.

Buyer pays for 55 MW of SCPPA Facility Energy at the applicable Energy price under Appendix A, even though Buyer receives 60 MW of physical energy at PODs. Seller is responsible for the provision to Buyer of 2 MW of Generator Imbalance Service Energy by the applicable Balancing Authority. Buyer also receives at PODs 3 MW of SCPPA Facility Energy which has not received WREGIS certified RECs. Buyer receives 55 RECs as measured at POI.

Buyer is responsible for paying Seller for the 2 MW of “non renewable” Generator Imbalance Service Energy at the Dow Jones Palo Verde Electricity Price as set forth in Appendix A and responsible for making payment to Seller at the Dow Jones Palo Verde Electricity Price as set forth in Appendix A for the 3 MW of SCPPA Facility Energy which has not received WREGIS certified RECs.

Staff Report to the Mayor and City Council
La Paz Solar Tower
March 20, 2012

ATTACHMENT 4

SCPPA-COLTON POWER SALES AGREEMENT

LA PAZ SOLAR TOWER PROJECT

POWER SALES AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

CITY OF COLTON, CALIFORNIA

Dated as of December 1, 2011

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LA PAZ SOLAR TOWER PROJECT

POWER SALES AGREEMENT

1. **PARTIES.** This La Paz Solar Tower Project Power Sales Agreement (this “Agreement”), is dated for convenience as of the 1st day of December, 2011, by and between the SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY, a joint powers agency and a public entity organized under the laws of the State of California, hereinafter designated as “SCPPA,” created under the provisions of the Act, and the CITY OF COLTON, CALIFORNIA, a municipal corporation organized and existing under the laws of the State of California. The CITY OF COLTON is also periodically designated in this Agreement as “Colton” or as “Purchaser,” or, depending upon context, as “Project Participant.” Colton and SCPPA are also sometimes herein referred to individually as a “Party” and together as the “Parties.” In addition, Colton and the other members of SCPPA participating in the Project may be referred to collectively, in this Agreement, as “Project Participants.”

2. **RECITALS, CONSTRUCTION AND PRELIMINARY MATTERS.** The Recitals set forth herein and the facts, which follow, are incorporated into this Agreement by reference for all purposes. The facts and the circumstances of the Parties contained in the Recitals, among others, represent the background and framework for this Agreement, the aim and purpose of this Agreement and the intendments of the Parties with respect thereto. This Agreement has been reviewed by attorneys for both Parties and shall not be interpreted with reference to the rules of construction providing for construction against a Party responsible for drafting or creating a particular provision or section, but should instead be interpreted in a manner which broadly carries forth the goals and objectives of the Parties as expressed herein. References to “Sections,” “Annexes,” “Appendices,” “Schedules” and “Exhibits” shall be to Sections, Annexes, Appendices, Schedules and Exhibits, as the case may be, of this Agreement unless otherwise specifically provided. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose nor given any substantive effect. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. The use herein of the word “include” or “including”, when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. This Agreement is made with reference to the following facts among others:
 - 2.1 SCPPA was created pursuant to provisions contained in the Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of California, as amended from time to time (the “Act”), by its members, which are municipalities and an irrigation district

that supply, among other things, electrical energy, in the State of California, for the purpose of jointly and cooperatively undertaking the planning, financing, development, acquisition, construction, improvement, betterment, operation, and maintenance, of projects for the generation or transmission of electric energy, including the development and implementation of systems and frameworks for the acquisition and delivery of secure, long-term reliable supplies of renewable electric energy.

- 2.2 Pursuant to the terms of the Act, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, manage, operate, maintain and administer projects involving systems, methodologies and programs for the acquisition, supply procurement and delivery of secure, long-term reliable supplies of renewable electric energy and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, undertaken, constructed, managed, operated, maintained and administered and to provide by agreement for the performance and carrying out of any such activities.
- 2.3 Purchaser is a general law California municipality which provides electric energy to its citizens through its municipally owned electric system. Purchaser is one of the parties to the SCPPA Joint Powers Agreement and is one of the eleven founding member municipalities which formed SCPPA. Since the initial creation of SCPPA pursuant to the Joint Powers Agreement, Purchaser has acted, in part, through SCPPA's Board of Directors to carry out generation, transmission and other projects through SCPPA.
- 2.4 During the past decade Purchaser and other SCPPA members have experienced the imposition of a substantial number of new environmental laws, rules, regulations and policies and revised resource requirements which have effectively required Purchaser and other SCPPA members to shift generation assets and increasingly turn to and rely upon renewable forms of energy generation, including solar energy technologies, systems and facilities, as a significant part of the generation resource portfolio necessary and appropriate to their electric systems. This shift to renewable energy including solar generation has created an ever-increasing need for the development of secure long-term arrangements for the acquisition of solar energy resources and the delivery of energy from solar generation facilities so that the Project Participants will be able to carry out their objectives to reliably supply their customers with renewable electric energy. The acquisition for the Project Participants of the resources and output of the solar energy generation facility reflected herein, including the procurement of the energy from this facility by way of the Power Purchase Agreement and the accompanying facility purchase

option and the associated ancillary provisions for acquisition and delivery of the resources and output of the facility and the benefits of its associated lines, substations, interconnections, leases, licenses, contract rights, clearances, permits, entitlements and other assets and infrastructure, has been carried forth at the request of the Project Participants to assist the Project Participants in their endeavors to meet their required renewable electric energy resource goals.

- 2.5 Over the course of the past several years members of SCPPA have investigated means and methods by which to acquire renewable energy generation resources and secure necessary long-term reliable supplies of renewable electric energy, including energy generated by facilities employing solar energy based technologies, to carry forth their generation responsibilities to their citizens.
- 2.6 To facilitate the appropriate review and due diligence studies necessary to carry forth an effective program for the development of renewable resources SCPPA created the “Renewable Electric Energy Resource Project” to be carried forth between SCPPA and those SCPPA members desiring to participate in this renewable energy oriented project under SCPPA’s Joint Powers Agreement.
- 2.7 To further the aims of the proposed Renewable Electric Energy Resource Project, on January 19, 2006 the SCPPA Board of Directors approved Resolution 2006-2 which declared its intention to reimburse certain renewable resource expenditures from the proceeds of future financings, as required by United States Department of Treasury Regulations section 1.150-2.
- 2.8 Thereafter on March 17, 2006 the SCPPA Board of Directors by way of Resolution 2006-13 found and declared the proposed Renewable Electric Energy Resource Project to be an official SCPPA Study Project pursuant to the SCPPA Joint Powers Agreement and authorized the execution of a development agreement for the Renewable Electric Energy Resource Project among SCPPA and the SCPPA members participating in this Study Project.
- 2.9 During the ensuing time frame following the creation of the Renewable Electric Energy Resource Project the Board of Directors approved certain additional resolutions declaring its intention to reimburse certain renewable resource expenditures from the proceeds of further future financings, as required by United States Department of Treasury Regulations section 1.150-2.
- 2.10 In pursuit of the goals of the Renewable Electric Energy Resource Project SCPPA has issued Requests for Proposals for potential renewable electric resources to address SCPPA member renewable energy needs, and the

Purchaser and other participants in the Renewable Electric Energy Resource Project have identified potential solar energy generation resources which are being developed in La Paz County, Arizona. This solar energy project has been denominated as the La Paz Solar Tower Project. The La Paz Solar Tower Project is being developed by La Paz Solar Tower LLC, a Delaware limited liability company which is an affiliate of EnviroMission Limited, a corporation formed in Australia. The La Paz Solar Tower Project entails a generating facility to be situated on an approximately 5700 acre site consisting principally of Arizona state lands.

- 2.11 At the time of the formation of this Agreement, the Power Purchase Provider as the developer and owner of the La Paz Solar Tower Project has undertaken to develop, construct and operate, and pursuant to the Power Purchase Agreement to sell to SCPPA a portion of the output from the La Paz Solar Tower Project (the developed "Facility," as further described herein). The Facility, when fully developed, is contemplated to entail a solar power generating facility with an expected nameplate capacity of 200MW. The Facility is to be situated in western La Paz County along Arizona State Route 95 between the towns of Parker and Quartzite. The Power Purchase Provider's project development responsibilities will involve, among other things, the siting, construction, and installation of this solar tower facility. The facility is anticipated to contain thirty-two (32) 6.25 MW pressure-staged turbines. The turbines are to be mounted in 2x2 banks of four at the base of the generation facility. The interconnected grid from the facility is projected to include either one 230kv or 500kv substation interconnected by a 230kv or 500kv transmission line that will in turn provide access to the transmission system of the Western Area Power Administration. This project, to be developed by La Paz Solar Tower LLC, is contemplated to entail the solar generation facility, designated portions of the infrastructure facilities, transmission tie line, substation, SCADA system equipment, related communication lines, access roads, operations, maintenance and storage facilities, and other equipment, materials, and improvements associated with such facilities. The Facility which is slated to provide energy to the Project Participants includes all structures or improvements erected on the portion of the state land lease dedicated thereto, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery, and other articles attached thereto or to the extent used in connection therewith, and all spare parts which may from time to time be incorporated or installed in or attached thereto, all related contracts and agreements for services or for real or personal property or goods related thereto, all real or personal property owned, easement granted upon or related thereto, and all other real and tangible and intangible personal property leased or owned by the developer to the extent associated with the Project and placed upon or used in connection with the generation of electricity from the Project.

- 2.12 The Project Participants desire to obtain the SCPPA Facility Output and also to put into place certain acquisition alternatives under which SCPPA would be provided the ability to exercise an option to purchase or acquire the Facility or a portion thereof or to otherwise succeed to the ownership of the Facility or a portion thereof as well as related resources. It is the intention of the Project Participants, as well, to provide a means by which the Project Participants may secure such transmission and delivery resources as may be necessary to transmit, move or exchange the energy from the Facility as directed by the respective Project Participants.
- 2.13 To carry forth the Project goals, Purchaser and the other participants in the Renewable Electric Energy Resource Project have carried out extensive investigations into the advisability of the methodology for the acquisition of the long-term reliable supply of renewable electric energy from the Facility provided for through the Power Purchase Agreement for the purpose of carrying forth the goals of achieving a continuing systematic source of renewable electric energy.
- 2.14 The Project Participants have examined numerous alternatives. Based upon the investigations by Purchaser and the other participants in the Renewable Electric Energy Resource Project, the Project Participants have determined that, in the case of the La Paz Solar Tower Project, the purchase of solar energy under and pursuant to the provisions of the Power Purchase Agreement, together with the alternatives for acquisition of the Facility which are provided for in the Power Purchase and Security Agreements, provides the most desirable commercial structure by which to best achieve the Project Participants' renewable energy needs and best satisfy the continuing requirements of the Project Participants' respective renewable portfolio standards.
- 2.15 The Project Participants have participated in the negotiation of a power purchase agreement and related agreements, arrangements and mechanisms for the procurement of the SCPPA Facility Output of the Facility by way of a transaction through which SCPPA will purchase the SCPPA Facility Output of the Facility and will pay for SCPPA Facility Output, Replacement Energy, Excess Energy, Capacity Rights, Environmental Attributes and any other SCPPA Facility Output in connection with the delivery of the same, and which also provide certain acquisition alternatives under which SCPPA would be entitled to exercise an option to, purchase or acquire the Facility or an ownership interest therein or to otherwise succeed to the ownership in the Facility, its various interconnections, its associated transmission arrangements, its resources, its liabilities, its leases, contracts, permits, services and other related facility assets, rights and entitlements. In addition the Project Participants and SCPPA have further carried forth due diligence investigations and plans and measures by which to provide appropriate project financing in connection with such potential acquisitions.

- 2.16 Purchaser and the other Project Participants have also examined and analyzed alternative methodologies and structures for the potential acquisition of solar generation to determine the most reliable framework with the best pricing attributes to provide the best value to each Project Participant's respective renewable generation portfolio. Purchaser and the other Project Participants have concluded that with respect to the La Paz Solar Tower Project, the methodology posed by way of the Power Purchase and Security Agreements set forth herein provides the Project Participants with the most desirable means to achieve secure reliable long-term supplies of solar generation.
- 2.17 The Project Participants have concluded that the purchase of solar generation under the Power Purchase Agreement and the potential option to purchase solar generation facilities contemplated through the Power Purchase Agreement and related agreements and the structure, design and planned methodologies contemplated herein, as part of the Project, will materially assist the Project Participants in carrying out their critical operating and business objectives to provide a long-term supply of solar energy for the generation needs of the Project Participants. SCPPA, Anaheim, Azusa, Banning, Burbank, Colton, Glendale and Pasadena anticipate that the SCPPA Facility Output produced by the Project will be utilized to serve the Project Participants' renewable energy needs within their respective service areas and will materially assist each respective utility in meeting its renewable portfolio standard.
- 2.18 To carry forth the objectives set forth herein, the Parties acknowledge, authorize and agree that SCPPA (i) is entering into the Power Purchase Agreement with La Paz Solar Tower LLC, an affiliate of EnviroMission Limited, which will provide, in part, for the purchase of SCPPA Facility Output from the Facility (ii) may enter into amendments of the Power Purchase Agreement as approved by the Coordinating Committee and the Board of Directors and (iii) in addition, will enter into other Power Purchase and Security Agreements which, along with other applicable provisions of the Power Purchase Agreement, will provide SCPPA with certain purchase rights as well as a mortgage, liens and security interests with respect to the Project and certain related facilities and property, all as shall inure to SCPPA for and on behalf of the Project Participants in accordance with each Project Participant's Output Entitlement Share and Output Cost Share, including all of the rights, benefits and entitlements and all of the duties, obligations, and liabilities under the Power Purchase and Security Agreements accruing through SCPPA, including the receipt of SCPPA Facility Output under and pursuant to the terms of the Power Purchase Agreement and this Agreement and (iv) may enter into such Project Agreements and such amendments to such Project Agreements as the Coordinating Committee and the Board of Directors may from time to time approve.

- 2.19 In order to secure the performance of the Power Purchase Provider in connection with all of its obligations and requirements under the Power Purchase and Security Agreements, SCPPA has endeavored to provide for various legal mechanisms including Security Instruments and other contractual provisions under which SCPPA is entitled to exercise certain remedial rights and assurances, cure rights and foreclosure rights in order to assure the provision of electric energy by the Facility to satisfy the requirements of the Power Purchase Agreement. It is the intention of the Parties that the Project Participants, under the Power Sales Agreements, shall be reposed with the rights, benefits, liabilities, obligations and risks accruing to SCPPA pursuant to the provisions of these instruments in accordance with each Project Participant's Output Entitlement Share and Output Cost Share.
- 2.20 Purchaser has need for a long-term source of renewable energy to satisfy Purchaser's renewable portfolio standard requirements and desires to ensure the reliable delivery of solar powered electric energy generation to fulfill this requirement. Purchaser desires that SCPPA proceed with arrangements providing for the economic design, structuring, financing, Acquisition, development, implementation, operation and administration of the Project to procure such a long-term supply of secure renewable solar powered electric generation. To assist in meeting such future renewable generation needs, Purchaser has determined that it is desirable to enter into this Agreement to procure such renewable generation.
- 2.21 The Purchaser and the other Project Participants desire and intend through the Power Sales Agreements to provide for certain potential acquisition alternatives for SCPPA's purchase of the Facility or an ownership interest therein, including certain options under the Power Purchase and Security Agreements.
- 2.22 SCPPA will take or cause to be taken all reasonable steps necessary to cause to be secured, such contracts, instruments, rights and entitlements and all such governmental entitlements, permits, licenses and approvals as are necessary for SCPPA to secure the benefits of the Project, and will then proceed as appropriate with, all measures necessary for the economic design, structuring, financing, Acquisition, development, implementation, operation and administration of the Project, including, where applicable and in accordance with this Agreement, the potential purchase of all or any portion of the Project. To the extent provided through the Project Agreements, SCPPA will carry forth those measures as directed by Purchaser and the other Project Participants, associated with the operation and maintenance of those interests and facilities designated as part of the Project to provide a secure source of renewable energy for Purchaser and the other Project Participants contracting with SCPPA therefor pursuant to the terms and conditions of the Project Agreements.

- 2.23 The Purchaser and the other Project Participants may desire to finance certain costs required for the Acquisition, financing, and development of the Project by way of funds raised through the issuance by SCPPA of Bonds. Except as otherwise provided herein, each Project Participant shall be solely responsible for its respective associated debt obligations, including but not limited to the repayment of its share of the Bonds, as provided in each Project Participant's Power Sales Agreement.
- 2.24 In accordance with the directions of the Project Participants and the determination of the Board of Directors SCPPA will finance the costs of acquiring and developing the Project or an ownership interest therein, including the acquisition of all or any portion of the Project, either pursuant to the Power Purchase Agreement or otherwise, through the issuance of Bonds. In addition, in the event certain other conditions should occur under which SCPPA shall determine to, and be provided opportunity to, purchase the Facility or an ownership interest therein pursuant to the Power Purchase and Security Agreements or otherwise acquire ownership in the Facility, it is anticipated that SCPPA will issue Bonds for the purpose of financing the costs thereof. To pay the costs of acquiring, financing, and developing the Project, SCPPA will enter into the Power Sales Agreements with the Project Participants which, among other things, will provide for the payment of all debt service associated with the Bonds. In order to enable SCPPA to issue Bonds it is necessary for SCPPA to have binding agreements with the Project Participants to pay all of SCPPA's costs associated with the Project, and all payments required to be made in accordance with the applicable provisions of the Power Sales Agreements entered into by the Project Participants, including payments required to be made under this Agreement, may be pledged by SCPPA as security for the payment of the applicable Bonds, and the interest thereon, subject to the application thereof to such purposes and on such terms as provided in the Indenture and as required by the Act. SCPPA shall further provide for the administration, operation and maintenance of the Project if acquired by it through the application of the payments required to be made by the Project Participants to SCPPA in accordance with the provisions of the Power Sales Agreements.
- 2.25 In order to enable SCPPA to carry out the activities necessary to the planning, economic design, structuring, financing, Acquisition, development, implementation, operation and administration of the Project on behalf of the Project Participants, it is necessary for SCPPA to have binding agreements with both Purchaser and the other Project Participants in the Project and to employ those payments made under the respective Power Sales Agreements for the purpose of securing and paying for the rights, services, entitlements and deliverables contemplated by each of the Project Participants. SCPPA shall provide for the further investigation, implementation, administration, operation and maintenance of the Project if acquired by it through the application of the payments required to be

made pursuant to the Power Sales Agreements in accordance with their provisions.

2.26 To the extent that SCPPA should finance any costs of acquisition of the Project with Bonds that are subject to any Federal Tax Law Requirements, it is necessary that both the Purchaser and the other Project Participants be unconditionally obligated to comply with such Federal Tax Law Requirements as determined and directed by SCPPA until such time as any such Bonds have been fully paid or redeemed and discharged.

2.27 Each Project Participant shall pay from its electric revenue fund, including any and all legally available electric system reserves, all amounts payable to SCPPA under its Power Sales Agreement, including but not limited to its Monthly Costs and all other costs, and such payments shall constitute an operating expense of the Project Participant's electric utility.

3. **AGREEMENT.** For and in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and in order to pay SCPPA for its costs of Purchaser's share of the SCPPA Facility Output and in the event SCPPA acquires the Facility or an ownership interest therein to pay SCPPA for Purchaser's share of SCPPA's costs of administration, operation, maintenance and other related costs of the Facility or an ownership interest therein and debt service on SCPPA's Bonds issued therefor, and the maintenance of reserves under the Indenture securing such Bonds, the Parties agree as herein set forth.

4. **DEFINITIONS.** Appendix A to this Agreement sets forth definitions of certain terms used in this Agreement. The terms defined in Appendix A and this Section 4, whether in the singular or plural, unless specifically provided otherwise, when used herein or in the Appendices hereto and initially capitalized, shall have the meaning ascribed thereto in said Appendix A or as set out below:

4.1 Agreement. This Agreement, as it may be amended, modified or supplemented from time to time.

4.2 Effective Date. The date described in Section 20.1 hereof.

4.3 [Intentionally Omitted]

4.4 Cost of Acquisition. The Cost of Acquisition shall equal the sum of the amounts described in Sections 4.4.1 through 4.4.18. SCPPA shall apply, as a credit against the Cost of Acquisition, a proportionate share of all receipts, revenues and other moneys received by it from the sale, if any, of surplus equipment, materials, supplies or goods all if and to the extent held in or paid into (without duplication) Funds, and as provided for in the Indenture.

4.4.1 All costs associated with acquisition of the Facility or an ownership interest therein and its resources pursuant to the Power

Purchase Agreement and for acquiring the Facility and its associated resources pursuant to any purchase option or requirement or pursuant to the purchase of rights, interests or options through any applicable Facility Credit Agreement or any other agreement, including, if applicable, any other agreement relating to any security in the Facility or an ownership interest therein or any assignment or consent to assignment, including the purchase of the Facility at any foreclosure sale or taking a deed in-lieu-of foreclosure, or otherwise purchasing the Facility or an ownership interest therein pursuant to any provisions in any of the Power Purchase and Security Agreements, including without limitation the following costs, as applicable: (i) the cost of acquiring the Facility or an ownership interest therein pursuant to the Power Purchase and Security Agreements, (ii) the cost of purchasing the Facility, as applicable, through any foreclosure sale or by way of any Security Instrument, (iii) the cost of planning, designing, acquiring, constructing, mitigating impacts, installing, and developing the Project or any Capital Improvements or any portion thereof, (iv) the cost of the exercise of cure rights or enforcement of rights with respect to any default by the Power Purchase Provider or any other counterparty under any agreements, mortgages, leases or other instruments relating to or affecting the Project, (v) the cost of contracting for and facilitating the delivery of the output of the Project at the prescribed Point of Delivery or other prescribed location, (vi) the cost, where applicable, of placing the Project into operation, concluding, terminating and decommissioning (as applicable) the Project, obtaining governmental approvals, certificates, permits, assurances, entitlements and licenses relating to the Project, including, where necessary, environmental entitlements, clearances or credits, heretofore or hereafter paid or incurred by SCPPA, (vii) all costs, expenses, obligations and liabilities associated with exercising all performance rights, options, benefits, entitlements, duties, liabilities and obligations under the Project Agreements, (viii) to the extent deemed appropriate by the Coordinating Committee, the cost of procurement of rights associated with interconnection, transmission, and the dispatching, scheduling and delivery of energy and for otherwise facilitating the sale, disposition, movement, taking and accounting for energy (including planning and design costs) and (ix) the cost of those measures taken for the benefit of, and in connection with, the Project that the Coordinating Committee determines shall be included within this Section 4.4.1.

- 4.4.2 All costs and expenses for investigation and development of the Project, for performance studies, for feasibility studies, economic studies, diurnal, barometric and meteorological studies, for

modeling and planning, for examination of legal, environmental and regulatory issues and for securing of legal, environmental or regulatory approvals, for energy cost modeling, project modeling or projections, economic analyses, diurnal, barometric and meteorological forecasts and weather analyses, as well as costs for leases, lease options, lease related rights, land, land rights, land options, resources, turbines, facilities, regulatory developments, geographic, diurnal, barometric and meteorological investigation and analysis, and, if applicable, engineering, consultants, experts' fees, contractors' fees, processing fees, labor, materials, equipment, utility services and supplies, and legal fees and financing costs relating to and in connection with the Project.

- 4.4.3 The costs and expenses incurred in the issuance and sale of bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness (tax-exempt or taxable) from time to time issued, the proceeds of which have been used or will be required to be applied to one or more purposes for which Bonds could be issued, including, without limitation, legal, accounting, engineering, consulting, financing, technical, fiscal agent and underwriting costs, fees and expenses, bond discount, insurance, rating agency fees, and all other costs and expenses incurred in connection with the authorization, sale and issuance of the Bonds.
- 4.4.4 Interest accruing in whole or in part on Bonds for such period as SCPPA may reasonably determine to be necessary in accordance with the provisions of the Indenture.
- 4.4.5 To the extent not included in Total Monthly Costs, the cost of any administrative, regulatory or judicial proceeding or any litigation associated with the Power Purchase and Security Agreements or other Project Agreement, or any aspect of the operation, management or administration of the Project or in connection therewith.
- 4.4.6 To the extent not included in Total Monthly Costs, all costs incurred by SCPPA related to the acquisition of resources, agreements, facilities and supplies for solar energy acquisition, procurement, interconnection, transmission, sale, dispatching, scheduling, movement and delivery and all other incidental costs necessary for and in connection with the Project.
- 4.4.7 Training and testing costs, which are properly allocable to the cost of acquisition and development of the Project.

- 4.4.8 All costs of insurance, if any, applicable to the development of and in connection with the Project.
- 4.4.9 All costs relating to injury or damage claims or judgments paid by SCPPA in connection with the acquisition, development or implementation of the Project less proceeds of insurance, if any.
- 4.4.10 To the extent not included in Total Monthly Costs, legally required or permitted federal, state and local taxes relating to the Project.
- 4.4.11 All other costs incurred by SCPPA and properly allocable to the planning, design, acquisition and development of the Project, including, without limitation, all legal fees relating to the Project (including, but not limited to, legal fees incurred by SCPPA in the development or preparation of Project Agreements or in the enforcement of any provision or provisions of the Project Agreements).
- 4.4.12 The working capital requirements and reserves in such amounts as shall be required during development of the Project and for placing the Project in operation as deemed reasonably necessary by the Board of Directors, and as may be provided or required in the Indenture, and such additional amounts of working capital and reserves, as may be established pursuant to the Indenture.
- 4.4.13 Interest accrued in whole or in part on Bonds prior to and during development of the Project or during any time period as SCPPA may reasonably determine necessary for placing the Project or any component thereof in operation in accordance with the provisions of the Indenture.
- 4.4.14 The deposit or deposits from the proceeds of Bonds issued to finance such costs in any Fund established pursuant to the Indenture to meet the Project Debt Service reserve requirements for the Bonds.
- 4.4.15 Without duplication with respect to amounts otherwise provided in this Section 4.4, the deposit or deposits from the proceeds of Bonds issued to finance such costs in any other Funds established pursuant to the Indenture which deposit or deposits are required or permitted by the Indenture.

- 4.4.16 The payment of principal, premium, if any, and interest when due (whether at the maturity of principal or at the due date of interest or upon redemption) of any note or other evidence of indebtedness, if any should exist, which is issued in anticipation of Bonds for the purpose of financing the Cost of Acquisition.
- 4.4.17 All costs required to be paid to the Project Manager pursuant to any applicable agreement for project management which are applied or are to be applied thereunder to the payment of the Cost of Acquisition.
- 4.4.18 Without duplication, all other costs (including incidental financing costs and the costs of issuance of Bonds) financed by the issuance of Bonds (i) pursuant to Section 13 of this Agreement, (ii) for procurement of rights associated with the acquisition, production, generation, transmission, interconnecting, balancing, shaping, firming and delivery and for otherwise facilitating the dispatching, scheduling, disposition, movement, taking and accounting for SCPPA Facility Output (including planning and design costs) relating to, or for the benefit of, the Project that the Board of Directors determines shall be included within this Section 4.4.18, (iii) the acquisition of the Facility or an ownership interest therein or the rights and interests under any of the Power Purchase and Security Agreements; and (iv) any amounts required to be paid pursuant to section 148 of the Internal Revenue Code.
- 4.5 Delivery Point Output Cost Share. As to any Project Participant for each Power Supply Year during the term of the Power Purchase Agreement, the applicable percentage share, as set forth for such Project Participant in Appendix C hereof, of the Delivery Output Point cost component with respect to such Project Participant's Designated Point of Delivery. The Delivery Point Output Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 21.1.
- 4.6 Indenture Cost Share. As to any Project Participant for each Power Supply Year, the applicable percentage share, as set forth for such Project Participant in Appendix C hereof, of the Indenture cost component. The Indenture Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 21.1.
- 4.7 Total Monthly Costs. All of SCPPA's costs to the extent not paid from the proceeds of Bonds, certificates of participation, commercial paper, notes or other evidences of indebtedness issued in anticipation of Bonds, resulting from SCPPA's contracting for, providing for, accommodating, acquiring, and facilitating the Project, and from its administration,

ownership, operation and maintenance of and renewal and replacement of any facility, service or other element or component of the Project, including costs arising under any of the Power Purchase and Security Agreements or other Project Agreements. SCPPA shall apply, as a credit against Total Monthly Costs, any receipts, revenues and other moneys received by SCPPA from surplus equipment, materials, supplies or assets relating to the Project sold prior to the date of Commercial Operation for the benefit of SCPPA (not otherwise applied as a credit against the Cost of Acquisition as provided in Section 4.4) and any other amounts to be so applied as provided in the Indenture. Total Monthly Costs shall, as applicable, consist of (i) the Operating cost component (described in Section 4.9.1), (ii) the Delivery Point Output cost component (described in Section 4.8.1), (iii) the Transmission Services cost component (described in Section 4.9.2), (iv) the PPA General and Administrative cost component (described in Section 4.8.2), (v) the Ownership General and Administrative cost component (described in Section 4.9.3), (vi) a Reserve Fund cost component (described in Sections 4.8.3 and 4.9.4), (vii) the Indenture cost component (described in Section 4.9.5), and (viii) a Supplementary Services cost component to the extent SCPPA incurs such cost (described in Sections 4.8.4 and 4.9.6), and Total Monthly Costs shall include, but not be limited to, the items of cost and expense referred to in the Power Purchase and Security Agreements, the Ownership Participation and Related Agreements and this Section 4.7 that are accrued or paid by SCPPA during each Month of each Power Supply Year. In the event any Power Supply Year shall consist of fewer than twelve Months, the fraction set forth in Sections 4.8.2, 4.9.1, 4.9.3 and 4.9.5(b) shall be adjusted accordingly and, in the event of any revision of the Annual Budget after the commencement of any Power Supply Year, the amount determined pursuant to said Sections shall be appropriately adjusted so that any increase or decrease in the portion of the Annual Budget applicable to said Sections shall be evenly apportioned over the remaining Months of such Power Supply Year.

4.8 Power Purchase Agreement Total Monthly Costs. The cost components of Total Monthly Costs during the term of the Power Purchase Agreement shall consist of the following:

4.8.1 The Delivery Point Output cost component of the Total Monthly Costs for each Month with respect to each of the respective Points of Delivery shall consist of the costs of the SCPPA Facility Output or Replacement Energy, as calculated at the applicable Energy Prices therefor, as delivered at such Point of Delivery during such Month.

4.8.2 The PPA General and Administrative cost component of the Total Monthly Costs for each Month shall consist of one-twelfth of the administrative and general costs with respect to

the Project, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, any taxes required to be paid by SCPPA with respect to SCPPA Facility Output or the Project, (ii) all expenses incurred in enforcing the Power Purchase Agreement and other Power Purchase and Security Agreements, and (iii) all costs related to the conducting of the business of SCPPA with respect to the Project, including the applicable portion of salaries, fees for legal, engineering, financial and other services, all other costs attributable to miscellaneous and incidental expenses in connection with the administration of the Project, and all other expenses properly related to the conduct of such affairs of SCPPA.

4.8.3 The Reserve Fund cost component of the Total Monthly Costs shall consist of the monthly costs associated with a Project Participant's Project Cost Share that is necessary to establish and maintain the Reserve Funds at the level deemed prudent and appropriate by the Coordinating Committee and the SCPPA Board of Directors.

4.8.4 The Supplementary Services cost component of the Total Monthly Costs shall consist of all monthly costs incurred by SCPPA, if any, in connection with the transmission, dispatching, scheduling, firming, balancing, or delivery of and otherwise facilitating the disposition, movement, crediting and accounting for a Purchaser's Output Entitlement Share from its Designated Point of Delivery to one or more specified delivery point(s) as determined by such Purchaser pursuant to Sections 9.2 and 9.5.

4.9 Ownership Total Monthly Costs. In the event that SCPPA acquires the Facility or an ownership interest therein, commencing with such Acquisition by SCPPA, the cost components of Total Monthly Costs shall consist of the following:

4.9.1 The Operating cost component of the Total Monthly Costs for each Month shall consist of one-twelfth of the costs of all Operating Work, operating expenses, and all costs relating to, contracting for, providing for, managing, administering, producing, procuring, transporting and delivering of the SCPPA Facility Output during such Power Supply Year, including, but not limited to, as applicable, ordinary operation and maintenance costs or other operation and maintenance costs payable by SCPPA and, where applicable, costs of repairs, replacements, reconstitution and reconstruction of the Project (that are not included in any Cost of Acquisition), any other

costs payable by SCPPA in connection with SCPPA Facility Output; provided that the Operating cost component shall not include the Transmission Services cost component as set forth in Section 4.9.2.

4.9.2 The Transmission Services cost component of Total Monthly Costs for each Month and with respect to the Transmission Services applicable to the delivery of SCPPA Facility Output from the Point of Interconnection to each respective Point of Delivery, the costs of such Transmission Services, together with the associated Transmission Losses, for such Month.

4.9.3 The Ownership General and Administrative cost component of Total Monthly Costs for each Month shall consist of one-twelfth of the administrative and general costs (exclusive of costs included in the Operating cost component set forth in Section 4.9.1 above) with respect to the Project, including (i) legal fees, costs relating to litigation (including disbursements and other amounts paid as a result of such litigation), insurance costs (including amounts to fund any self-insurance program), overhead costs, taxes required to be paid by SCPPA with respect to the Project and any other costs payable by SCPPA in connection with SCPPA Facility Output, (ii) all expenses incurred in enforcing the Ownership Participation and Related Agreements and the expenses of enforcing the applicable covenants and provisions of the ground leases, leasehold interests, rights-of-way, estates and other interests and property associated with the Facility or an ownership interest therein, including all expenses of foreclosure or otherwise perfecting any property interest or security interest in the Facility, and (iii) all costs related to the conducting of the business of SCPPA with respect to the Project, including the applicable portion of salaries, fees for legal, engineering, financial and other services, all other costs attributable to miscellaneous and incidental expenses in connection with the administration of the Project and all other expenses properly related to the conduct of such affairs of SCPPA; provided that the Ownership General and Administrative cost component shall not include the Transmission Services cost component as set forth in Section 4.9.2.

4.9.4 The Reserve Fund cost component of Total Monthly Costs shall consist of the monthly cost associated with a Project Participant's Project Cost Share that is necessary to establish and maintain the Reserve Funds at the level deemed prudent and appropriate by the Coordinating Committee and the SCPPA Board of Directors; provided, however, that to the extent such a Reserve Fund cost component of Total Monthly

Costs are paid by the Project Participants pursuant to the Indenture cost component of Total Monthly Costs, the Project Participants shall be credited for that amount of the monthly Reserve Fund cost component so paid by Project Participants which is contained in such monthly Indenture cost component.

4.9.5 The Indenture cost component of Total Monthly Costs, as applicable, shall consist of:

(a) The amount, without duplication, which SCPPA is required under the Indenture to pay with respect to Debt Service or to pay or deposit during such Month into Funds established by the Indenture for Debt Service and for any Debt Service reserve requirements for the Bonds or for operating and other reserve requirements, including replenishment (the timing of which shall be in accordance with the provisions of this Agreement and the Indenture) of any reserves drawn down as a result of a failure of a Project Participant to pay all or any portion of its share of Monthly Costs;

(b) One-twelfth of the amount (not otherwise included under any item in this Section 4.9 hereof) which SCPPA is required under the Indenture to pay or deposit during such Power Supply Year into any other Fund established by the Indenture, including, without limitation, any amounts required to make up a deficiency in any Fund required or permitted by the Indenture;

(c) The amount of fees, expenses or other charges incurred or payable by SCPPA under the Indenture; and

(d) Any rebate amount owed to the federal government.

4.9.6 The Supplementary Services cost component of the Total Monthly Costs shall consist of all monthly costs incurred by SCPPA, if any, and to the extent not included in Section 4.9.1 or Section 4.9.2, in connection with services for transmission, dispatching, scheduling, tagging, firming, balancing, swapping, exchanging or delivery and for otherwise facilitating the disposition, movement, taking, receiving, crediting and accounting for the SCPPA Facility Output provided for under this Agreement. The Supplementary Services cost component of the Total Monthly Costs shall also entail all monthly costs incurred by SCPPA, if any, which are necessary to move or otherwise handle Purchaser's Output Entitlement Share from its Designated Point of Delivery to one or more specified

delivery point(s) as determined by Purchaser pursuant to Sections 9.2 and 9.5.

- 4.10 Project Cost Share. For any Power Supply Year and as to any particular Project Participant, the share (expressed as a percentage), as set forth in Appendix B of this Agreement, attributable to such Project Participant with respect to Monthly Costs as provided in Section 7.1 and Section 7.2 hereof, other than financing and refinancing related costs associated with the Project. The Project Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix B as provided in Section 21.1.
- 4.11 Transmission Services Cost Share. As to any particular Project Participant, in the event that SCPPA shall acquire the Facility or an ownership interest therein, for each Power Supply Year commencing upon such acquisition, the applicable percentage share, as set forth for such Project Participant in Appendix C hereof, of the Transmission Services cost component with respect to the delivery of such Project Participant's Point of Interconnection Allocable Share of SCPPA Facility Output, less applicable Transmission Losses, from the Point of Interconnection to such Project Participant's Designated Point of Delivery. The Transmission Services Cost Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 21.1.

5. PURCHASE AND SALE OF OUTPUT AND THE ROLES AND OBLIGATIONS OF SCPPA AND THE PROJECT PARTICIPANTS.

- 5.1 Purchase and Sale of Output Entitlement Share. In accordance with the terms and conditions of this Agreement, commencing on the earliest of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of any Bonds, (iii) the effective date of the Power Purchase Agreement, or (iv) the date of the first delivery of energy to Purchaser pursuant to this Agreement, and continuing through the term of this Agreement, except as otherwise provided herein, SCPPA shall provide Purchaser its Output Entitlement Share of any and all products, rights, and benefits, whether tangible or intangible received or obtained by SCPPA with respect to the Project, including without limitation SCPPA Facility Output or, if applicable, Replacement Energy, at Purchaser's Designated Point of Delivery, and Purchaser shall be responsible for and pay its applicable Cost Share of any and all costs, liabilities and obligations associated with the acquisition of such products, rights, and benefits, which shall include without limitation all costs, liabilities and obligations associated with SCPPA Facility Output or Replacement Energy, as applicable, under the Power Purchase Agreement and any other applicable Project Agreement, or associated with the purchase and operation of the Facility upon any purchase or acquisition of the Facility

or an ownership interest therein by SCPPA, including purchase or acquisition of any rights pursuant to the Power Purchase and Security Agreements and any other applicable Project Agreement, and all costs, credits, liabilities and obligations under the Indenture or Bonds issued by SCPPA to finance the Project or any portion or component thereof, any Cost of Acquisition, or any Capital Improvements.

- 5.2 Output and Deliverables. During the term of the Power Purchase Agreement, SCPPA shall purchase and provide and Purchaser shall purchase from SCPPA and receive its Output Entitlement Share of the SCPPA Facility Output or Replacement Energy as delivered at Purchaser's Designated Point of Delivery in accordance with the Power Purchase Agreement. In the event that SCPPA shall acquire the Facility or an ownership interest therein, from and after such Acquisition SCPPA shall allocate at the Point of Interconnection the Purchaser's Point of Interconnection Allocable Share, as set forth in Appendix C of this Agreement, of the SCPPA Facility Output as delivered to the Point of Interconnection and shall deliver or cause the delivery of such allocated share of SCPPA Facility Output, less applicable Transmission Losses, to Purchaser at its Designated Point of Delivery, and Purchaser shall purchase and receive such SCPPA Facility Output delivered to its Designated Point of Delivery as its Output Entitlement Share of such SCPPA Facility Output. To the extent permitted by the Power Purchase and Security Agreements, the applicable Project Agreements, or otherwise determined by the Coordinating Committee or the Board of Directors, SCPPA will endeavor to take such actions or implement such measures as may be necessary or desirable for the utilization, maintenance or preservation of the rights and interests of the Project Participants in the Project including, if appropriate, such enforcement actions or other measures as the Coordinating Committee or the Board of Directors deems to be in the Project Participants' best interests. To the extent not inconsistent with the Power Purchase and Security Agreements or other applicable Project Agreements, SCPPA may also be reposed with responsibilities for planning, designing, financing, developing, acquiring, insuring, contracting for, administering, operating and maintaining the Project to effectuate the delivery and sale of such share of SCPPA Facility Output or Replacement Energy, as applicable, to Purchaser. To the extent such services are available and can be carried forth in accordance with the Power Purchase and Security Agreements or other applicable Project Agreements, SCPPA shall also provide such other services, as approved by the Coordinating Committee or the Board of Directors, as may be deemed necessary to secure the benefits and/or satisfy the obligations associated with the Power Purchase and Security Agreements or other applicable Project Agreements. SCPPA shall use its best efforts, on behalf of Purchaser and the other Project Participants, to secure the benefits of the transactions contemplated under the Power Purchase and Security Agreements or other applicable Project Agreements including, if

appropriate, SCPPA's acquisition of the Facility or an ownership interest therein and its associated resources, as well as the delivery of the SCPPA Facility Output or Replacement Energy, as applicable, contemplated by this Agreement, and shall endeavor to maintain and secure the rights and benefits accruing to SCPPA through the Power Purchase and Security Agreements and the other applicable Project Agreements in accordance with Purchaser's Output Entitlement Share. SCPPA is authorized to exercise the powers vested in SCPPA pursuant to the Act, its Joint Powers Agreement and this Agreement, as agent for Purchaser to fully carry forth Purchaser's objectives in the Project as set forth herein.

5.3 Project Manager. SCPPA or its designee or designees shall act as Project Manager to develop, operate, maintain and administer the Project, or cause the Project to be developed, operated, maintained and administered, through any development, operating, project management or agency agreement or, as applicable, through the Power Purchase Agreement.

5.4 Adoption of Annual Budget. The Annual Budget and any amendments to the Annual Budget shall be prepared and approved in accordance with Sections 5.4.1 or 5.4.2, respectively.

5.4.1 SCPPA will prepare and submit to Purchaser a proposed Annual Budget at least 60 days prior to the beginning of each Power Supply Year. In connection with the preparation of the Annual Budget, SCPPA shall incorporate therein the Operating Budget (including an energy production costs budget and where appropriate a provision for the payment of costs of renewals, replacements or other costs of acquisition and development which are not being financed by proceeds of Bonds or other sources) for such Power Supply Year as prepared by the Project Manager and approved by the Coordinating Committee. Purchaser and the other Project Participants may then submit to SCPPA, at any time until the Annual Budget is adopted, any matters or suggestions relating to the Annual Budget. SCPPA shall adopt the Annual Budget not less than 30 nor more than 60 days prior to the beginning of such Power Supply Year and shall cause copies of such adopted Annual Budget to be delivered to each Project Participant; provided, however, the Annual Budget for the first Power Supply Year shall be prepared, considered, adopted and delivered in the most practicable manner available prior to Commercial Operation of the Facility. As required from time to time during any Power Supply Year after seven days written notice to each Project Participant, SCPPA may, pursuant to the foregoing provisions for adopting the Annual Budget, adopt an amended Annual Budget for and applicable to such Power Supply Year for the remainder of such Power Supply Year.

5.4.2 Any adjustment, and any other or further mechanism for adjustment, as may be required to address the variability of costs of operation of

the Project at any time during the Power Supply Year or the variability of or addition to any other Annual Budget component, may be incorporated into the Annual Budget as provided above, or any amendment to an Annual Budget at any time during any Power Supply Year upon the seven days written notice to each Project Participant as set forth in Section 5.4.1.

- 5.5 Reports. SCPPA will prepare and issue to Purchaser and the other Project Participants the following reports each quarter of a Power Supply Year:
 - 5.5.1 Financial and operating statement relating to the Project.
 - 5.5.2 Variance report comparing the costs in the Annual Budget versus actual costs, and the status of other cost-related issues with respect to the Project.
- 5.6 Records and Accounts. SCPPA will keep, or cause to be kept, accurate records and accounts of each of the properties and facilities comprising the Project as well as of the operations relating to the Project, all in a manner similar to accepted accounting methodologies associated with similar projects. All transactions of SCPPA relating to the Project with respect to each Fiscal Year shall be subject to an annual audit. Purchaser shall have the right at its own expense to examine and copy the records and accounts referred to above on reasonable notice during regular business hours.
- 5.7 Provide Information. Purchaser agrees to supply SCPPA, upon request, with such information, documentation and certifications as SCPPA shall reasonably determine to be requisite to and necessary or desirable for the design, financing, refinancing, development, operation, administration, maintenance and ongoing activities of the Project, including information reasonably available to allow SCPPA to respond to requests for such information from any federal, state or local regulatory body or other authority.
- 5.8 Consultants and Advisors Available. SCPPA shall make available to the Coordinating Committee at the latter's request, all consultants and advisors, including, but not limited to, financial advisors, Bond Counsel and Tax Counsel, that are retained by SCPPA, and such consultants and advisors shall be authorized to consult with and advise the Coordinating Committee on Project matters.
- 5.9 Deposit of Insurance Proceeds. Except as otherwise may be required by any of the Project Agreements and unless otherwise provided by the Coordinating Committee, SCPPA promptly shall deposit with the Project Trustee or Lender any insurance proceeds received by SCPPA as a result of injury or damage to any insured interest attributable to any component or all or any portion of the Project. All insurance proceeds collectible by SCPPA as a result of an insured event affecting the Project shall be

applied as directed by SCPPA (which directions shall be in accordance with any applicable provisions of the Indenture).

- 5.10 Compliance with Federal Tax Law Requirements. Notwithstanding anything to the contrary in this Agreement, SCPPA and the Purchaser shall each take all actions necessary to comply in all respects with the Federal Tax Law Requirements applicable to any Bonds and shall refrain from taking any action that would result in or cause non-compliance with the Federal Tax Law Requirements applicable to any Bonds.

6. COORDINATING COMMITTEE.

- 6.1 Establishment and Authorization of the Coordinating Committee. The Coordinating Committee is hereby established and duly authorized to act on behalf of the Project Participants as provided in this Section 6 for the purpose of (i) providing coordination among, and information to, the Project Participants and SCPPA, (ii) the administration of the Power Purchase Agreement, (iii) the administration of the Project Agreements, (iv) the administration of any operating agreement or any maintenance agreement, (v) otherwise making any recommendations to the Board of Directors regarding the administration of the Project and any acquisitions related thereto, (vi) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration and operation thereof, and such further developments as may need to be addressed, (vii) making recommendations to the Board of Directors in connection with the exercise of any option, or other acquisition alternative, to purchase the Facility or any ownership interest therein under and pursuant to any of the Power Purchase and Security Agreements, including the purchase of rights and interests under the Facility Credit Agreements or under any arrangement or agreement with the Facility Lender or under any consents or assignments or any agreements relating thereto, and taking foreclosure action (or deed in-lieu-of foreclosure) under and pursuant to any of the Security Instruments or purchasing the Facility at foreclosure sale or otherwise; provided, however that any decision as to exercise of an option to purchase the Facility or an ownership interest therein or taking any such foreclosure action or such purchase at a foreclosure sale shall be subject to the approval of the Board of Directors, (viii) exercising any cure rights with respect to any default by the Power Purchase Provider under any agreements, deeds of trust, leases or other instruments and (ix) execution of the Coordinating Committee responsibilities set forth in Section 6.2 hereof, including the various financial, administrative, and technical matters which may arise from time to time in connection with the Project or the administration and operation thereof, and such further developments as may need to be addressed. The Coordinating Committee shall consist of one representative from each Project Participant. Each

Project Participant shall be entitled to cast a vote equal to its Project Cost Share as set forth in Appendix B hereof. SCPPA shall be entitled to one non-voting representative. SCPPA and Purchaser shall, within 30 days after SCPPA has entered into the Power Sales Agreement between SCPPA and Purchaser, give notice to SCPPA and any other Project Participant, of its representative on the Coordinating Committee. Alternate representatives may be appointed by similar written notice to act on the Coordinating Committee, or on any subcommittee established by the Coordinating Committee or by the Board of Directors, in the absence of the regular representative or to act on specified occasions with respect to specified matters. An alternate representative may attend all meetings of the Coordinating Committee but may vote only if the representative for whom she/he serves as alternate is absent. No Project Participant's representative shall exercise any greater authority than permitted by the Project Participant or Project Participants, which she/he represents. The chairperson of the Coordinating Committee ("Chairperson") shall be a representative of the Project Manager. The Chairperson shall be responsible for calling and presiding over meetings of the Coordinating Committee. The Chairperson or SCPPA shall promptly call a meeting of the Coordinating Committee at the request of any representative in a manner and to the extent permitted by law. For the purpose of conducting meetings, a quorum shall exist so long as SCPPA's representative and the representative of at least a majority of the Project Participants shall be present. Except as may otherwise be provided in an agreement to which all of the Project Participants agree, all actions taken by the Coordinating Committee shall require an affirmative vote of Project Participants having Project Cost Shares aggregating at least eighty percent (80%) of the total Project Cost Shares. Notwithstanding the forgoing, however, if a proposed action before the Coordinating Committee or the Board of Directors relates solely to the interests of a single Project Participant and such Project Participant determines, in good faith, that such proposed action will not adversely affect, economically or otherwise, such Project Participant, such Project Participant agrees that it shall not unreasonably withhold its affirmative vote with respect to such proposed action. Should the Coordinating Committee address any determination to exercise the Project Purchase Option all Project Participants shall be given notice of any such proposed action, and the views of any Project Participant desiring to so provide its views to the Coordinating Committee, shall be considered prior to a vote on the proposed action. Unless the Board of Directors shall otherwise determine to require a majority vote pursuant to the terms of the Joint Powers Agreement, all actions with respect to the Project taken by the SCPPA Board of Directors shall require an affirmative vote of at least eighty percent (80%) of the Project Votes (as defined in SCPPA's Joint Powers Agreement, dated as of November 1, 1980, as amended from time to time) cast thereon. Purchaser acknowledges and agrees that SCPPA, through the Coordinating

Committee or the Board of Directors, as applicable, may from time to time enter into applicable Project Agreements or amendments of and supplements to the applicable Project Agreements (in accordance with their respective terms) and that, except as provided herein or as otherwise provided by resolution of the Board of Directors, SCPPA will not be required to obtain the consent or approval of Purchaser in connection with any such Project Agreement or supplement or amendment, provided that any such amendment shall be approved by the Coordinating Committee or the Board of Directors in the manner provided by this Agreement. Conducting of Coordinating Committee meetings and actions taken by the Coordinating Committee may be taken by vote given in an assembled meeting or by telephone, video conferencing, telegraph, telex, letter, e-mail or by any combination thereof, to the extent permitted by law.

6.2 Coordinating Committee Responsibilities. The Coordinating Committee shall have the following responsibilities:

- 6.2.1 Provide liaison between SCPPA and the Project Participants at the management or other levels with respect to Acquisition, further developments, operation and ongoing administration of the Project, and maintain a liaison between the Project Participants and all other SCPPA members with respect to the Project, and where the Coordinating Committee deems it appropriate, maintain a liaison with the counterparties to any Project Agreements and with any other entities or utilities engaged in or in connection with other renewable energy projects.
- 6.2.2 If any desired Project design, feasibility or planning studies or activities which are to be completed by SCPPA have not been completed by the Effective Date of this Agreement, oversee, as appropriate, the continuation and completion of such Project design, feasibility or planning studies or activities.
- 6.2.3 Exercise general supervision over any subcommittee established pursuant to Section 6.5.
- 6.2.4 Review, develop, discuss, and, if appropriate, recommend, modify or approve all budgets and revisions thereof prepared and submitted by SCPPA or the Project Manager pursuant to any applicable agreement.
- 6.2.5 Review, develop, discuss, and, if appropriate, modify, approve or otherwise act upon any systems or procedures for adjustment of the Annual Budget or any alternative methodologies for budgeting or billing as set forth in Section 5 and Section 7 of this Agreement.

- 6.2.6 Carry out all other actions reposed in the Coordinating Committee with respect to budgeting and billing as set forth in Section 5 and Section 7 of this Agreement.
- 6.2.7 Review, discuss and attempt to resolve any disputes among the Project Participants or the parties to any Project Agreements including, without limitation, the Power Purchase Provider, the counterparties under the Power Purchase and Security Agreements, the Lease, the Security Instruments, any rights-of-way with respect to the Project, any agreement providing for any interest in real estate with respect to the Project, any common facilities agreements, any transmission provider, any La Paz County officials or representatives, any community organizations, or any other counterparty with respect to any Project Agreement relating to the Project.
- 6.2.8 Make recommendations to the Project Manager, the Board of Directors or to the counterparties to any of the Project Agreements, as appropriate, with respect to the development, operation and ongoing administration of the Project.
- 6.2.9 Upon the request of the Project Participants affected thereby, acting by and through their respective representatives on the Coordinating Committee and in coordination with SCPPA's Board of Directors, adopt a resolution approving the revisions of Appendix B and Appendix C, as applicable, of this Agreement as provided in Section 21.1.
- 6.2.10 Review, develop, and if appropriate, modify and approve rules, procedures and protocols for the administration of the Project or Project Agreements, including rules, procedures and protocols for the management of the costs of the Facility or an ownership interest therein and the scheduling, handling, tagging, dispatching and crediting of SCPPA Facility Output and the handling and crediting of Environmental Attributes associated with the Facility.
- 6.2.11 Review, develop, and if appropriate modify and approve rules, procedures and protocols for the monitoring, inspection and the exercise of due diligence activities in connection with the Acquisitions relating to the Project and the operation of the Facility.
- 6.2.12 Review, and, if appropriate, modify, approve or otherwise act upon, the form or content of any written statistical, administrative, or operational reports, solar energy related data, electric generation information, solar energy production data, diurnal, barometric and meteorological information, solar tower and turbine mechanical

and technical information, facility reliability data, transmission information, forecasting scheduling, dispatching, tagging, parking, firming, shaping, exchanging, balancing, movement, or other delivery information, climate and weather related matters, cloud conditions, regulatory matters or requirements, and other information and other similar records or matters pertaining to the Project which are furnished to the Coordinating Committee by the Project Manager, the counterparties to Project Agreements, experts, consultants or others.

- 6.2.13 In coordination with the Board of Directors, review, and, if appropriate, recommend, modify or approve rules, procedures, and protocols as provided in Section 10.3.
- 6.2.14 Review, and, if appropriate, modify, approve or otherwise act upon, practices and procedures as formulated by the Project Manager or, if applicable, the counterparty to any Project Agreement, to be followed by the Project Participants for, among other things, the production, scheduling, tagging, transmission, delivery, firming, balancing, exchanging, crediting, tracking, monitoring, remarketing, sale or disposition of SCPPA Facility Output.
- 6.2.15 Review, modify and approve, if necessary, the schedule of planned activities formulated by the Project Manager or the counterparty with respect to the performance of any Project Agreement, including the policies for selection and utilization of contractors and consultants included in the budgets with respect to the Project. In formulating and approving such schedules, consideration may be given, if possible, to each Project Participant's electric system conditions, which may prevail during such planned activities
- 6.2.16 Review, and, if appropriate, recommend, modify, approve or otherwise act with respect to the exercise of SCPPA's rights under Section 11.6 or 11.8 of the Power Purchase Agreement or review, recommend, approve or otherwise act with respect to the procurement of resources in connection with any New Facility or any Additional Facility under Section 11.6 or 11.8, respectively, of the Power Purchase Agreement.
- 6.2.17 In connection with the Lease, review, exercise, or otherwise act upon any cure rights under Section 11.5 or Section 13.7 of the Power Purchase Agreement or take such other action under the Power Purchase Agreement or the Power Purchase and Security Agreements, or otherwise, in connection with the Lease as may be deemed to be in SCPPA's interest or otherwise appropriate.

- 6.2.18 Review, modify, approve or otherwise act upon any proposed change to the milestone schedule or to any Milestone under the Power Purchase Agreement as the Coordinating Committee shall deem to be desirable, appropriate or otherwise in SCPPA's interest. The Coordinating Committee may impose such other terms, conditions or qualifications upon any such action as the Coordinating Committee shall deem appropriate.
- 6.2.19 Review, approve or otherwise act upon any proposed extension of any date set forth in Appendix I of the Power Purchase Agreement or of any Milestone Date under the Power Purchase Agreement which, in the discretion of the Coordinating Committee, may be appropriate, desirable or otherwise in SCPPA's interest. The Coordinating Committee may impose other conditions or qualifications upon the grant of any such extension as the Coordinating Committee shall deem appropriate.
- 6.2.20 Review and act upon any present, potential or possible future anticipated failure to deliver Guaranteed SCPPA Energy under the Power Purchase Agreement in such manner as the Coordinating Committee shall deem appropriate.
- 6.2.21 Act upon such recommended changes, as the Coordinating Committee shall deem appropriate as set forth in Section 15.5 of the Power Sales Agreements. Such changes as may occur in such manner with respect to Appendix B and Appendix C herein shall be considered an element of the administration of this Agreement and shall be deemed an amendment of this Agreement and shall not require the consent of the Parties hereto.
- 6.2.22 Review, and if appropriate, approve, recommend, modify or otherwise act upon any matters or issues associated with Operating Work and any other matters or issues which may arise in the operation, maintenance or administration of the Project.
- 6.2.23 Review, and if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or by any counterparty to any Project Agreements giving due recognition to the needs of all Project Participants.
- 6.2.24 Review and act upon any matters involving any Security and Assignment Agreement, including but not limited to the Milestone Security, the Performance Security, the Mortgage and any guarantee or letter of credit delivered to or for the benefit of SCPPA by the Power Purchase Provider or any other counterparty to any Project Agreement in connection with the Project, and take

such actions or make such recommendations as may be appropriate or desirable in connection therewith.

- 6.2.25 Review, and, if appropriate, recommend, modify or approve practices and procedures formulated by the Project Manager or any counterparty with respect to any Project Agreement, and when requested by a Project Participant review, and, if appropriate, recommend, modify or approve those matters associated with any of the Points of Delivery or any other point or points designated for delivery of energy, delivery arrangements, transmission contracts, or other Project Agreements.
- 6.2.26 Review, and, if appropriate, recommend, modify or approve policies or programs formulated by the Project Manager, any counterparty under any Project Agreement or any other Person for the exchange of energy from the Facility.
- 6.2.27 Review, and, if appropriate, recommend, modify, or approve policies or programs formulated by the Project Manager or any counterparty under any Project Agreement for determining or estimating the solar energy resources or the values, quantities, volumes or costs of renewable energy from the Facility.
- 6.2.28 Review, modify or approve recommendations of the Project Manager or counterparties made pursuant to the provisions of any Project Agreement.
- 6.2.29 Review, modify and approve all Cost of Acquisition and costs of Operating Work and submit to the Board of Directors any budget revisions or other provisions for the payment or financing thereof.
- 6.2.30 Review, modify and approve SCPPA's insurance program with respect to the Project (as applicable) including, without limitation, the establishment of any self-insurance program and the maximum amount or amounts of any uninsured claim that the Project Manager may settle without prior approval of the Coordinating Committee.
- 6.2.31 Review, modify and where appropriate, recommend or approve the implementation of metering technologies and methodologies appropriate for the delivery, accounting for, transferring and crediting of SCPPA Facility Output to the respective Points of Delivery or from any of the Points of Delivery to other points or destinations, as applicable.
- 6.2.32 Review, modify and where appropriate, recommend or approve the implementation of practices and procedures to carry forth the

provisions of Section 9 herein, as may be applicable with respect to any of the Project Participants.

- 6.2.33 Identify, or develop criteria to identify, contracts or agreements relating to work or Operating Work that shall be deemed to be Major Contracts under any applicable project management or operating agreement.
- 6.2.34 Review, and to the extent permitted by this Agreement or any other relevant agreement relating to the Project, modify and approve or disapprove the specifications, vendors' proposals, bid evaluations, form of final agreement, or any other matters with respect to Major Contracts.
- 6.2.35 Review, modify or approve recommendations, including recommendations of the Project Manager with respect to actions, disposition or use, if any, relating to Acquisition activities.
- 6.2.36 Perform such other functions and duties as may be provided for under this Agreement, the Power Purchase Agreement, the Power Purchase and Security Agreements, the Ancillary Documents, the Interconnection Contracts, the Lease, the Security Instruments, any real estate instruments relating to the Facility or any other applicable Project Agreement, or as may otherwise be appropriate or beneficial to the Project.

6.3 Management Decisions and the Role of Board of Directors. The rights and obligations of SCPPA under the Project Agreements shall be subject to the ultimate control at all times of the Board of Directors. Purchaser and the other Project Participants shall be entitled to participate in the decisions of the Board of Directors with respect to SCPPA's rights and interests in the Facility and the Project as provided in Section 6.1 herein. SCPPA through the Board of Directors shall have, in addition to the duties and responsibilities set forth elsewhere in this Agreement, the following duties and responsibilities, among others:

- 6.3.1 Future Developments. The Board of Directors shall provide liaison among the Project Participants at the management level with respect to the direction of the Project and future developments arising out of the Power Purchase and Security Agreements, including any purchase or acquisition of the Facility or any portion thereof and shall carry out those measures necessary to address such developments, including any purchase or acquisition of the Facility or any portion thereof.
- 6.3.2 Dispute Resolution. The Board of Directors shall endeavor to review, discuss and attempt to resolve any disputes among SCPPA,

the Project Participants and the counterparties under the Project Agreements relating to the Project, the operation and management of the Facility and SCPPA rights and interests in the Facility.

- 6.3.3 Scheduling procedures. When recommended by the Coordinating Committee, or when otherwise appropriate, the Board of Directors shall act upon and approve or modify the practices and procedures to be followed by the Project Participants for the scheduling, delivering, controlling and allocating SCPPA Facility Output associated with the Project.
- 6.3.4 Project Agreements. The Board of Directors shall have the authority to approve the Project Agreements and to review modify and approve, as appropriate, all amendments, modifications and supplements to the Project Agreements.
- 6.3.5 Capital Improvements. The Board of Directors shall review, modify and approve if appropriate all Capital Improvements and Acquisitions undertaken with respect to the Project and all financing arrangements for such Capital Improvements or Acquisitions. The Board of Directors shall approve those budgets or other provisions for the payments associated with the Project and the financing for any development or Acquisitions associated with the Project.
- 6.3.6 Committees. The Board of Directors shall exercise such review, direction or oversight as may be appropriate with respect to the Coordinating Committee and any other committees established pursuant to the Project Agreements.
- 6.3.7 Bond issuance. The Board of Directors shall have authority to approve any and all of the following: (1) each issuance of SCPPA indebtedness relating to the Project, (2) each supplement or amendment to the Indenture relating to the Project, (3) the Bonds issued to finance the purchase or acquisition of the Facility or any portion thereof, any New Facility or Additional Facility or any portion thereof, any Acquisition, any Capital Improvements, or any costs related to the exercise or enforcement by SCPPA of its rights with respect to any agreements, Mortgages, deeds of trust, leases or other Power Purchase and Security Agreements relating to or affecting the Project, or the purchase of rights and interests under the Facility Credit Agreements, or other Acquisitions to carry out the objectives of the Project, (4) the selection of underwriters for each series of Bonds, (5) the manner and timing of marketing (including of the manner of sale), amount, interest rates and other terms and conditions of each series of SCPPA indebtedness

associated with the Project, and (6) any other action necessary or appropriate to carry forth Section 13 of this Agreement.

- 6.3.8 Budgeting. The Board of Directors shall review, modify and approve each Annual Budget and the revisions thereto in accordance with Section 5.4 of this Agreement.
- 6.3.9 Federal Tax Law Requirements. With respect to any Bonds, the Board of Directors, in consultation with Bond Counsel or Tax Counsel, shall develop and promulgate rules, procedures, and protocols, including the development and maintenance of relevant information and reporting procedures, and shall provide direction to the Purchaser and the other Project Participants with respect to the Federal Tax Law Requirements.
- 6.3.10 Revision of Appendices B and C. In coordination with the Coordinating Committee adopt a resolution approving the revisions of Appendix B and Appendix C, as applicable, of this Agreement as provided in Section 21.1.
- 6.3.11 Other Matters. The Board of Directors is authorized to perform such other functions and duties, including oversight of those matters and responsibilities addressed by the Coordinating Committee, as may be provided for under this Power Sales Agreement and under the other Project Agreements, or as may otherwise be appropriate.
- 6.4 Periodic Audits. The Board of Directors or the Coordinating Committee may arrange for the annual audit under Section 5.6 of this Agreement by certified accountants, selected by SCPPA and experienced in electric generation or electric utility accounting, of the books and accounting records of SCPPA, and where deemed appropriate the Project Manager (if other than SCPPA), the Power Purchase Provider (to the extent provided under any of the Power Purchase and Security Agreements) and any other counterparty under any Project Agreement to the extent allowable, and any cost reimbursable consultant or cost reimbursable contractor relevant to the Acquisition, development, administration or operation of the Project, and such audit shall be completed and submitted to SCPPA as soon as reasonably practicable after the close of the Fiscal Year. SCPPA shall promptly furnish to Purchaser and the other Project Participants copies of all audits. No more frequently than once every calendar year, a Project Participant may, at its sole cost and expense, audit or cause to be audited the books and cost records of SCPPA, the Project Manager (if other than SCPPA), the counterparty under any Project Agreement to the extent so provided in the applicable Project Agreement, and any cost reimbursable consultant or cost reimbursable contractor relevant to the Acquisition, development, administration or operation of the Project.

- 6.5 Additional Committees. The Coordinating Committee, or the Board of Directors, as appropriate, may establish as needed subcommittees including, but not limited to, auditing, legal, financial, engineering, mechanical, weather, geologic, diurnal, barometric, meteorologic, operating, insurance, community relations, governmental relations, environmental and public information subcommittees. The authority, membership, and duties of any subcommittee shall be established by the Coordinating Committee or Board of Directors; provided, however, such authority, membership or duties shall not conflict with the provisions of any of the Project Agreements. Each such subcommittee shall be initially responsible to the Coordinating Committee.
- 6.6 Written Record. All actions, resolutions, determinations and reports made by the Coordinating Committee as required by this Agreement shall be set forth in a written record or its minutes.
- 6.7 Change in Representative. Each Project Participant shall promptly give written notice to the other Project Participants and SCPPA of any changes in the designation of its representative on the Coordinating Committee or any subcommittee, and SCPPA shall promptly give written notice to the other Project Participants of any changes in the designation of its representative on the Coordinating Committee or any subcommittee.
- 6.8 Costs of Consultants. Costs (or the applicable portion thereof) of consultants and others employed or appointed by the Coordinating Committee to perform the duties required hereunder, to the extent the Coordinating Committee is authorized to so employ or appoint, shall be included in the Cost of Acquisition or Total Monthly Costs, as appropriate, and shall be billed to SCPPA or the Project Manager (if other than SCPPA).
- 6.9 Representative's Expenses. Any expenses incurred by any representative of any Project Participant or group of Project Participants serving on the Coordinating Committee or any other committee in connection with his/her duties on such committee shall be paid by the Project Participant or Project Participants which he/she represents and shall not be an expense payable under this Agreement.
- 6.10 Inaction by Committee. It is recognized by SCPPA and the Project Participants that if the Coordinating Committee is unable or fails to agree with respect to any matter or dispute which it is authorized to determine, resolve, approve, disapprove or otherwise act upon after a reasonable opportunity to do so, or within the time limits specified herein or in any otherwise applicable Project Agreement, then the Project Manager may take such action as in its discretion is necessary for its timely performance under any applicable Project Agreement pending the resolution of any such inability or failure to agree, but nothing herein shall be construed to

allow the Project Manager to act in violation of the express terms of any applicable project management agreement or this Agreement.

- 6.11 Compliance with Indenture. It is recognized by SCPA and the Project Participants that the planning, financing, development, acquisition, operation and maintenance of, and insurance programs relating to, the Project must comply in all respects with requirements of the Indenture and all licenses, permits and regulatory provisions necessary for such planning, financing, development, acquisition, operation and maintenance and it is therefore agreed that, notwithstanding Section 6.10 or any other provision of this Agreement, no action by the Coordinating Committee or the Project Manager (if a designee other than SCPA) shall require SCPA to act in any manner inconsistent with any such requirements or to refrain from acting as required by the Power Sales Agreements and if the Coordinating Committee or the Project Manager (if a designee other than SCPA) shall fail to make recommendations or act with respect to any matter in connection with an action that is required to be taken pursuant to any of the foregoing, SCPA shall take such action as is appropriate to assure compliance with the foregoing.
- 6.12 Compliance with the Power Purchase Agreement and Transmission Arrangements. It is further recognized by SCPA and the Project Participants that the planning, development, acquisition, operation and maintenance of the Project must comply with requirements of the Power Purchase Agreement, those transmission arrangements entered into to facilitate the delivery of SCPA Facility Output and the licenses, permits and regulatory provisions applicable to such planning, development, acquisition, operation and maintenance and it is therefore agreed that, notwithstanding Section 6.10 or any other provision of this Agreement, no action by the Coordinating Committee, or the Project Manager (if a designee other than SCPA) shall require SCPA to act in any manner inconsistent with any such requirements or to refrain from acting in a manner required by such requirements.
- 6.13 Delegation. To secure the effective cooperation and interchange of information in a timely manner in connection with various administrative, technical and other matters which may arise from time to time in connection with Operating Work, in appropriate cases the authority, duties and responsibilities of the Board of Directors or the Coordinating Committee, as the case may be under this Section 6, may be delegated to the Executive Director.

7. CHARGES AND BILLINGS.

- 7.1 Power Purchase Agreement Monthly Costs and Billing Statement. During the term of the Power Purchase Agreement the amount of Monthly Costs which shall be paid by Purchaser pursuant to a Billing Statement for a

particular Month shall be the sum of the following, as applicable, subject to Sections 7.9 and 7.10 hereof and any applicable adjustments as provided in Section 16 hereof:

- 7.1.1 Purchaser's Delivery Point Output Cost Share multiplied by the Delivery Point Output cost component of Total Monthly Costs (as provided in Section 4.8.1) with respect to Purchaser's Designated Point of Delivery for such Month.
- 7.1.2 Purchaser's Project Cost Share multiplied by the PPA General and Administrative cost component of Total Monthly Costs (as provided in Section 4.8.2 hereof) for such Month.
- 7.1.3 Purchaser's Project Cost Share multiplied by the Reserve Fund cost component of Total Monthly Costs (as provided in Section 4.8.3 hereof) for such Month.
- 7.1.4 Purchaser's share of the Supplementary Services cost component of Total Monthly Costs (as provided in Section 4.8.4 hereof) for such Month based on Purchaser's allocated share of any such services procured by SCPPA on behalf of the Purchaser.
- 7.1.5 By the fifth calendar day of each Month during each Power Supply Year, SCPPA shall bill Purchaser for the amount of Monthly Costs to be paid by Purchaser for the current Month by providing Purchaser with a Billing Statement in accordance with the charges established pursuant to the provisions of this Agreement. Such Billing Statement shall detail the costs described in this Section 7.1 and shall set forth, among other things, the amounts due for such Month by Purchaser with respect to the items of Monthly Costs set forth in this Section 7.1, as such Monthly Costs may be adjusted from time to time in accordance with Section 5 and this Section 7. Such Billing Statement shall be paid by Purchaser on or before 20 days after receipt of such Billing Statement.

7.2 Ownership Monthly Costs and Billing Statement. In the event that SCPPA shall acquire the Facility or an ownership interest therein, the amount of Monthly Costs which shall be paid by Purchaser pursuant to a Billing Statement for a particular Month, commencing upon such Acquisition, shall be the sum of the following, as applicable, subject to Sections 7.9 and 7.10 hereof and any applicable adjustments as provided in Section 16 hereof:

- 7.2.1 Purchaser's Project Cost Share multiplied by the Operating cost component of Total Monthly Costs (as provided in Section 4.9.1 hereof) for such Month.

- 7.2.2 Purchaser's Transmission Services Cost Share multiplied by the Transmission cost component of Total Monthly Costs (as provided in Section 4.9.2) for such Month with respect to Transmission Services applicable to the delivery of SCPPA Facility Output from the Point of Interconnection to Purchaser's Designated Point of Delivery.
- 7.2.3 Purchaser's Project Cost Share multiplied by the Ownership General and Administrative cost component of Total Monthly Costs (as provided in Section 4.9.3 hereof) for such Month.
- 7.2.4 Purchaser's Project Cost Share multiplied by the Reserve Fund cost component of Total Monthly Costs (as provided in Section 4.9.4 hereof) for such Month.
- 7.2.5 Purchaser's Indenture Cost Share as set forth in the Indenture Cost Shares column of Appendix C hereof multiplied by the Indenture cost component of Total Monthly Costs (as provided in Section 4.9.5 hereof) for such Month as the Indenture cost component has been reduced by interest earned on investments of amounts held under the Indenture if and to the extent not credited against the Cost of Acquisition or has been off-set or reduced by other amounts made available therefor as provided in the Indenture.
- 7.2.6 Purchaser's share of the Supplementary Services cost component of Total Monthly Costs (as provided in Section 4.9.6 hereof) for such Month based on Purchaser's allocated share of any such services procured by SCPPA on behalf of Purchaser.
- 7.2.7 By the fifth calendar day of each Month during each Power Supply Year, SCPPA shall bill Purchaser for the amount of Monthly Costs to be paid by Purchaser for the current Month by providing Purchaser with a Billing Statement in accordance with the charges established pursuant to the provisions of this Agreement; provided, however, that such Billing Statement, with respect to Debt Service and other obligations payable from the Debt Service Fund under the Indenture, shall instead include the amount, if any, to be paid by Purchaser with respect to the applicable Bonds and the other obligations payable from the Debt Service Fund that is due and payable in the immediately succeeding Month or as otherwise provided under the Indenture, and provided further, that such Billing Statement, with respect to the cost of SCPPA Facility Output provided by SCPPA to Purchaser under this Agreement, shall also include with respect to the performance by SCPPA or the counterparty under and pursuant to applicable Project Agreements, a charge or credit to Purchaser with respect to the costs or revenues attributable to Purchaser pursuant to and under any applicable

Project Agreement. Such Billing Statement shall detail the costs described in this Section 7.2 hereof and shall set forth, among other things, the amounts due for such Month by Purchaser with respect to the items of Monthly Costs set forth in this Section 7.2, as such Monthly Costs may be adjusted from time to time in accordance with Section 5 and this Section 7. Such Billing Statement shall be paid by Purchaser on or before 20 days after receipt of such Billing Statement.

- 7.3 Adoption of Alternative Billing Statement Procedures. The Coordinating Committee may recommend the adoption of an alternative Billing Statement billing methodology in connection with each Project Participant's Billing Statement with respect to the Total Monthly Costs and the costs associated with any Project Agreement. Such alternative Billing Statement procedures may be placed into effect with the approval of the same by resolution of the Board of Directors. Any such alternative Billing Statement billing methodology shall satisfy all requirements of the Indenture and shall be fiscally prudent, financially sound and shall assure coverage of all potential and actual costs and obligations of SCPPA.
- 7.4 Disputed Monthly Billing Statement. In case any portion of any Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth calendar day following the receipt by SCPPA of the disputed overpayment. In the event such Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within 30 days following receipt of written notification by Purchaser of such dispute.
- 7.5 Reconciliation of Monthly Costs. As soon as practicable after the end of each Power Supply Year, SCPPA will submit to Purchaser and the other Project Participants a detailed statement of the actual aggregate Monthly Costs and other amounts payable hereunder, including any credits thereto, for all of the Months of such Power Supply Year, and the adjustments of the aggregate Monthly Costs and other amounts payable hereunder, if any, for any prior Power Supply Year, based on the annual audit of accounts provided for in Section 6.4. If, on the basis of the statement submitted as provided in this Section 7.5, the actual aggregate Monthly Costs and other amounts payable by the Project Participants for any Power Supply Year exceed the amount thereof which Purchaser and the other Project Participants have been billed, Purchaser and the other Project Participants

shall pay SCPPA, within 20 days of receipt of SCPPA's invoice, the amount to which SCPPA is entitled. If, on the basis of the statement submitted pursuant to this Section 7.5, the actual aggregate Monthly Costs or other amounts payable by the Project Participants for any Power Supply Year are less than the amount therefor which Purchaser and the other Project Participants have been billed, SCPPA shall, unless otherwise directed by Purchaser or the other Project Participants with respect to moneys owed to each, credit such excess against Purchaser's and the other Project Participants' next monthly Billing Statement. In the event that the failure of Purchaser to make its payments in accordance with this Agreement shall have resulted in the application of amounts in any reserve or other Fund under the Indenture or this Agreement to the payment of costs payable from such reserve or Fund and the other Project Participants shall have made up the deficiency created by such application or paid additional amounts as a result of a draw on such reserve or Fund, amounts thereafter paid to SCPPA by Purchaser for application to such past due payments including interest shall be credited on the Billing Statements of such other Project Participants in the next Month or Months as provided in the applicable provisions of Section 15.

- 7.6 Other or Additional Cost Reconciliation Mechanisms. The Board of Directors may, by resolution, authorize or prescribe other billing, payment, costing and cost reconciliation mechanisms to address such billing, payment, costing and cost reconciliation issues as may from time to time arise with respect to the Project.
- 7.7 Interest on Late Payments. If Purchaser fails to pay any Billing Statement when due, interest shall accrue, to the extent permitted by law, at a rate equal to the lesser of (i) one percent per Month (12% per annum) on the unpaid amount of the bill or (ii) the monthly equivalent of the "prime" rate of interest as noticed in the Federal Reserve's HR 15 weekly bulletin (or the subsequent equivalent thereof) as of the date of nonpayment on the unpaid amount of the bill, until such Billing Statement is paid.
- 7.8 Prepayment of Monthly Costs. Purchaser may, at any time, pay moneys to SCPPA or utilize any credits due or amounts owed by SCPPA to Purchaser with respect to the Project for the purpose of prepaying its monthly Billing Statement. Such moneys and amounts owed by SCPPA under any Project Agreement shall be deposited into an account established by, or at the direction of, SCPPA. Consistent with SCPPA's investment policy, moneys in such account shall be invested pursuant to instructions provided to SCPPA by Purchaser and all investment income shall be credited to such account. Payment of the amount of any monthly Billing Statement or Default Invoice shall be made from moneys available in such account to the extent set forth in written directions from Purchaser to SCPPA received at least five business days prior to the due date of such payment. Any credit or prepayment with respect to its monthly Billing

Statement shall not relieve or reduce Purchaser's other obligations under this Agreement.

- 7.9 Costs or Expenses Incurred for Sole Benefit of Purchaser. Notwithstanding anything to the contrary in this Agreement, if a particular cost or expense is incurred by SCPPA for the sole benefit of Purchaser, unless otherwise determined by the Coordinating Committee, then such cost or expense shall be allocated only to Purchaser, in which event only Purchaser (and no other Project Participant) shall be responsible for the payment thereof under this Agreement. Any such cost or expense incurred by SCPPA for the sole benefit of Purchaser shall be deemed to be paid last from amounts paid by Purchaser for the payment of its Billing Statements.
- 7.10 Credit, or other Payment Attributable to a Specific Project Participant. Should any Project Participant make or provide, through any type of payment mechanism, for a separate payment or prepayment for SCPPA Facility Output or other Project purpose which results in a credit or reduction in SCPPA's obligation being credited to the purchase of SCPPA Facility Output, or a reduced cost of power or otherwise credited under the Power Purchase Agreement or other Project Agreement, then, to the extent that such credit is credited to an obligation of SCPPA under the Power Purchase Agreement or such other Project Agreement, such credit shall be passed through or credited to the applicable Project Participant under such Project Participant's Power Sales Agreement. Such a credit may at the request of the applicable Project Participant be credited on the Project Participants subsequent Billing Statements or handled pursuant to a Billing Statement methodology which bills for and places an amount which is the equivalent of the credit into the Project Participants project stabilization account or such a credit may be otherwise handled in such manner as the applicable Project Participant may reasonably request. The provisions of this Section 7.10 shall be in addition to the terms and provisions of Section 16 and shall not be applicable to any circumstances, conditions or matters that are within the scope of Section 16.

8. UNCONDITIONAL PAYMENT OBLIGATIONS; RATE COVENANT; AUTHORIZATIONS; CONFLICTS; LITIGATION.

- 8.1 Unconditional Payment Obligation. Beginning with the earliest of (i) the date SCPPA incurs or becomes obligated to pay any portion of the costs of the Project , (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) the effective date of the Power Purchase Agreement or (iv) the date of the first delivery of SCPPA Facility Output to Purchaser and continuing through the term of this Agreement, Purchaser shall pay SCPPA the amounts of Monthly Costs set forth in the Billing Statements submitted by or on behalf of SCPPA to Purchaser in accordance with the provisions of Section 7 hereof and, without duplication, any amount set forth in any Step-Up Invoices or

Default Invoices received by Purchaser as a result of the operation of Section 15 hereof, whether or not the Project or any part thereof has been completed, is functioning, producing, operating or operable or its output is suspended, interrupted, interfered with, reduced or curtailed or terminated in whole or in part, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

- 8.2 Source of Payments. The Purchaser hereby represents and warrants that the obligations of Purchaser to make the payments to SCPPA under this Agreement shall constitute a cost of purchased power and an operating expense of Purchaser payable solely from its electric revenue fund, including any and all legally available electric system reserves. Purchaser will annually in each and every fiscal year of Purchaser during the term of this Agreement include in its power system budget, whether or not any other items are included, an appropriation from the revenues of its electric system (including moneys derived from sales to third parties) sufficient to satisfy all the payments required to be made in such year under this Agreement until all payments required under this Agreement have been paid in full.
- 8.3 Rate Covenant. Purchaser will establish, maintain and collect rates and charges for the electric service of its electric system each year so as to provide revenues sufficient, together with any legally available electric system reserves, to enable Purchaser to pay to SCPPA all amounts payable when due under this Agreement and to pay all other amounts payable from, and all lawful charges against or liens on, the revenues of its electric system.
- 8.4 Authorizations. The Purchaser hereby represents and warrants that no order, approval, consent or authorization of any governmental or public agency, authority or person, is required on the part of the Purchaser for the execution and delivery by the Purchaser of this Agreement, or the performance by the Purchaser of its obligations under this Agreement except for such as have been obtained.
- 8.5 Conflicts. Purchaser represents and warrants to SCPPA as of the Effective Date and as of the date of the opinion of counsel referenced in Section 13.4, that, to Purchaser's knowledge, the execution and delivery of this Agreement by Purchaser, and Purchaser's performance thereunder will not constitute a default under any agreement or instrument to which it is a party, or any order, judgment, decree or ruling of any court that is binding on Purchaser, or a violation of any applicable law of any governmental authority, which default or violation would have a material adverse effect on the financial condition of Purchaser's electric revenue fund.

- 8.6 Litigation. Purchaser represents and warrants to SCPPA as of the Effective Date and as of the date of the opinion of counsel referenced in Section 13.4 that, to Purchaser's knowledge, except as disclosed, there are no actions, suits or proceedings pending against Purchaser (service of process on Purchaser having been made) in any court that questions the validity of the authorization, execution or delivery by Purchaser of this Agreement, or the enforceability on Purchaser of this Agreement.

9. OTHER TERMS AND SERVICES.

- 9.1 Delivery Procedures. Prior to the time at which any Energy will be delivered to Purchaser from the Facility, Purchaser will schedule and shall be obligated to take delivery of its Output Entitlement Share of the Energy to be delivered. The SCPPA Facility Output generated and produced from the Project shall be scheduled and delivered to Project Participants at their respective Designated Points of Delivery under any development, operating, project management or agency agreement and/or practices and procedures approved by the Coordinating Committee pursuant to Section 6.2, as applicable.
- 9.2 Other Services and Transmission From Points of Delivery. It is the obligation of Purchaser to receive its share of SCPPA Facility Output and to arrange for delivery of such SCPPA Facility Output to its ultimate destination or destinations after having reached its Designated Point of Delivery, as determined by Purchaser. However, to the extent specified by the Purchaser, and to the extent practicable for SCPPA to do so, SCPPA shall assist in arranging for Supplementary Services and for such additional transmission, interconnection arrangements, energy management, firming, shaping, swaps, exchanges or other services associated with the transmission, use or disposition of SCPPA Facility Output to be utilized by the Purchaser and to provide for delivery, accounting for, transferring and crediting the ownership and transfer of SCPPA Facility Output from such Purchaser's Designated Point of Delivery to any other points or destinations, as determined by the Purchaser.
- 9.3 Energy Services. Except as otherwise provided in this Agreement and subject to Section 18.1, nothing herein shall prevent or restrict Purchaser from providing for its own transmission, energy management services, firming, balancing, or exchanging services or otherwise using or dispatching its Energy under this Agreement; provided, however, that such services, use or activities shall not affect any of the obligations of Purchaser under this Agreement or, if applicable, result in or cause non-compliance with the Federal Tax Law Requirements, and shall at all times conform to the applicable requirements of Section 10 of this Agreement.

- 9.4 Actions Respecting Facility Purchase. SCPPA shall endeavor to take those actions and carry forth those measures necessary to maintain and preserve SCPPA's rights with respect to any purchase potential or purchase or acquisition options contained in the Power Purchase and Security Agreements and, if so determined pursuant to the terms of this Agreement, to facilitate any such purchase or acquisition of the Facility or an ownership interest therein pursuant to the terms of the Power Purchase and Security Agreements or under or pursuant to any consents, assignments or any agreements relating thereto, including any purchase of rights or interests under or pursuant to the Facility Credit Agreements. SCPPA's services in connection with any such purchase obligation or purchase option may include but is not limited to determining the advisability of such purchase, preparing such agreements, documents or instruments as may be necessary to facilitate such purchase, and carrying forth any diurnal, barometric or meteorological reporting, prepare any facility efficiency reports, economic, modeling or appraisal studies as may be desirable to facilitate any proposed transaction and to obtain any necessary or appropriate information in connection with any such potential purchase or acquisition of the Facility or an ownership interest therein.
- 9.5 Balancing Agent and Dynamic Scheduling. Upon the request of Purchaser, SCPPA shall either (i) retain an agent to maintain and balance Purchaser's hourly Energy schedules in accordance with WECC protocols ("Balancing Agent"), including the provision or absorption of imbalance energy to accommodate intra-hour fluctuations of SCPPA Facility Output as compared to Purchaser's Energy schedule and maintaining a balancing account of accumulated imbalance energy to be settled by adjusting future Purchaser Energy schedules, (ii) arrange for Dynamic Scheduling from Purchaser's Designated Point of Delivery to Purchaser's control area or electric system, including the procurement and installation of scheduling hardware, software, and communications equipment necessary to effectuate Dynamic Scheduling (if such a scheduling methodology is deemed appropriate, applicable and/ or otherwise feasible), (iii) procure, contract for or otherwise arrange for any available energy balancing, firming, shaping or integration services to address any of the above referenced imbalances, fluctuations, variability, intermittency, or like conditions or (iv) address the costs, charges or consequences of such imbalances, fluctuations, variability, intermittency, or like conditions through other mechanisms or methodologies which are mutually agreeable to the Purchaser and SCPPA. Any such arrangements (other than arrangements with another Project Participant or other SCPPA members) entered into by SCPPA at the request of Purchaser shall be with third parties and negotiated in arms' length transactions, to the extent applicable.

- 9.6 Transfer of Environmental Attributes to Project Participants. SCPPA shall transfer all Environmental Attributes received by SCPPA either under the Power Purchase Agreement or with respect to SCPPA Facility Output following its purchase or acquisition of the Facility to Purchaser and the other Project Participants in accordance with their respective Output Entitlement Shares in the same manner by which SCPPA receives Environmental Attributes.

10. FEDERAL TAX LAW REQUIREMENTS.

- 10.1 Purchaser to Provide Information Relevant to Compliance with Federal Tax Law Requirements. At such times and through such means as prescribed by the rules, procedures and protocols promulgated by SCPPA to address compliance with the applicable Federal Tax Law Requirements with respect to any Bonds, or pursuant to any request by SCPPA, Purchaser shall provide SCPPA with a tax certificate relating to such Bonds, and such additional information and representations as necessary to establish Purchaser's compliance with the Federal Tax Law Requirements, including, to the extent applicable, information and representations concerning the disposition or use of electric energy provided under this Agreement or the disposition or use of any assets acquired with the proceeds of such Bonds.
- 10.2 Compliance with Federal Tax Law Requirements. With respect to any Bonds, Purchaser agrees that it will promptly act in accordance with written instructions which SCPPA may reasonably require from time to time in connection with the Federal Tax Law Requirements, and in addition Purchaser will not at any time take any action, or fail to take any action, if such action or failure to take action would result in or cause non-compliance with Federal Tax Law Requirements. The Purchaser agrees to execute new or revised tax certificates or provide such information or other assurance respecting past and future compliance with the Federal Tax Law Requirements applicable to any Bonds as may be reasonably requested by SCPPA. In connection therewith, Purchaser shall cooperate with and provide to SCPPA such other information, representations and certifications as necessary for Bond Counsel or Tax Counsel to render an opinion or advise to the effect that any applicable Federal Tax Law Requirements are met.
- 10.3 SCPPA to Issue Rules, Procedures and Protocols. SCPPA shall develop and promulgate such rules, procedures and protocols, together with amendments thereto, as necessary, in consultation with Bond Counsel or Tax Counsel, to ensure compliance with any applicable Federal Tax Law Requirements, including to establish expectations regarding future compliance under applicable laws and regulations existing from time to time with respect to any Bonds, and shall include, without limitation, the

appropriate reporting, documentation and certifications to establish and maintain compliance with the provisions of this Section 10.

11. PROJECT SPECIFIC MATTERS AND PROJECT PARTICIPANT RIGHTS AND OBLIGATIONS UNDER PROJECT AGREEMENTS.

11.1 Rights and Obligations under the Project Agreements. Notwithstanding anything to the contrary contained herein: (i) the obligation of SCPPA to deliver Purchaser's Output Entitlement Share of SCPPA Facility Output hereunder during the Delivery Term of the Power Purchase Agreement is limited to the SCPPA Facility Output which SCPPA receives from the Facility (or the Power Purchase Provider, as applicable) at Purchaser's Designated Point of Delivery for redelivery to Purchaser hereunder during such time; (ii) the obligation of SCPPA (or the Power Purchase Provider) to deliver Purchaser's Output Entitlement Share of Replacement Energy hereunder during the Delivery Term of the Power Purchase Agreement is limited to the Replacement Energy which SCPPA receives at Purchaser's Designated Point of Delivery under the Power Purchase Agreement, (iii) the obligation of SCPPA to pay any amount to Purchaser hereunder or to give credits against amounts due from Purchaser hereunder is limited to amounts SCPPA receives in connection with the transaction to which the payment or credit relates (or is otherwise available to SCPPA in connection with this Agreement for which such payment or credit relates); (iv) any purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges for which SCPPA is responsible under the Project Agreements shall be considered purchase costs, operating costs, energy costs, capacity costs, environmental attribute costs, transmission costs, tax costs, insurance costs, indemnifications, other costs or other charges incurred by SCPPA and payable by Purchaser and the other Project Participants as provided in this Agreement; and (v) any Force Majeure under the Power Purchase Agreement or other event of force majeure affecting the delivery of energy pursuant to applicable provisions of the Project Agreements shall be considered an event caused by Uncontrollable Forces affecting SCPPA with respect to the delivery of energy and/or environmental attributes hereunder and SCPPA forwarding to Purchaser notices and information from the Power Purchase Provider concerning an event of Force Majeure upon receipt thereof shall be sufficient to constitute a notice that Uncontrollable Forces have occurred pursuant to Section 16.3 of this Agreement.

11.2 Acquisition of the Facility by SCPPA. The Parties mutually acknowledge and agree that SCPPA may, under certain circumstances, acquire ownership of the Facility or an ownership interest therein, and succeed to the rights and obligations associated with such ownership with respect to the Facility pursuant to the provisions of the Power Purchase and Security Agreements, including the purchase of rights and interests under the

Facility Credit Agreements or pursuant to any security interest in the Project held by any third party, or through foreclosure action (or a deed in-lieu-of foreclosure) or under and pursuant to any of the Security Instruments, or purchase at foreclosure sale, including, but not limited to, the rights and obligations under operating agreements and the ownership interests with respect to the leasehold estates, rights-of-way and other real property interests upon which the Facility is situated, at such time and under such terms as provided in the Power Purchase and Security Agreements or on such other terms as may be agreed upon between SCPPA and the Power Purchase Provider, or otherwise. The Parties also anticipate that any such Acquisition of the Facility, or an ownership interest therein may be carried out with SCPPA financing. If, pursuant to the recommendation of the Coordinating Committee and approval of the Board of Directors, SCPPA should enter into any arrangement to purchase or acquire the Facility, or any ownership interest therein, pursuant to the Power Purchase and Security Agreements or, subject to the recommendation of the Coordinating Committee and approval of the Board of Directors, SCPPA exercises any option to purchase or acquire the Facility or any ownership interest therein as provided in the Power Purchase and Security Agreements or to purchase rights and interests under the Facility Credit Agreements, or otherwise acquires the Facility or an ownership interest therein, pursuant to any of the Security Instruments or any of the foregoing, SCPPA may finance the associated Cost of Acquisition through the issuance of Bonds.

- 11.3 Special Payment Obligations in Advance of the Issuance of Bonds. In the event the Board of Directors anticipates that SCPPA will be obligated to make a substantial payment under a Project Agreement which may be reimbursed from the proceeds of Bonds (a “Special Obligation”) and it is anticipated that there will not be time to issue Bonds, or that it is otherwise impracticable to issue Bonds, to cover such Special Obligation, and the amounts available through other cost payment mechanisms under this Agreement are not sufficient to timely pay such Special Obligation at the time it may come due, the Board of Directors may take action by resolution in advance of the time anticipated for payment of such Special Obligation to impose upon Purchaser the obligation to make such payment. Purchaser shall pay its share of such costs within seven (7) days of receiving an invoice therefor (a “Special Obligation Billing Statement”) from SCPPA which Special Obligation Billing Statement shall describe the Special Obligation. In case any portion of any Special Obligation Billing Statement received by Purchaser from SCPPA shall be in bona fide dispute, Purchaser shall pay SCPPA the full amount of such Special Obligation Billing Statement and, upon determination of the correct amount, the difference between such correct amount and such full amount, if any, including interest at the rate received by SCPPA on any overpayment, will be credited to Purchaser by SCPPA after such determination; provided, however, that such interest shall not accrue on

any overpayment that is acknowledged by SCPPA and returned to Purchaser by the fifth (5th) Business Day following the receipt by SCPPA of the disputed overpayment. In the event such Special Obligation Billing Statement is in dispute, SCPPA will give consideration to such dispute and will advise Purchaser with regard to SCPPA's position relative thereto within thirty (30) days following receipt of written notification from Purchaser of such dispute. Should Purchaser satisfy such a Special Obligation through its own resources, at the request of Purchaser SCPPA will endeavor to reimburse such payments from the proceeds of future financings to the extent, if applicable, permitted by the Federal Tax Law Requirements.

12. PLEDGE OF PAYMENTS. All or any portion of the payments required to be made by Purchaser in accordance with or pursuant to any provision of this Agreement may be pledged by SCPPA to secure the payment of the Bonds, and interest thereon, subject to the application thereof to such purposes and on such terms as provided in the Indenture, and as required by the Act. SCPPA may assign, among other rights and security, to the Project Trustee or Lender its rights to receive from Purchaser all or any portion of the payments to be made by Purchaser pursuant to this Agreement. SCPPA may direct Purchaser to make all or any portion of such payments directly to the Project Trustee or Lender for application by the Project Trustee or Lender under the Indenture. Notwithstanding the foregoing or any other provision of this Agreement, SCPPA shall not acquire the Facility unless there shall be compliance with the applicable provisions of Section 10 and with the provisions of the Indenture applicable to the acquisition of the Facility.

13. ISSUANCE OF BONDS.

13.1 Issuance of Bonds. Bonds will be issued by SCPPA in accordance with this Agreement, the provisions of the Indenture and the Act for the purpose of financing the Cost of Acquisition, which may entail, among other things, the acquisition resulting from the exercise of the purchase option in the Power Purchase Agreement, and, if applicable, the purchase or acquisition of the Facility or an ownership interest therein and all or any portion of associated assets, rights and interests under or pursuant to the Power Purchase and Security Agreements, and any other Acquisitions and any Capital Improvements.

13.2 Additional Bonds. Additional Bonds may be issued by SCPPA in accordance with this Agreement, the provisions of the Indenture and the Act at any time and from time to time in the event funds are required for further development or completion of the Project or for the purpose of financing any further Cost of Acquisition or other Acquisitions or Capital Improvements, including without limitation the cost of acquiring the Facility or an ownership interest therein or the rights and interests otherwise described in Section 11.2, and upon the recommendation of the

Coordinating Committee and approval of the Board of Directors, SCPPA shall use its best efforts to issue such additional Bonds.

- 13.3 Refunding Bonds. In the event that Monthly Costs may be reduced by the refunding of any of the Bonds or in the event it shall otherwise, for one or more of the Project Participants, be advantageous, in the opinion of SCPPA, to refund any Bonds, SCPPA may issue and sell refunding Bonds in accordance with the Indenture and the Act.
- 13.4 Opinions of Counsel. In connection with the issuance of Bonds, additional Bonds or refunding Bonds for the purposes described in this Section 13, Purchaser shall provide an opinion of an attorney or firm of attorneys, or the equivalent thereof, in substantially the form as attached hereto as Appendix D as may be reasonably necessary to facilitate the issuance of such Bonds.
- 13.5 Redemption or Payment of Bonds. SCPPA may issue such bonds, notes, certificates of participation, commercial paper, other evidences of indebtedness or other instruments, in accordance with the Indenture and the Act, as it may deem appropriate to facilitate the redemption or payment of Bonds.
- 13.6 Bond-Related Documents. Purchaser agrees to supply SCPPA, upon written request, with such additional information and documentation as SCPPA shall reasonably determine to be necessary or desirable to facilitate the issuance of Bonds, additional Bonds or refunding Bonds for the purposes described in this Section 13 and to comply with Federal Tax Law Requirements and continuing disclosure requirements including, but not limited to, requirements under the United States Securities and Exchange Commission Rule 15c2-12.

- 14. **EXCESS BOND PROCEEDS**. In the event the proceeds derived from the sale of any Bonds exceed the aggregate amount required for the purposes for which such Bonds were issued, the amount of such excess shall be used, after prior consultation with Bond Counsel or Tax Counsel, to make up any deficiency existing in any Funds under the Indenture in the manner therein provided, and any balance shall (i) be used to retire, by purchase or redemption, Bonds in advance of maturity, (ii) be deposited in any applicable account established in accordance with Section 7.8 hereof, (iii) reduce the payments by the applicable Project Participants required pursuant to Section 7 hereof, and in such event SCPPA will reduce the monthly Billing Statements of such Project Participants as are necessary and appropriate, or (iv) be used for other lawful Project expenses or purposes.

15. NONPERFORMANCE AND PAYMENT DEFAULT.

- 15.1 Nonperformance by Purchaser. If Purchaser shall fail to perform any covenant, agreement or obligation under this Agreement or shall cause SCPPA to be in default with respect to any undertaking entered into for the Project or to be in default under the Power Purchase Agreement, or any other Project Agreement, as applicable, or cause a default to occur pursuant to such agreements, SCPPA may, in the event the performance of any such obligation remains unsatisfied after 30 days' prior written notice thereof to the Purchaser and a demand to so perform; take any action permitted by law to enforce its rights under this Agreement, including but not limited to termination of this Agreement, and/or (unless SCPPA has already taken action pursuant to the immediately following sentence) bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform. In addition to any other rights SCPPA may have under this Agreement as a result of nonpayment by the Purchaser, if the Purchaser fails to pay its share of Debt Service in accordance with this Agreement and the result is that SCPPA defaults on the payment of principal of or interest on any Bond or other obligations payable from the Debt Service Fund under the Indenture, SCPPA may, immediately and without delay, take any action permitted by law to enforce its rights under this Agreement and/or bring any suit, action or proceeding at law or in equity as may be necessary or appropriate to recover damages and/or enforce any covenant, agreement or obligation against the Purchaser with regard to its failure to so perform.
- 15.2 Notice of Payment Default. On or promptly following the Initial Payment Default Date by Purchaser, SCPPA shall issue a Default Invoice and shall provide written notice to Purchaser that as a result of a Payment Default it is in default under this Agreement and has assumed the status of a Defaulting Project Participant and that Purchaser's Project Rights are subject to discontinuance, termination and disposal in accordance with Sections 15.4 and 15.5 of this Agreement. Notice of such Payment Default shall be provided promptly by SCPPA to the other Project Participants and to the Project Trustee or Lender. In addition to the foregoing, the Notice of Payment Default shall specify that five days after the issuance of the written notice of Payment Default by SCPPA, deliveries of SCPPA Facility Output to the Purchaser pursuant to this Agreement shall be thereafter suspended until such time as Purchaser is in Compliance. SCPPA may take any action through or in conjunction with the Power Purchase Provider or any other counterparty under a Project Agreement or with the Project Manager, if applicable, to expeditiously carry forth the provisions of this Section 15.

- 15.3 Cured Payment Default. Except for a Payment Default which causes SCPPA to default on the payment of principal of or interest on Bonds or other obligations payable from the Debt Service Fund under the Indenture, which shall be subject to and addressed as provided in Section 15.4 and the other applicable sections of this Agreement, and except as provided in Section 15.14, if after a Payment Default, Purchaser cures such Payment Default within 30 days (the Cure Period) its Project Rights shall not be subject to discontinuance, termination or disposal as provided for in Sections 15.4 and 15.5 of this Agreement as a result of any Payment Default associated with such Cured Payment Default.
- 15.4 Failure to Cure Payment Default. If at any time 30 days after an uncured Payment Default by Purchaser, Purchaser fails to be in Compliance, or if at any time SCPPA defaults on the payment of principal of or interest on any Bond, or other obligations payable from the Debt Service Fund under the Indenture, due to the failure of the Defaulting Project Participant to pay its share of Debt Service in a timely manner in accordance with this Agreement, Purchaser's Project Rights shall immediately be discontinued and terminated and its Project Rights and Obligations shall be disposed of by SCPPA in accordance with Section 15.5 of the Defaulting Project Participant's Power Sales Agreement; provided, however, the Defaulting Project Participant's obligation to make payments under its Power Sales Agreement shall not be eliminated or reduced except to the extent provided in Section 15.6. SCPPA shall provide to the Defaulting Project Participant a separate monthly invoice of any such payment obligations under its Power Sales Agreement. SCPPA shall immediately notify the Project Manager (if other than SCPPA), the other Project Participants and the Project Trustee or Lender, and such others as SCPPA deems appropriate, of such discontinuance and termination of a Defaulting Project Participant's Project Rights.
- 15.5 Treatment of the Defaulting Project Participant's Project Rights and Obligations upon Payment Default of Defaulting Project Participant. In the event Defaulting Project Participant's Project Rights are discontinued and terminated pursuant to Section 15.4 of its Power Sales Agreement, SCPPA shall undertake or cause to be undertaken the following actions in the order indicated:
- 15.5.1 SCPPA shall offer to convey, transfer and assign to all non-Defaulting Project Participants, on a temporary or permanent basis as determined by SCPPA, the Project Rights and Obligations of Defaulting Project Participant, and SCPPA shall so convey, transfer and assign on such basis so determined by SCPPA to (i) all requesting non-Defaulting Project Participants the amount of Project Rights and Obligations requested if the aggregate of such requests does not exceed the amount of the Project Rights and Obligations of the Defaulting Project

Participant, or (ii) all requesting non-Defaulting Project Participants on a pro-rata basis (based upon the amount requested) if the aggregate of such requests exceeds the amount of the Project Rights and Obligations of the Defaulting Project Participant; provided, however, that SCPPA shall not offer or permit the conveyance, transfer or assignment of Defaulting Project Participant's Project Rights and Obligations in such a manner or in such an amount as, in the opinion of Bond Counsel or Tax Counsel, would violate any provision of the Indenture or result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds. Each such requesting non-Defaulting Project Participant shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA.

15.5.2 If all of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned to non-Defaulting Project Participants as provided in Section 15.5.1 of its Power Sales Agreement, SCPPA shall, to the extent SCPPA in its discretion determines it appropriate, offer to convey, transfer and assign, on a temporary or permanent basis as determined by SCPPA, the remaining (or all, if applicable) of Defaulting Project Participant's Project Rights and Obligations to third parties, all in accordance with applicable law; provided, however, that SCPPA shall not offer or permit the conveyance, transfer or assignment of Defaulting Project Participant's Project Rights and Obligations in such a manner or in such an amount as would, in the opinion of Bond Counsel or Tax Counsel, violate any provision of the Indenture or result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds. Each such requesting third party shall assume all, but not less than all, Project Rights and Obligations so conveyed, transferred and assigned to it by SCPPA.

15.5.3 If, at any time or from time to time, any of the Project Rights and Obligations of a Defaulting Project Participant are not conveyed, transferred and assigned as provided in Sections 15.5.1 or 15.5.2 of its Power Sales Agreement, SCPPA shall use its best efforts, to the extent reasonably possible and economically beneficial, to offer all non-Defaulting Project Participants and third parties, for long-term or short-term sale as determined by SCPPA, Facility Output associated with such Project Rights and Obligations or to remarket or resell such SCPPA Facility Output, or cause the same to be remarketed or resold; provided, however, that SCPPA shall not offer or permit the sale or remarketing of such SCPPA Facility Output associated with Defaulting Project Participant's Project Rights in

such a manner or in such an amount as would, in the opinion of Bond Counsel or Tax Counsel, violate any provision of the Indenture or result in or cause non-compliance with the Federal Tax Law Requirements relating to (if applicable) the Bonds; and provided further, however, that without eliminating Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement), including payment of SCPPA's costs and expenses related to such default and sale, such payment obligation shall be satisfied to the extent that payments are received by SCPPA from the remarketing or sale of SCPPA Facility Output associated with Defaulting Project Participant's Project Rights. If at the time of any Coordinating Committee meeting, any of Defaulting Project Participant's Project Rights and Obligations are not conveyed, transferred and assigned as provided in Sections 15.5.1 or 15.5.2, the associated voting rights with respect to Defaulting Project Participant's Project Rights and Obligations shall be redistributed pro rata among the non-Defaulting Project Participants, based upon each non-Defaulting Project Participant's Output Entitlement Share, so that the total voting rights remain at 100%.

Except as provided in this Section 15.5 or otherwise in this Agreement, SCPPA may not convey, transfer or assign any Project Participant's Rights and Obligations without the prior written consent of the Project Participant.

- 15.6 Elimination or Reduction of Payment Obligations. Upon termination of Defaulting Project Participant's Project Rights pursuant to Section 15.5 and conveyance, transfer or assignment of Defaulting Project Participant's Project Rights and Obligations pursuant to Sections 15.5.1 or 15.5.2, Defaulting Project Participant's obligation to make payments under its Power Sales Agreement (notwithstanding anything to the contrary in this Agreement) shall not be eliminated or reduced except to the extent of moneys received by SCPPA as a result of the conveyance, transfer and assignment of Defaulting Project Participant's Project Rights and Obligations, less SCPPA's related costs and expenses; provided, however, such payment obligations for Defaulting Project Participant may be eliminated or reduced to the extent permitted by law, if and to the extent any costs incurred by SCPPA have been fully paid, and (a) no Bonds are outstanding or adequate provision for the payment thereof has been made in accordance with the applicable provisions of the Indenture and (b) the Board of Directors, by resolution, determines to eliminate or reduce such payment obligations, which determination shall not be unreasonably withheld.

- 15.7 Use of Operating Reserve Account. With respect to a Payment Default by Purchaser, funds in the operating reserve account, if any, under the Indenture may be used, to the extent necessary and to the extent available and consistent with the Indenture, to cover any deficiency with respect to any payment due by SCPA attributable to Purchaser's participation in the Project under the Indenture during the period prior to the Operating Reserve Depletion Date. Any replenishing of the operating reserve account under the Indenture shall be in accordance with the Indenture.
- 15.8 Use and Replenishment of Debt Service Reserve Fund(s). SCPA may maintain Debt Service Reserve Fund(s) which shall be funded and maintained in the amount(s) specified in the Indenture. With respect to a Payment Default by Purchaser, funds (or any surety bond, credit facility or similar instrument) in the Debt Service Reserve Fund(s) under the Indenture shall be used, to the extent necessary and to the extent available, to cover any shortfall in the Debt Service account(s) relating to the Indenture to pay for Debt Service (but, unless otherwise provided in the Indenture, not the payment of other obligations payable from amounts deposited in the Debt Service Fund). The replenishment of the Debt Service Reserve Fund(s) shall be in accordance with the Indenture.
- 15.9 Step-Up Invoices. Step-Up Invoices shall be issued in accordance with the provisions set forth below.
- 15.9.1 In the event of a Payment Default by one or more Project Participants, SCPA shall provide by the fifth day of the month following such Payment Default(s) a separate Step-Up Invoice to each non-Defaulting Project Participant that specifies the non-Defaulting Project Participant's pro rata share, based upon the Indenture Cost Shares of all non-Defaulting Project Participants, of the amount of the Payment Defaults with respect to the Indenture cost component (described in Section 4.9.5 hereof) set forth in the Billing Statement(s) for the Defaulting Project Participant(s). Notwithstanding the previous sentence, (i) the amount of a Step-Up Invoice provided to a non-Defaulting Project Participant under this Section 15.9.1 shall not exceed 100% of the amount that such non-Defaulting Project Participant was billed for the Indenture cost component (described in Section 4.9.5 hereof) in its Billing Statement for the Month preceding such monthly Step-Up Invoice and (ii) following the Operating Reserve Depletion Date, the provisions of Section 15.9.2 hereof shall apply and no additional Step-Up Invoices shall be issued pursuant to this Section 15.9.1 with respect to such Payment Default.

- 15.9.2 In the event of a Payment Default by one or more Defaulting Project Participants, which is in existence following the Operating Reserve Depletion Date, SCPPA shall provide by the fifth day of the Month following such Operating Reserve Depletion Date, a separate Step-Up Invoice to each non-Defaulting Project Participant that includes a charge equal to the non-Defaulting Project Participant's pro rata share, based upon the Project Cost Shares of all non-Defaulting Project Participants, of the amount of Total Monthly Costs reflected in the unpaid Billing Statements for the previous Month for such Defaulting Project Participant(s). Notwithstanding the foregoing, the amount of each monthly Step-Up Invoice provided to a non-Defaulting Project Participant shall not exceed 100% of the aggregate amount that such non-Defaulting Project Participant was billed with respect to Total Monthly Costs in its Billing Statement for the Month preceding such monthly Step-Up Invoice.
- 15.9.3 Step Up Invoices shall be due and payable within 20 days of the receipt thereof, and payments to SCPPA with respect to Step-Up Invoices shall be separate from any other payments due under each Project Participant's Power Sales Agreement, including but not limited to monthly Billing Statement payments.
- 15.10 Application of Moneys Received from Step-Up Invoices Relating to the Project. Moneys received by or on behalf of SCPPA from the payment of Step-Up Invoices relating to a Payment Default of a Project Participant shall be applied in the following manner:
- 15.10.1 Moneys received from Project Participants with respect to the Indenture cost component (described in Section 4.9.5 hereof), as set forth in the Step-Up Invoices, to the extent such moneys relate to Debt Service, shall be forwarded to the Project Trustee or Lender for deposit directly into the Debt Service Fund under the Indenture, and to the extent such moneys relate to any other portion of the Indenture cost component, shall be forwarded to the Project Trustee or Lender for deposit into such other Funds as are appropriate under the Indenture.
- 15.10.2 Moneys received from the Project Participants with respect to the amount of Total Monthly Costs (described in Section 4.8 or Section 4.9 hereof, other than Section 4.9.5) as set forth in the Step-Up Invoices, shall be forwarded to the Project Trustee or Lender for deposit into the Revenue Fund under the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture.

- 15.10.3 In the event a Project Participant pays less than the total amount of its Step-Up Invoice, such Project Participant shall be a Defaulting Project Participant and its partial payment shall be allocated in the following order: (i) all Total Monthly Costs (described in Section 4.8 or Section 4.9 hereof) except the Indenture cost component described in Section 4.9.5 hereof, and (ii) the Indenture cost component (described in Section 4.9.5 hereof).
- 15.11 Application of Moneys Received from Default Invoices. Moneys received by or on behalf of SCPPA from the payment of Default Invoices shall be forwarded by SCPPA to the Project Trustee or Lender for deposit into the Revenue Fund of the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture. SCPPA shall credit on each non-Defaulting Project Participant's next monthly Billing Statement or Billing Statements an amount equal to the aggregate amount such non-Defaulting Project Participant paid as a result of Step-Up Invoices with respect to such Default Invoice, plus a pro rata share, based upon the Project Cost Shares of the non-Defaulting Project Participants, of the amount SCPPA received regarding late payment interest charges. In the event a Defaulting Project Participant pays less than the full amount of its Default Invoice, the credit to each non-Defaulting Project Participant shall be adjusted proportionately.
- 15.12 Application of Moneys Received from Compliance Payments. Moneys received by or on behalf of SCPPA from a Defaulting Project Participant that makes payments to remain in Compliance with respect to a Payment Default shall be applied in the following manner:
- 15.12.1 With respect to a Defaulting Project Participant's first payment to remain in Compliance, SCPPA shall forward or cause to be forwarded the moneys received to the Project Trustee or Lender to be deposited into the Revenue Fund of the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture. SCPPA shall provide a credit on each non-Defaulting Project Participant's next monthly Billing Statement(s) an amount equal to the aggregate amount such non-Defaulting Project Participant paid as a result of Step-Up Invoices with respect to such Compliance payment, plus a pro rata share, based upon the Project Cost Shares of the non-Defaulting Project Participants, of the amount SCPPA received regarding late payment interest charges.
- 15.12.2 With respect to a Defaulting Project Participant's payments to remain in Compliance other than the first payment (as provided in Section 15.12.1 hereof), SCPPA shall forward or cause to be forwarded the moneys received to the Project Trustee or Lender

for deposit into the Revenue Fund of the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture.

15.13 Application of Moneys Received from Sale of SCPPA Facility Output. Moneys received by or on behalf of SCPPA from the sale of SCPPA Facility Output related to a Defaulting Project Participant's Project Rights and Obligations, as provided in Section 15.5.3 hereof, shall be applied in the following manner in order:

15.13.1 SCPPA shall credit on each non-Defaulting Project Participant's next monthly Billing Statement(s) an amount up to, but not in excess of, the aggregate amount paid to SCPPA by such non-Defaulting Project Participant with respect to each such non-Defaulting Project Participants Step-Up Invoices.

15.13.2 SCPPA shall forward or caused to be forwarded to the applicable Project Trustee or Lender for deposit into the Revenue Fund of the Indenture, as appropriate, or into such other Funds as are appropriate under the Indenture, the applicable portion of such moneys.

15.13.3 Following consultation with the non-Defaulting Project Participants, SCPPA shall determine the disposition of any moneys received that are in excess of the aggregate amount of related Step-Up Invoices paid by non-Defaulting Project Participants. Unless the Coordinating Committee determines otherwise, or except as otherwise required by law, the Defaulting Project Participant shall have no claim or right to any such monies.

15.14 Limitation on Cure Period. Notwithstanding anything to the contrary in this Agreement, there shall be no Cure Period with respect to Purchaser's failure to pay those costs constituting its share of Debt Service in a timely manner in accordance with this Agreement, and any such Debt Service not paid by the Purchaser when due shall be immediately due and payable to SCPPA.

16. CHARACTER, CONTINUITY OF SERVICE.

16.1 Outages, Interruptions and Curtailment of Energy Deliveries. Under certain conditions set forth in Project Agreements or in the case of emergencies or abnormal conditions with respect to the Facility or in order to take the Facility out of service for repairs, maintenance work, replacements, equipment installation or inspections, or in the event of a failure by a Project Participant to receive or accept SCPPA Facility Output or Replacement Energy delivered to SCPPA at a Point of Delivery, the

Power Purchase Provider or, if SCPPA shall acquire the Facility or an ownership interest therein, SCPPA, its agent or the Project Manager, as the case may be, may temporarily interrupt or curtail deliveries of SCPPA Facility Output (or in the case of the Power Purchase Provider, the Replacement Energy) to Project Participants. In the event of the occurrence of any such interruption or curtailment, including any associated Facility outage, which shall cause a reduction in deliveries of SCPPA Facility Output, any incurrence by SCPPA of additional costs, or a receipt by SCPPA of payments or credits under any Project Agreement, certain of the rights, entitlements and obligations of the affected Project Participants under their respective Power Sales Agreements shall be subject to adjustment as follows:

- 16.1.1 In the case of such an interruption, curtailment or outage affecting the deliveries of SCPPA Facility Output at or to the Point of Interconnection, (i) the resulting reduction in SCPPA Facility Output at the Point of Interconnection shall be shared by the Project Participants pro rata in accordance with their respective Point of Interconnection Allocable Shares, and (ii) any resulting costs incurred by SCPPA or payments or credits received by SCPPA shall be allocated among the Project Participants in accordance with their respective Project Cost Shares.
- 16.1.2 In the case of such an interruption or curtailment that affects deliveries of SCPPA Facility Output from the Point of Interconnection to any Point of Delivery, and as a result thereof SCPPA shall receive any payment or credit, each affected Project Participant shall in turn receive a credit on its monthly Billing Statement (i) during the term of the Power Purchase Agreement, in the amount of its Delivery Point Output Cost Share of such payment or credit received by SCPPA, and (ii) commencing upon an Acquisition by SCPPA of the Facility or an ownership interest therein, the amount of its Transmission Services Cost Share of such payment or credit received by SCPPA.
- 16.1.3 In the case where a Project Participant fails to accept or receive at its Designated Point of Delivery all or any portion of its Output Entitlement Share of SCPPA Facility Output or Replacement Energy delivered to such Point of Delivery, such Project Participant shall be responsible for any cost incurred by SCPPA which is attributable to such failure and the amount of such cost shall be added to such Project Participant's monthly Billing Statement.
- 16.1.4 No such interruption or curtailment of deliveries of SCPPA Facility Output, including any interruption or curtailment due to a Facility outage, shall relieve any of the Project Participants of their obligations to make payments under their respective Power Sales Agreements.

- 16.1.5 SCPPA or the Project Manager (if other than SCPPA) or SCPPA's agent will use its best efforts to apprise the affected Project Participants of potential outages, interruptions or curtailments, the reason therefor and the probable duration thereof, when such outages, interruptions or curtailments can be deemed likely to occur.
- 16.1.6 After informing the affected Project Participants regarding any such planned interruption or curtailment, giving the reason therefor, and stating the probable duration thereof, SCPPA, its agent or the Project Manager, as applicable, will to the best of its ability schedule such interruption or curtailment at a time which will cause the least interference with the system operations of the Project Participants.
- 16.2 Uncontrollable Forces. SCPPA shall not be required to provide, and SCPPA shall not be liable for failure to provide, SCPPA Facility Output or other service under this Agreement when such failure or the cessation or curtailment of or interference with the service is caused by Uncontrollable Forces or by the inability of SCPPA, the Power Purchase Provider or other applicable counterparty to obtain any required governmental permits, licenses or approvals to enable SCPPA or the Power Purchase Provider, as applicable, to acquire, administer or operate the Project; provided, however, that Purchaser and the other Project Participants shall not thereby be relieved of their obligations to make payments under their respective Power Sales Agreements except to the extent SCPPA is so relieved pursuant to the Indenture and/or other applicable Project Agreements.

17. SEVERAL OBLIGATION; LIABILITY.

- 17.1 Project Participants' Obligations Several. Purchaser and the other Project Participants shall be severally responsible and liable for performance under their respective Power Sales Agreements, and for any respective arrangements which are not part of the Project. The obligation of Purchaser to make payments under this Agreement is a several obligation and not a joint obligation with those of the other Project Participants under the other Power Sales Agreement to which such Project Participants are parties.
- 17.2 No Liability of SCPPA, Directors, Officers, Etc.; SCPPA Directors, Officers, Employees, Project Manager Not Individually Liable. Purchaser agrees that neither SCPPA, the Project Manager, nor any of their directors, officers, or employees shall be liable to Purchaser for any and all claims, including loss of profits, direct or consequential loss, or damage suffered by Purchaser as a result of (i) the performance or non-performance by the Power Purchase Provider or the Project Manager or any of its directors, officers, and employees under this Agreement or any Project Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct) or (ii) the performance or non-performance of

SCPPA, the Project Manager, or any of their directors, officers, or employees under this Agreement or any Project Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct). Purchaser releases SCPPA and its directors, officers, and employees and the Project Manager from any claim or liability that Purchaser may have cause to assert as a result of any actions or inactions of SCPPA under this Agreement or the performance or non-performance by the Project Manager under this Agreement or any Project Agreement (including negligent or grossly negligent acts or omissions and excluding willful misconduct). No such performance or non-performance by the Project Manager, the Power Purchase Provider, or SCPPA shall relieve Purchaser from its obligations under this Agreement, including its obligation to make payments required under this Agreement. The provisions of this Section 17.2 shall not be construed so as to relieve the Project Manager or the Power Purchase Provider from any obligation (or liability in the case of the Power Purchase Provider) under this Agreement, the Power Purchase and Security Agreements or any other applicable Project Agreement. It is also hereby recognized and agreed that no member of the Board of Directors, the Project Manager, nor their officers or employees or member of SCPPA in its capacity as a member of SCPPA, shall be individually liable in respect of any undertakings by SCPPA under this Agreement or any Project Agreement.

- 17.3 Extent of Exculpation; Enforcement of Rights. The exculpation provision set forth in Section 17.2 hereof shall apply to all types of claims or actions including, but not limited to, claims or actions based on contract or tort. Notwithstanding the foregoing, Purchaser may protect and enforce its rights under this Agreement by a suit or suits in equity for specific performance of any obligations or duty of SCPPA, and Purchaser shall at all times retain the right to recover, by appropriate legal proceedings, any amount determined to have been an overpayment by Purchaser in accordance with Section 7.4 hereof.
- 17.4 Determination or Enforcement of Rights. Notwithstanding Section 17.2 and 17.3 hereof, Purchaser or SCPPA may determine, protect and enforce its rights under this Agreement or any Project Agreement by a suit(s) in equity for specific performance of, or declaratory action with respect to, any obligation or duty hereunder or thereunder.
- 17.5 No Relief From Insurer's Obligations. Notwithstanding any provision in this Agreement to the contrary, including but not limited to the provisions in this Section 17, the provisions of this Section 17 shall not be construed or applied so as to relieve any insurer of its obligation to pay any insurance claims in accordance with any applicable insurance policy.

- 17.6 No General Liability of SCPPA. The undertakings under this Agreement by SCPPA, or the Project Manager in its capacity as such, shall never constitute a debt or indebtedness of SCPPA or the Project Manager within the meaning of any provision or limitation of the Constitution or statutes of the State of California and shall not constitute or give rise to a charge against its general credit.

18. RESTRICTIONS ON DISPOSITION.

- 18.1 Limitations Concerning Private Use. Purchaser recognizes that certain Federal Tax Law Requirements, if applicable, limit the arrangements permitted with respect to the purchase, sale, assignment or other disposition of Purchaser's Project Rights and Obligations. Purchaser shall comply with the rules, procedures and protocols promulgated by SCPPA pursuant to Section 10.3 with respect to compliance with the Federal Tax Law Requirements, applicable, to any Bonds. Except as provided in Section 6.2.9 or Section 15 hereof, no sale, assignment or other disposition of all or any portion of Purchaser's Project Rights and Obligations, including the Purchaser's Output Entitlement Share with respect to the Project, shall be effective until (i) Purchaser shall have given prior written notice thereof to SCPPA, and (ii) unless waived by the Board of Directors after consultation with Bond Counsel or Tax Counsel, Bond Counsel or Tax Counsel shall have rendered an opinion that such sale, assignment or other disposition will not result in or cause non-compliance with any applicable Federal Tax Law Requirements and will not be inconsistent with the Power Sales Agreements. Notwithstanding the immediately preceding sentence, Purchaser may (without giving such notice or obtaining such opinion) contract to provide or otherwise sell or dispose of the SCPPA Facility Output to which it is entitled hereunder in a transaction which complies with guidelines established by SCPPA and approved by SCPPA's Bond Counsel or Tax Counsel from time to time. In addition to the forgoing, no such sale, assignment or disposition shall cause SCPPA to be in default of any term or condition of the Power Purchase Agreement.
- 18.2 Restrictions on Elimination of Payment Obligations. No sale, assignment or other disposition of Purchaser's Project Rights and Obligations to any Person ("Assignee") that occurs when any Bonds are outstanding shall release Purchaser from its payment obligations under this Agreement; provided, however, such payment obligations may be eliminated or reduced if no Bonds are outstanding or adequate provisions for the payment thereof have been made in accordance with the provisions of the Indenture if (i) such Assignee shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, (ii) unless otherwise provided by resolution of the Board of Directors, such Assignee shall have a corporate or long-term senior unsecured credit rating not less than Standard & Poors A- or Moody's A3, and (iii) the

Board of Directors, by resolution, determines in its sole discretion to eliminate or reduce such payment obligations. For avoidance of doubt, notwithstanding the forgoing, no such sale, assignment or disposition shall cause SCPPA to be in default of any term or condition of the Power Purchase Agreement or of any Project Agreement.

- 18.3 Restrictions on Disposition of Purchaser's Entire System. Purchaser shall not sell, lease or otherwise dispose of all or substantially all of its electric system to any Person ("Acquiring Entity") unless the following conditions shall be met: (A) in the event that Bonds are outstanding then (i) Purchaser shall assign its Project Rights and Obligations hereunder to such Acquiring Entity and such Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, (ii) such sale, lease or other disposition shall not, in and of itself, cause the rating of any Bonds to be downgraded, suspended or withdrawn (which fact shall be evidenced by letters of the rating agencies then rating the Bonds), and (iii) such sale, lease or other disposition will not adversely affect the value of this Agreement as security for the payment of the Indenture cost component; (B) in the event that no Bonds are outstanding or adequate provisions for the payment thereof have been made in accordance with the provisions of the Indenture then (i) such Acquiring Entity shall assume and agree to fully perform and discharge the Project Rights and Obligations under this Agreement, and (ii) such Acquiring Entity shall have a corporate or long-term senior unsecured credit rating not less than investment grade; and (C) in all cases, unless waived by SCPPA after consultation with Bond Counsel or Tax Counsel, Bond Counsel or Tax Counsel shall have rendered an opinion that such sale, lease or other disposition will not result in or cause non-compliance with any applicable Federal Tax Law Requirements with respect to any Bonds.
- 18.4 Successors and Assigns. Subject in all respects to Sections 15 and 18 hereof, the Project Rights and Obligations under this Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties to this Agreement.

- 19. REIMBURSEMENT OF PROJECT DEVELOPMENT COSTS.** Within 90 days after the issuance of the first Bonds all of the following project development costs and expenses and other applicable costs for Development Work, paid by Purchaser prior to the date of such issuance, to the extent reimbursable under applicable tax law and regulations, shall be reimbursed to Purchaser by SCPPA from the proceeds of the Bonds (in an amount determined by the Coordinating Committee or Board of Directors, as appropriate): costs of planning and development of the Project; costs relating to any acquisition of the Project; costs of investigation and feasibility studies; technical, legal and financing expenses; legal costs including but not limited to the costs of Bond Counsel, Tax Counsel, electric utility counsel, secured transaction and real estate specialists, solar energy counsel, environmental counsel, bankruptcy counsel, and counsel

experienced in securing and facilitating this transaction under California, Arizona, and Federal law, costs of obtaining permits, clearances, licenses, entitlements and approvals or other governmental authorizations, options or rights therein; costs of preparing agreements or other documents; and other costs relating to the Project in amounts determined by the Coordinating Committee.

20. EFFECTIVE DATE, TERM AND EXPIRATION.

- 20.1 Effective Date; Execution in Counterparts. This Agreement shall become effective on the first day when all of the following shall have occurred: (i) this Agreement shall have been duly executed and delivered by SCPPA and Purchaser, (ii) the Power Purchase Agreement shall have been duly executed and delivered by SCPPA and the Power Purchase Provider, and (iii) the Power Sales Agreement between SCPPA and the other Project Participants shall have been duly executed and delivered by the parties thereto. Once the Power Purchase Agreement has been executed and delivered as set forth above, SCPPA shall deliver a copy of the same to Purchaser. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.
- 20.2 Termination Conditions. This Agreement shall be effective upon satisfaction of the conditions set forth in Section 20.1 and shall extend for the term specified in Section 20.3 unless earlier terminated pursuant to an express provision of this Agreement, or by operation of the Indenture or of law; provided, however, that (i) any obligation to make payments to SCPPA or any outstanding liability of Purchaser hereunder which either exists or may exist as of the date of termination of this Agreement, or which comes into existence at any future time as a result of any activity or transaction carried forth under this Agreement, shall survive such termination and (ii) any obligation of SCPPA or Purchaser hereunder to comply with the Federal Tax Law Requirements shall continue until such time as provided in Section 23.3.
- 20.3 Expiration. The term of this Agreement shall begin on the day this Agreement becomes effective pursuant to Section 20.1 hereof. Unless terminated earlier pursuant to Sections 20.4 or 20.5 and subject to Section 23 hereof, the term of this Agreement shall expire on the later of: (i) the date SCPPA's Joint Powers Agreement (including any extensions thereof) expires or (ii) the date on which all Bonds and the interest thereon shall have been paid in full or adequate provision for such payment shall have been made and the Bonds are no longer outstanding; provided, however, that in no event shall the term of this Agreement expire so long as the Power Purchase Agreement is of any force or effect.
- 20.4 Transfer of SCPPA Interest. Except as provided in Section 20.5 hereof, and subject to any applicable provisions of any associated operating agreements, upon the expiration of the term of this Agreement pursuant to

Section 20.3 hereof, in the event SCPPA shall have purchased or acquired the Facility or an ownership interest therein, SCPPA shall transfer to the Project Participants and each Project Participant shall assume its pro rata share of any right, title and interest in the Facility or such ownership interest therein, as applicable, (including all rights and obligations of SCPPA under any Project Agreement) as evidenced by a participation agreement developed by SCPPA and the Project Participants, unless otherwise agreed to by SCPPA and all of the Project Participants. The purchase price and consideration to be paid to SCPPA by Purchaser for such transfer shall consist of the payments made by Purchaser pursuant to this Agreement prior to the date of such transfer plus any remaining costs or obligations incurred by SCPPA in connection with the Project.

20.5 Termination of Agreement before Expiration Date. Notwithstanding the expiration date set forth in Section 20.3 hereof, this Agreement shall terminate, subject to Section 23 hereof, on the date, if any, by which each and all of the following have occurred:

20.5.1 All Bonds and the interest thereon shall have been paid in full or adequate provision for such payment shall have been made and the Bonds are no longer outstanding under the Indenture;

20.5.2 SCPPA notifies Purchaser that all Power Sales Agreements are superseded as a result of each Project Participant having (i) succeeded to SCPPA's rights through another agreement or agreements, (ii) entered into a replacement power sales agreement or other agreement with SCPPA or (iii) entered into a replacement power sales agreement or other agreement with one or more Project Participants which have become Project Participants in the Project under another agreement. The purchase price and consideration to be paid to SCPPA by Purchaser with respect to any such superseding arrangement shall consist of the payments and satisfaction of all obligations by Purchaser under and pursuant to this Agreement prior to the effective date of the superseding arrangement plus any remaining costs or obligations incurred by SCPPA in connection with the Facility or an ownership interest therein, as applicable; and

20.5.3 The Power Purchase Agreement shall no longer be of any force or effect.

21. REVISION OF APPENDICES B AND C.

21.1 Revision of Appendices B and C. The Parties acknowledge that under the terms of the Power Purchase Agreement SCPPA may hereafter increase its SCPPA Facility Capacity Share of the Facility Capacity and may hereafter enter into additional power sales agreements for the purchase of SCPPA

Facility Output by LADWP and other of its members which would then become additional Project Participants. In such event Appendix B and Appendix C may be revised, as applicable, so as to add Project Participants and to adjust the Capacity Amounts, Output Entitlement Shares, any of the Cost Shares, the Point of Interconnection Allocable Shares and the Points of Delivery (collectively, the “Appendix A and B Designations”) as set forth in Appendix B and Appendix C, as shall be necessary to provide for any such increase in the SCPPA Facility Capacity Share of the Facility Capacity or the addition of Project Participants; provided that (i) any such adjustments in Appendix B and Appendix C shall be approved by a resolution adopted by the Coordinating Committee (which shall include the affirmative vote of Purchaser’s representative on the Coordinating Committee if any of the Purchaser’s Appendix A and B Designations shall be so adjusted), and shall be approved by a corresponding resolution adopted by SCPPA’s Board of Directors, (ii) such adjustments shall not result in an increase or a decrease of more than fifty percent (50%) of the then existing Capacity Amount, Output Entitlement Share, any Cost Share, or the Point of Interconnection Allocable Share of Purchaser, and (iii) such adjustments shall be in compliance with this Agreement and from and after the Acquisition by SCPPA of the Facility or an ownership interest therein shall be subject to and shall comply with the applicable provisions of the Indenture. The Parties further agree that any such adjustments in Appendix B or Appendix C shall be made pursuant to the terms of this Agreement as entered into by the Parties and shall be treated as an element of administration and not an amendment of this Agreement. The revised Appendix B and Appendix C upon receipt of the approvals as provided above and upon compliance with the other requirements set forth in this Section 21.1 shall become Appendix B and Appendix C, respectively, to this Agreement in replacement of the prior Appendix B and Appendix C hereof.

- 21.2 Agreement Subject to the Indenture. It is recognized by the Parties hereto that SCPPA, in undertaking the planning and financing, development, acquisition, operation and maintenance of the Project, must comply with the requirements of the Indenture and all conditions, permits and approvals or other governmental authorizations necessary for such planning, financing, development, acquisition, operation and maintenance and it is therefore agreed that this Agreement is made subject to the provisions of the Indenture and all such conditions, permits, approvals and governmental authorizations
- 21.3 Comply With the Indenture. SCPPA covenants and agrees for the benefit of Purchaser to comply in all material respects with all terms, conditions and covenants of the Indenture and all conditions, permits, approvals and governmental authorizations relating to the Project, provided that SCPPA shall not be prevented from contesting the validity or applicability of any

such conditions, permits, approvals and governmental authorizations in good faith by appropriate proceedings.

22. SEVERABILITY. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid by a court of competent jurisdiction, it is the intention of each of the Parties hereto that such illegality or invalidity shall not affect any other provision hereof, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein unless a court holds that the provisions are not separable from all other provisions of this Agreement.

23. CONDITIONS TO TERMINATION OR AMENDMENT.

23.1 No Adverse Effect. So long as any of the Bonds are outstanding under the Indenture, this Agreement shall not be terminated, amended, modified or otherwise altered in such a manner (i) as will materially reduce the payments pledged as security for the Bonds or extend the time of such payments provided herein, (ii) as will materially impair or materially adversely affect the rights of the owners from time to time of any Bonds, or (iii) as would be prohibited by any applicable provision of the Indenture.

23.2 Rights Among Project Participants. None of the Power Sales Agreements may be terminated as to any one or more of the Project Participants, or be amended as to any one or more of the Project Participants so as to provide terms and conditions materially different from those contained therein except, subject to the provisions of Section 23.1 and consistent with the Indenture, upon written notice to and written consent or waiver by the other Project Participants, and upon similar amendment, if appropriate, being made to the Power Sales Agreement of the other Project Participants requesting such amendment after receipt by such Project Participant of written notice of such amendment.

23.3 Continuing Compliance with Federal Tax Law Requirements. Notwithstanding anything contained in the Power Sales Agreements to the contrary, all obligations of SCPPA and the Project Participants with respect to compliance with Federal Tax Law Requirements with respect to any Bonds shall survive any termination of the Power Sales Agreements until such time as all Bonds to which such Federal Tax Law Limitations shall apply shall have been fully paid or redeemed and discharged or such earlier time as SCPPA shall determine upon consultation with Bond Counsel or Tax Counsel, or Bond Counsel or Tax Counsel shall have rendered an opinion to the effect that such Federal Tax Law Requirements shall no longer be applicable.

24. REPRESENTATION AND GOVERNING LAW. The Parties acknowledge that each Party was represented by counsel in the negotiation and execution of this Agreement. This Agreement was made and entered into in the County of Los Angeles and shall be

governed by, interpreted and enforced in accordance with the laws of the State of California. All litigation arising out of, or relating to this Agreement, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

25. **ARBITRATION AND ATTORNEYS' FEES.** If a dispute arises between the Parties which the Coordinating Committee or the Board of Directors is unable to resolve, the Parties may by mutual agreement submit the dispute to mediation or non-binding arbitration. With respect to any such dispute the Parties agree that each Party shall bear its own attorneys fees and costs. Notwithstanding the foregoing, Purchaser and SCPPA recognize and agree that SCPPA's attorneys fees associated with any matter relating to the Project or this Agreement, including any dispute relating thereto, shall constitute a Project cost which shall be allocated and billed as set forth in Sections 4 and 7 of this Agreement.
26. **PURCHASER'S CONTRACT ADMINISTRATOR.** Purchaser's contract administrator for this Agreement shall be the person so designated by the individual authorized to receive notices on behalf of Purchaser pursuant to Section 27 herein, and Purchaser's contract administrator shall have the authority to administer this Agreement on behalf of Purchaser.
27. **NOTICES.** Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, to the persons specified below:

Southern California Public Power Authority
Attention: Executive Director
225 South Lake Avenue, Suite 1250
Pasadena, California 91101

City of Colton
Electric Utility Director
Attention: David Kolk
650 N. La Cadena Drive
Colton, California 92324

28. **AMENDMENTS.** The Parties acknowledge and agree that any amendment to this Agreement shall be in writing and duly executed by the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed on their respective behalves by their duly authorized representatives.

SOUTHERN CALIFORNIA PUBLIC
POWER AUTHORITY

By: _____
GLENN L. STEIGER
President

Attest: _____
BILL D. CARNAHAN
Assistant Secretary

CITY OF COLTON, CALIFORNIA

By: _____
Rod Foster
City Manager

ATTEST:
Office of the City Clerk

By: _____
Eileen C. Gomez
City Clerk

Approved as to Form and Legal Content:

Dean Derleth, City Attorney

APPENDIX A

DEFINITIONS

The following terms, whether in the singular or the plural, and initially capitalized, shall have the meanings specified below:

1. Acquisition. Acquisition shall entail the procurement of SCPPA's rights and obligations pursuant to the Power Purchase Agreement and applicable Project Agreements, the acquisition resulting from the exercise of the purchase option pursuant to the Power Purchase Agreement, any purchase of the Facility or an ownership interest therein, including the purchase of rights and interests under any of the Power Purchase and Security Agreements, SCPPA financing arrangements for the foregoing, and all rights and entitlements associated with the acquisition, development and implementation of the Project, including those resources, contracts, rights, benefits, entitlements and arrangements as may be necessary, desirable or appropriate to the Project to further SCPPA's and the Project Participants' goals and those associated structures and services procured, retained or acquired by and on behalf of the Project Participants as part of the Project and which have been approved by the Coordinating Committee and, where applicable, the Board of Directors. Acquisition also includes the rights and interests under any consents to assignment and related agreements, and taking foreclosure action (or a deed in-lieu-of foreclosure) under and pursuant to any of the Power Purchase and Security Agreements, or a purchase at foreclosure sale, and, if and as applicable, associated financing, and all rights and entitlements of SCPPA under the Power Purchase and Security Agreements or other Project Agreements associated with the development and implementation of the Project.
2. Act. All of the provisions contained in 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., as amended from time to time
3. Additional Facility. "Additional Facility" shall have the definition set forth in the Power Purchase Agreement
4. Anaheim. The City of Anaheim, a California municipality.
5. Ancillary Documents. "Ancillary Documents" shall have the definition set forth in the Power Purchase Agreement.
6. Annual Budget. The budget approved by the Coordinating Committee and adopted by SCPPA pursuant to Section 5.4.1 of this Agreement not less than 30 days nor more than 60 days prior to the beginning of each Power Supply Year, including any amendments thereto, which shall show a detailed estimate of the Total Monthly Costs under the Power Sales Agreements and all credits, charges, revenues, income, or other funds to be applied to such costs, for and applicable to such Power Supply Year.

7. Azusa. The City of Azusa, a California municipality.
8. Banning. The City of Banning, a California municipality.
9. Billing Statement. The written statement prepared or caused to be prepared each Month by, or on behalf of, SCPPA which shall be based upon certain of the information in the Annual Budget and shall show for such Month the amount to be paid to SCPPA by a Project Participant in accordance with the provisions of Section 7 of its Power Sales Agreement.
10. Board of Directors. The Board of Directors of the Southern California Public Power Authority.
11. Bond Counsel. Nationally recognized legal counsel having background and experience in the issuance of municipal bonds, including the Federal Tax Law Requirements relating thereto, and selected by SCPPA to evaluate and advise regarding the Bonds with respect to specified cases, transactions and matters from time to time.
12. Bonds. The bonds, notes, bond anticipation notes, certificates of participation, commercial paper or other evidences of indebtedness issued or incurred by SCPPA and outstanding pursuant to the provisions of the Indenture to finance or refinance the Cost of Acquisition and any Capital Improvements, and, where applicable, the purchase of the Facility or any part, portion or component thereof, including purchase of the rights and interests under the Facility Credit Agreements or any consents or agreements relating to any assignment. Bonds shall include but not be limited to the taxable and/or tax-exempt bonds, notes, bond anticipation notes, certificates of participation, commercial paper or other evidences of indebtedness issued or incurred by SCPPA to finance any purchase of the Facility or an ownership interest therein, including purchase of the rights and interests under the Facility Credit Agreements or other applicable Project Agreement, or bonds, notes, certificates of participation, commercial paper or other evidences of indebtedness issued to redeem or refund such bonds, notes, certificates of participation, commercial paper or evidences of indebtedness, and any and all other obligations which SCPPA issues or incurs relating to the Project. Bonds shall also include any additional Bonds authorized by the Indenture or any supplement thereto and issued or incurred pursuant to the provisions of Section 13.2 of the Power Sales Agreements and any refunding of Bonds issued pursuant to the provisions of Sections 13.3 or 13.5 thereof. Bonds may constitute other categories of bonds eligible for certain tax benefits under the Internal Revenue Code, including but not limited to tax-exempt bonds, tax credit bonds, “build America bonds” or “qualified bonds” within the meaning of Section 54AA of the Internal Revenue Code, “new clean renewable energy bonds” within the meaning of Section 54C of the Internal Revenue Code or “qualified energy conservation bonds” within the meaning of Section 54D of the Internal Revenue Code.
13. Burbank. The City of Burbank, a California municipality.

14. Capacity. The ability or potential to generate, produce or transfer electricity, expressed in kilowatts (“kW”) or megawatts (“MW”), including, when feasible, ancillary or regulating services or other valuable non-energy products or services from a generating facility.
15. Capacity Amount. “Capacity Amount” means, with respect to a Project Participant, such Project Participant’s Project Cost Share of the amount of the SCPPA Facility Capacity Share of the Facility Capacity.
16. Capacity Rights. “Capacity Rights” means the rights, whether in existence as of the Effective Date or arising thereafter during the term of this Agreement, of SCPPA to Capacity of the Facility, including resource adequacy, associated attributes and/or reserves or any of the foregoing purchased by SCPPA under the Power Purchase Agreement, or, if SCPPA acquires the Facility or an ownership interest therein, associated with the electric generating capability of the Facility or such ownership interest therein.
17. Capital Improvements. Any unit of property, property right, land or land right which is a replacement, repair, addition, improvement or betterment to the Project or any transmission facilities relating to, or for the benefit of, the Project, the betterment of land or land rights or the enlargement or betterment of any such unit of property constituting a part of the Project or related transmission facilities which is (i) consistent with Prudent Utility Practices and determined necessary and/or desirable by the Board of Directors or (ii) required by any governmental agency having jurisdiction over the Project.
18. Chairperson. “Chairperson” is as defined in Section 6.1.
19. Colton. The City of Colton, a California municipality
20. Commercial Operation. “Commercial Operation” shall have the definition set forth in the Power Purchase Agreement.
21. Compliance. Following a Payment Default, a Defaulting Project Participant shall be in compliance with its payment obligations under its Power Sales Agreement if it (i) no later than the last day of the Cure Period fully pays all amounts owed as reflected in any Default Invoice; (ii) pays any monthly Billing Statement which comes due during the Cure Period; and (iii) replenishes any reduction made to the applicable operating reserve account, Debt Service reserves or other Reserve Fund as a result of any Payment Default.
22. Consent Agreements. All consents to assignments and all agreements relating thereto entered into with any lender, financial institution or other Person for the purpose of consenting to the assignment of the rights of the Power Purchase Provider under the Power Purchase Agreement.
23. Coordinating Committee. The Coordinating Committee established in accordance with Section 6 of this Agreement.
24. Cost of Acquisition. “Cost of Acquisition” is defined in Section 4.4.

25. Cost Share. “Cost Share” means and includes, with respect to any Project Participant, the Project Cost Share, the Delivery Point Output Cost Share, the Transmission Services Cost Share and the Indenture Cost Share, as applicable, with respect to such Project Participant.
26. Cure Period. That period of time beginning on the date of a Payment Default and concluding sixty (30) days thereafter.
27. Cured Payment Default. A Payment Default which has been cured in accordance with Section 15.3 of this Agreement. If at any time during the Cure Period the Defaulting Project Participant is in Compliance, then the requirements of a Cured Payment Default shall be deemed to have been satisfied as of the date of receipt of such payments by SCPPA and the Cure Period shall expire.
28. Debt Service. The debt service payable with respect to the Indenture pertaining to any category of Bonds, any Bonds issued pursuant to Section 13 of this Agreement, or other applicable series of Bonds, as determined by the context; provided that in the case of any Bonds, Debt Service may, to the extent provided in the Indenture, be reduced by the amount of any applicable cash grant or rebate payable by the Federal Government to SCPPA (or to the trustee under the Indenture) with respect to interest on such Bonds. Debt Service shall also include any payments required to be deposited into the Debt Service Fund under the Indenture to pay, for example, amounts due under any interest rate swap agreements or other derivative agreements.
29. Debt Service Fund. The Debt Service Fund or account, or similar fund or account, established by the Indenture to pay Debt Service. The Debt Service Fund shall not include the Debt Service Reserve Fund(s) under the Indenture.
30. Default Invoice. An invoice during the Payment Default Period and the Cure Period issued to a Defaulting Project Participant pursuant to Section 15 of this Agreement that identifies the total defaulted amount owed, including late payment interest, to achieve a Cured Payment Default. During the Cure Period, the Default Invoice shall also include the amount that must be paid to achieve Compliance.
31. Defaulting Project Participant. A Project Participant that causes a Payment Default which has not been remedied and where the Defaulting Project Participant has not effected a Cured Payment Default.
32. Delivery Point Output cost component. “Delivery Point Output cost component” is defined in Section 4.8.1.
33. Delivery Point Output Cost Share. “Delivery Point Output Cost Share” is defined in Section 4.5.
34. Delivery Term of the Power Purchase Agreement. The time period for the delivery of energy pursuant to the Power Purchase Agreement as set forth therein.

35. Designated Point of Delivery. means, at any time and with respect to a particular Project Participant, the Point of Delivery designated by such Project Participant, as provided for in this Agreement, at which such Project Participant is to receive SCPPA Facility Output or Replacement Energy.
36. Development Work. All work and activities in connection with the development of the Project, including, without limitation, all planning, designing, acquiring (by prepayment, purchase or otherwise), mitigating impacts, constructing, installing, investigating, cost monitoring and control activities, negotiating and administering contracts, purchasing, environmental monitoring, scheduling, protecting, erecting, supervising, expediting inspecting, testing and training activities, recruitment and training of technical, operational and administrative personnel, insuring, accounting, budgeting, public information services and activities, services of consultants and legal counsel, preparing of manuals and reports, and activities relating to securing requisite actions, permits, licenses, approvals and certificates from governmental agencies and authorities.
37. Dynamic Scheduling. “Dynamic Scheduling” shall mean the automated scheduling of Energy from the Designated Point of Delivery with respect to a Project Participant to such Project Participant’s control area or electric system, provided that said dynamic schedules adjust at four second intervals, or other intervals as specified by WECC, to match the amount of Energy actually delivered to such Designated Point of Delivery of the Project Participant from the Facility.
38. Energy. “Energy” shall have the definition set forth in the Power Purchase Agreement
39. Energy Prices. “Energy Prices” means the respective purchase prices, as provided in Appendix A to the Power Purchase Agreement, for SCPPA Facility Output and Replacement Energy, as applicable, delivered at the respective Points of Delivery.
40. Environmental Attributes. “Environmental Attributes” shall have the definition set forth in the Power Purchase Agreement.
41. Facility. “Facility” means all of the facilities including those resources described or defined as the Facility, the Site, the Lease, Purchased Assets, Permits and facilities referred to in the Power Purchase Agreement or such portions of these facilities, interests, assets and rights as are provided SCPPA by way of the Power Purchase Agreement and the other Power Purchase and Security Agreements and all of the Acquisitions, related assets and accompanying rights and obligations associated therewith and all rights, interests and obligations under the Ownership Participation and Related Agreements associated with such facilities, including the rights interests and obligations under agreements for Transmission Services and under any other of the Ancillary Documents. Facility shall also include all Capital Improvements.
42. Facility Capacity. “Facility Capacity” shall have the meaning provided in the Power Purchase Agreement.
43. Facility Energy. “Facility Energy” shall have the definition set forth in the Power Purchase Agreement.

44. Facility Credit Agreements. All agreements, assignments and security related documents associated with the financing of the Facility, or of the rights or interests held in connection with the Facility, by the Power Purchase Provider or any of its affiliates and any other agreements or documents providing for security for the performance of the obligations of the Power Purchase Provider.
45. Federal Tax Law Requirements. “Federal Tax Law Requirements” shall mean, with respect to the issuer of Bonds, any and all requirements and limitations to which any specified type or category of Bonds are subject under the Internal Revenue Code or related Treasury regulations in order that such specified Bonds initially qualify and maintain qualification as that type or category of Bonds.
46. Fiscal Year. The twelve-month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. on the following July 1, or such other time frame as determined by the Coordinating Committee or Board of Directors.
47. Force Majeure. “Force Majeure” shall have the definition set forth in the Power Purchase Agreement.
48. Fund or Funds. Any fund or account created under the Indenture.
49. Guaranteed SCPPA Energy. “Guaranteed SCPPA Energy” shall have the meaning provided in the Power Purchase Agreement.
50. Glendale. The City of Glendale, a California municipality.
51. Indenture. The indenture of trust, trust agreement, credit or loan agreement and other similar agreements with respect to the Bonds, between SCPPA and a Project Trustee or Lender, as from time to time amended and supplemented in conformity with its provisions and of this Agreement. Under such agreements, SCPPA may enter into, or authorize the entering into of, interest rate swap agreements, other derivative agreements, and such other agreements as are authorized or permitted under such agreements. Indenture shall include, but not be limited to, any and all indentures in connection with any bridge loans, bond anticipation notes or other notes, or draw down bonds or with respect to any other type of bonds, and the indentures of trust, trust agreements or other similar agreements entered into between SCPPA and the Project Trustee or Lender to effect the redemption or refunding of any bridge loans, bond anticipation notes or other notes, draw down bonds or other bonds, as from time to time amended and supplemented in conformity with their provisions and the provisions of this Power Sales Agreement.
52. Indenture cost component. “Indenture cost component” is defined in Section 4.9.5.
53. Indenture Cost Share. “Indenture Cost Share” is defined in Section 4.6.

54. Initial Payment Default Date. The earlier of (i) the end of the fifth day following the first Payment Default for which no remedy in payment has occurred and been received by SCPPA, or (ii) the last day of the Month in which the first Payment Default has occurred for which no remedy in payment has occurred and been received by SCPPA.
55. Interconnection Contracts. The contracts providing for the interconnections and associated facilities which interconnect the Facility with the transmission system and substations and provide for the delivery of SCPPA Facility Output.
56. Internal Revenue Code. The Internal Revenue Code of 1986, as amended.
57. Joint Powers Agreement. The “Southern California Public Power Authority Joint Powers Agreement” dated as of November 1, 1980, as amended and modified from time to time, entered into pursuant to the provisions of the Act, among SCPPA and its members.
58. Lease. “Lease” shall have the meaning provided in the Power Purchase Agreement.
59. Major Contracts. The Project Agreements and, to the extent not finalized or effective on the effective date of an applicable project management agreement, any other contract or agreement so identified by the Coordinating Committee or the Board of Directors, as such contracts or agreements may be amended or supplemented from time to time.
60. La Paz Solar Tower LLC. La Paz Solar Tower LLC, a Delaware limited liability company, or its successor.
61. Milestone. “Milestone” shall have the definition set forth in the Power Purchase Agreement.
62. Milestone Security. “Milestone Security” shall have the definition set forth in the Power Purchase Agreement.
63. Month. A calendar month.
64. Monthly Costs. “Monthly Costs” is defined in Section 7.1.
65. Mortgage. “Mortgage” shall have the meaning set forth in the Power Purchase Agreement.
66. New Facility. “New Facility” shall have the definition set forth in the Power Purchase Agreement.
67. Operating Budget. The operating budget approved by the Board of Directors, which shall show a detailed estimate of all Project operating costs, including all revenues, income or other funds to be applied to such operating costs, for and applicable to a Power Supply Year.
68. Operating cost component. “Operating cost component” is defined in Section 4.7.1.

69. Operating Reserve Depletion Date. The date that is two Months prior to the date on which SCPPA anticipates, assuming continued Payment Defaults by one or more Defaulting Project Participants, that the moneys in the operating reserve account of the Indenture will be fully depleted; provided, however, if as of the date on which a Payment Default occurs SCPPA determines that the moneys in the operating reserve account held by SCPPA will be fully depleted in less than two Months (or currently are fully depleted), then the Operating Reserve Depletion Date shall be deemed to have occurred when such a Payment Default occurs.
70. Operating Work. All work and activities in connection with the administration, operation and maintenance of the Project, including without limitation, negotiating and administering contracts, planning, mitigating impacts, purchasing, repairing, inspecting, maintaining, investigating and monitoring all aspects of the Project, performing modeling functions, economic analysis, quality control, testing and evaluating, recruitment and training of operating entities and personnel, electric energy and environmental attribute procurement, regulatory efforts, tagging, interconnecting, transmission, dispatching, firming, balancing, exchanging and scheduling activities, supervising, expediting, budgeting, insuring, accounting, tracking, registering, protecting, operating and managing activities, public information services and services of consultants, operators, engineers, contactors and legal counsel, renewals, replacements, reconstruction, and improvements, and activities related to securing requisite permits, franchises, licenses, approvals, entitlements, credits and certificates from governmental agencies and authorities.
71. Option Agreement. “Option Agreement” shall have the meaning provided in the Power Purchase Agreement.
72. Output Entitlement Share. With respect to a particular Project Participant and during each Power Supply Year, the percentage entitlement, as set forth for such Project Participant in Appendix B of this Agreement, of the SCPPA Facility Output or, if applicable, the Replacement Energy, delivered at such Project Participant’s Designated Point of Delivery. The Output Entitlement Share of such Project Participant may be adjusted in connection with a revision of Appendix B as provided in Section 21.1.
73. Ownership General and Administrative cost component. “Ownership General and Administrative cost component” is defined in Section 4.9.3.
74. Ownership Participation and Related Agreements. Any participation, tenant-in-common or shared facilities agreements with respect to the Facility and the associated Facility operation and maintenance agreements, and any lease, leasehold interest, rights-of-way, deeds, conveyances, assignments, mortgages or other security instruments or any estate or other property interests or consents or collateral instruments with respect to the Acquisition or ownership of the Facility or an ownership interest therein by SCPPA.
75. Participants. The Project Participants.
76. Pasadena. The City of Pasadena, a California municipality.

77. Payment Default. A failure by a Project Participant to pay when due all of its Billing Statement for any Month.
78. Payment Default Period. That period of time during which a Payment Default exists.
79. Performance Security. “Performance Security” shall have the definition set forth in the Power Purchase Agreement.
80. Permit. “Permit” shall have the definition set forth in the Power Purchase Agreement.
81. Person. “Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.
82. Point of Interconnection. Point of Interconnection shall have the definition set forth in the Power Purchase Agreement.
83. Point of Interconnection Allocable Share. With respect to a particular Project Participant, in the event that SCPPA shall acquire the Facility or an ownership interest therein and commencing with such acquisition, the percentage share, as set forth for such Project Participant in Appendix C hereof, of the SCPPA Facility Output at the Point of Interconnection. The Point of Interconnection Allocable Share of such Project Participant may be adjusted in connection with a revision of Appendix C as provided in Section 21.1.
84. Points of Delivery. The respective points at which SCPPA Facility Output or Replacement Energy is to be delivered to an individual Project Participant or to any combination of Project Participants, as set forth (or as designated by notice) pursuant to Appendix B hereof, or otherwise, pursuant to the Power Purchase Agreement and the Power Sales Agreements or, if SCPPA shall purchase or acquire the Facility or an ownership interest therein, the same respective Points of Delivery for the SCPPA Facility Output, as provided under the Power Purchase Agreement, or such other respective points of delivery as authorized and determined by the Coordinating Committee or the Board of Directors.
85. Power Purchase Agreement. The Power Purchase Agreement between Southern California Public Power Authority and La Paz Solar Tower LLC, dated as of December 1, 2011, attached hereto in substantial form as Appendix F, as the same may be amended from time to time.
86. Power Purchase and Security Agreements. The Power Purchase Agreement, the Security Instruments, Consent Agreements, Facility Credit Agreements, and any other consent to assignment or other agreement with any financial institution or Person relating to the solar tower project or the Facility or any loan or other credit agreement associated with the solar tower project or the Facility, or the Option Agreement or any other agreement under which SCPPA might acquire or otherwise purchase or obtain the Facility or an ownership interest therein or related resources and assets or output of the Facility or carry forth any Acquisition all as and to the extent applicable to any particular Project matter or

matters. The Power Purchase and Security Agreements shall also include any instrument or form of security which affords any opportunity for the purchase of the Facility or Acquisition, whether through foreclosure or otherwise, including the Mortgage or any other mortgage, deed or deed of trust, lease, assignment, beneficial interest, collateral instrument or other device or mechanism providing for the ability to acquire the solar tower project or the Facility or an ownership interest therein.

87. Power Purchase Provider. La Paz Solar Tower LLC Inc. as the counterparty to SCPPA under the Power Purchase Agreement, and the entity named under any applicable operating agreement to operate or otherwise run or manage the Facility, along with each of their successors, or any successors or assigns to the rights of these entities.
88. Power Sales Agreements. The La Paz Solar Tower Project Power Sales Agreements, dated for convenience as of December 1, 2011, as the same may hereafter be amended from time to time, entered into by SCPPA and each of the Project Participants for, among other things, the acquisition of the Output Entitlement Shares.
89. Power Supply Year. The Fiscal Year, except that the first Power Supply Year shall begin on the first to occur of (i) the date SCPPA is obligated to pay any portion of the costs of the Project, (ii) the date upon which SCPPA first incurs or accrues costs associated with the issuance of the Bonds, (iii) 90 days before the scheduled date for issuance of the Bonds, (iv) the date of Commercial Operation of the Facility, or (v) the date of the first delivery of Energy to Purchaser pursuant to this Agreement.
90. PPA General and Administrative cost component. “PPA General and Administrative cost component” is defined in Section 4.8.2.
91. Project Cost Share. “Project Cost Share” is defined in Section 4.10.
92. Project or La Paz Solar Tower Project. The term “Project” or “La Paz Solar Tower Project” shall be broadly construed to entail the aggregate of rights, liabilities, interests and obligations of SCPPA pursuant to the Power Purchase Agreement, the Power Purchase and Security Agreements and the other Project Agreements, including but not limited to the rights, liabilities, interests and obligations associated with the SCPPA Facility Output, or, upon purchase or acquisition by SCPPA, all rights, liabilities, interests and obligations associated with the Facility, or any ownership interest therein, as shall be purchased or acquired by SCPPA, and including all aspects of the operation and administration of the Facility or an ownership interest therein and the Project Agreements and the rights, liabilities, interests and obligations associated therewith. The term Project shall also include those rights, liabilities, interests or obligations necessary or appropriate to carry out the functions specified in Section 6 and to utilize or deliver the Energy of the Facility as specified in Section 9.
93. Project Agreements. Any project management agreement, the Indenture, the Power Sales Agreements, each of the Power Purchase and Security Agreements, any operation and management agreement, any agreement for the provision of Transmission Services, any Lease, any interconnection agreement, the Ancillary Documents, other contracts and

leases, easements, rights of way and each of the Ownership Participation and Related Agreements, and other real property arrangements or agreements associated with the Facility or an ownership interest therein, if any, any other Acquisition agreement or agreement for the purchase, procurement, delivery or transmission of SCPPA Facility Output, including all agreements connected or associated with any purchase of the Facility or an ownership interest therein or passing to SCPPA in connection with any purchase of the Facility or an ownership interest therein, and including the rights and interests under the Facility Credit Agreements or any other consents to assignments or agreements for assignment, any intercreditor agreement, any other operating agreements, maintenance agreements, warranty agreements, participation agreements, or any other agreements for scheduling, dispatching, exchanging, tagging, movement or transmission of SCPPA Facility Output, any agreements relating to any Capital Improvements and agreements to which SCPPA is a party relating to the project design, development, administration, management or operation of the Project and for placing of the Project into operation or maintaining its operation.

94. Project Manager. SCPPA or a designee or designees appointed by SCPPA to assist SCPPA to carry out SCPPA's responsibilities under the Power Sales Agreements, among other things, and to assist SCPPA in carrying out SCPPA's responsibilities upon purchase of the Facility or any of its resources or upon any Acquisition.
95. Project Participant(s). Those entities executing Power Sales Agreements, together in each case with each entity's successors or assigns, identified as "Project Participants" in Appendix B of the Power Sales Agreements or Appendix C of the Power Sales Agreements and such additional entities executing Power Sales Agreements as may be added by way of a revision of Appendix B or Appendix C under the terms of this Agreement
96. Project Purchase Option. "Project Purchase Option" shall have the meaning provided in the Power Purchase Agreement.
97. Project Rights. All rights and privileges of a Project Participant under its Power Sales Agreement, including but not limited to its Output Entitlement Share, its right to receive SCPPA Facility Output from the Facility, and its right to vote on Coordinating Committee matters.
98. Project Rights and Obligations. Purchaser's Project Rights and obligations under the terms of this Agreement.
99. Project Trustee or Lender. Any bank or other financial firm or institution at any time serving as trustee under the Indenture or any bank or financial firm party to the Indenture as a lender or as agent for a lender or lenders thereunder.
100. Prudent Utility Practices. "Prudent Utility Practices" shall have the meaning provided in the Power Purchase Agreement
101. Purchased Assets. "Purchased Assets" shall have the meaning provided in the Power Purchase Agreement.

102. Renewable Electric Energy Resource Project. The aggregate of SCPPA's endeavors to acquire renewable energy and capacity and to facilitate acquisition of renewable electric generation and the means to deliver such generation either by way of the development agreement for the Renewable Electric Resource Project as described in Section 2.6 herein
103. Replacement Energy. "Replacement Energy" shall have the meaning provided in the Power Purchase Agreement.
104. Reserve Fund cost component. "Reserve Fund cost component" is defined in Section 4.8.3 and Section 4.9.4.
105. Reserve Fund(s). Those reserve accounts deemed appropriate to afford a reliable source of funds for the payment obligations of the Project and, taking into account the variability of costs associated with the Project for the purpose of providing a reliable payment mechanism to address the ongoing costs associated with the Project.
106. SCPPA Facility Capacity Share. "SCPPA Facility Capacity Share" shall have the meaning provided in the Power Purchase Agreement.
107. SCPPA Facility Output. All output, rights, and other tangible or intangible benefits, whatsoever, derived from the Facility and received by SCPPA, including without limitation, all Facility Energy, Capacity Rights and Environmental Attributes, whether received by SCPPA under or pursuant to the Power Purchase Agreement or other applicable Project Agreement or derived from the Facility or an ownership interest therein by SCPPA as owner following SCPPA's purchase of the Facility or an ownership interest therein.
108. Security and Assignment Agreements. The agreements and instruments entered into by the Power Purchase Provider or any affiliate thereof and, where applicable, SCPPA, including the Milestone Security, the Performance Security, the Mortgage and the agreements and instruments referenced in the Power Purchase Agreement to, among other things, secure certain performance requirements.
109. Security Instruments. The Security and Assignment Agreements, the Mortgage, the Milestone Security, the Performance Security, the Facility Credit Agreements or other arrangement or agreement with the Facility Lender following a purchase of the rights and interests thereunder by SCPPA if applicable, and any and all instruments, agreements, assignments, mortgages, deeds of trusts or conveyances or other collateral arrangements entered into to secure the performance of the Power Purchase Provider or any affiliate thereof under the Power Purchase Agreement or any other of the Power Purchase and Security Agreements, or any lease or interest in real property used by or affecting the Facility, including without limitation any security interest conveyed by way of the Power Purchase Agreement or other agreement or instrument relating to the Project or any Project matter creating a security interest enforceable by SCPPA.
110. Site. "Site" shall have the meaning set forth in the Power Purchase Agreement

111. Special Obligation. “Special Obligation” shall have the meaning set forth in Section 11.3.
112. Special Obligation Billing Statement. “Special Obligation Billing Statement” shall have the meaning set forth in Section 11.3.
113. Step-Up Invoice. An invoice sent to a non-Defaulting Project Participant as a result of one or more Payment Defaults, which invoice shall separately identify any amount owed with respect to the monthly Billing Statement of one or more Defaulting Project Participants for, as the case may be, pursuant to Section 15.9.1 or 15.9.2 herein, either the Indenture cost component of the Defaulting Project Participant(s) unpaid monthly Billing Statement or the Total Monthly Costs reflected in the Defaulting Project Participant(s) unpaid monthly Billing Statement.
114. Study Project. “Study Project” has the meaning provided in the Joint Powers Agreement.
115. Supplementary Services. Those services in connection with the delivery of Energy involving additional transmission, interconnection arrangements, energy management, firming, shaping, energy balancing, dispatching, tagging, scheduling, Dynamic Scheduling, transmitting, interconnecting, swapping, exchanging or other services associated with the transmission, use or disposition of SCPPA Facility Output to be utilized by the Project Participants under the Power Sales Agreements, and to otherwise provide for delivery and facilitate the disposition, movement, taking, receiving, accounting for, transferring and crediting the ownership and transfer of SCPPA Facility Output from the respective Points of Delivery to any other points or destinations, as determined by the Project Participants. Supplementary Services include but are not limited to delivery point swaps, stranded energy/transmission curtailments, tiepoint liquidity improvement, transmission loss savings, tiepoint price spread optimization, on-peak/off-peak exchanges, peak shifting exchanges, seasonal exchanges, and both simultaneous or non simultaneous green energy exchanges.
116. Supplementary Services cost component. “Supplementary Services cost component” is defined in Section 4.8.4 and Section 4.9.6.
117. Tax Counsel. Nationally recognized legal counsel having background and experience in tax-exempt financing and selected by SCPPA to evaluate and advise regarding the Federal Tax Law Requirements with respect to specified cases, transactions and matters from time to time.
118. Total Monthly Costs. “Total Monthly Costs” has the meaning described in Section 4.7.
119. Transmission Services cost component. “Transmission Services cost component” is defined in Section 4.9.2.
120. Transmission Losses. “Transmission Losses” means the transformation and transmission losses associated with the delivery of SCPPA Facility Output from the Point of Interconnection to each respective Point of Delivery calculated in accordance with the Transmission Provider’s tariff applicable to the associated Transmission Services.

121. Transmission Provider. “Transmission Provider” means Western Area Power Administration of the United States Department of Energy or any other Person(s) providing Transmission Services.
122. Transmission Services. “Transmission Services” means the transmission and other related services required to transmit SCPPA Facility Output from the Point of Interconnection to each of the respective Points of Delivery.
123. Transmission Services Cost Share. “Transmission Services Cost Share” is defined in Section 4.11.
124. Uncontrollable Forces. Any Force Majeure event and any cause beyond the control of any Party, and which by the exercise of due diligence such Party is unable to prevent or overcome, including but not limited to, failure or refusal of any other Person to comply with then existing contracts, an act of God, fire, flood, explosion, earthquake, strike, sabotage, pestilence, an act of the public enemy (including terrorism), civil or military authority including court orders, injunctions and orders of governmental agencies with proper jurisdiction or the failure of such agencies to act, insurrection or riot, an act of the elements, failure of equipment, a failure of any governmental entity to issue a requested order, license or permit, inability of any Party or any Person engaged in work on the Project to obtain or ship materials or equipment because of the effect of similar causes on suppliers or carriers, or inability of SCPPA to sell or issue its Bonds. Notwithstanding the foregoing, Uncontrollable Forces as defined herein shall also include events of Force Majeure pursuant to the Power Purchase Agreement, as defined therein.
125. WECC. The Western Electricity Coordinating Council, or its successor.
126. [Reserved].

APPENDIX B*

**SCHEDULE OF PROJECT PARTICIPANTS
CAPACITY AMOUNTS
OUTPUT ENTITLEMENT SHARES
PROJECT COST SHARES
POINTS OF DELIVERY**

<u>Project Participants</u>	<u>Capacity Amounts (MW)</u>	<u>Output Entitlement Shares (at Points of Delivery)</u>	<u>Project Cost Shares</u>	<u>Points of Delivery** (as Designated by Project Participants)</u>
Anaheim	10 MW	100.0000%	14.7059%	230 kV Bus at Mead Substation or as mutually agreed between Buyer and Seller
Azusa	2 MW	3.4483% %	2.9412%	500 kV Bus at Marketplace Substation or as mutually agreed between Buyer and Seller.
Banning	2 MW	3.4483%	2.9412%	500 kV Bus at Marketplace Substation or as mutually agreed between Buyer and Seller.
Burbank	27 MW	46.5517%	39.7059%	500 kV Bus at Marketplace Substation or as mutually agreed between Buyer and Seller.

Colton	5 MW	8.6207%	7.3529%	500 kV Bus at Marketplace Substation or as mutually agreed between Buyer and Seller.
Glendale	12 MW	20.6896%	17.6470%	500 kV Bus at Marketplace Substation or as mutually agreed between Buyer and Seller.
Pasadena	10 MW	17.2414%	14.7059%	500 kV Bus at Marketplace Substation or as mutually agreed between Buyer and Seller.
Total	68 MW	100% at each discrete Point of Delivery	100%	

*Appendix B may be revised in accordance with the provisions of Section 21.1 of this Agreement.

**The agreement between SCPPA and the Power Purchase Provider, Transmission Provider or other party with respect to a change in the Designated Point of Delivery may only be provided by SCPPA in accordance with the Power Purchase Agreement or as may be otherwise permitted upon a timely request by the Project Participant.

APPENDIX C*

**SCHEDULE OF PROJECT PARTICIPANTS
DELIVERY POINT OUTPUT COST SHARES
TRANSMISSION SERVICES COST SHARES
POINT OF INTERCONNECTION ALLOCABLE SHARES
INDENTURE COST SHARES**

<u>Project Participants</u>	<u>Delivery Point Output Cost Shares</u>	<u>Transmission Services Cost Shares **</u>	<u>Point of Interconnection Allocable Shares</u>	<u>Indenture Cost Shares</u>
Anaheim	100.0000%	100.0000% **	14.7059%	14.7059%
Azusa	3.4483%	3.4483% **	2.9412%	2.9412%
Banning	3.4483%	3.4483% **	2.9412%	2.9412%
Colton	8.6207%	8.6207% **	7.3529%	7.3529%
Burbank	46.5517%	46.5517% **	39.7059%	39.7059%
Glendale	20.6896%	20.6896% **	17.6470%	17.6470%
Pasadena	17.2414%	17.2414% **	14.7059%	14.7059%
Total	100% at each discrete Point of Delivery	100% at each discrete Point of Delivery **	100%	100%

*Appendix C may be revised in accordance with the provisions of Section 21.1 of this Agreement.

**Less applicable transmission losses.

APPENDIX D

OPINION OF COUNSEL TO PROJECT PARTICIPANTS

[Date]

Southern California Public Power Authority
c/o Executive Director
225 South Lake Avenue, Suite 1250
Pasadena, California 91101

[Underwriters for the Bonds]

[Bond Insurer or credit enhancement entity]

Ladies and Gentlemen:

We have acted as counsel to the [City of Anaheim][City of Azusa][City of Banning][City of Burbank][City of Colton][City of Glendale] [the City of Pasadena] as Project Participant (the “Project Participant”) under the La Paz Solar Tower Project Power Sales Agreement dated for convenience as of December 1, 2011 (the “Power Sales Agreement”) between the Project Participant and Southern California Public Power Authority (“SCPPA”).

We have examined originals or copies of those records and documents we considered appropriate for purposes of this opinion. As to relevant factual matters, we have relied upon, among other things, the Project Participant’s factual representations.

We have assumed the genuineness of all signatures (other than the signatures of persons signing the Power Sales Agreement on behalf of Project Participant), the authenticity of all documents submitted to us as originals and the conformity with originals of all documents submitted to us as copies. To the extent the Project Participant’s obligations depend on the enforceability of the Power Sales Agreement against SCPPA, we have assumed that the Power Sales Agreement is enforceable against SCPPA.

From such examination, on the basis of our reliance upon the assumptions in this opinion and our consideration of those questions of law we considered relevant, and subject to the limitations and qualifications in this opinion, we are of the opinion that:

1. The Project Participant is a municipal corporation organized and existing under the laws of the State of California and authorized under [the City Charter of the City of Anaheim][the laws of the State of California][the City Charter of the City of Burbank][the laws of the State of California][the City Charter of the City of Glendale][the laws of the

State of California][the City Charter of the City of Pasadena] to furnish retail electricity within its service area.

2. The Project Participant is empowered under [the City Charter of the City of Anaheim][the laws of the State of California][the City Charter of the City of Burbank][the laws of the State of California][the City Charter of the City of Glendale][the laws of the State of California][the City Charter of the City of Pasadena] to enter into the Power Sales Agreement and to perform its obligations thereunder.

3. The Power Sales Agreement has been duly authorized, executed and delivered by the Project Participant and, assuming due authorization, execution and delivery by SCPPA of such Power Sales Agreement, constitutes the legal, valid and binding obligation of the Project Participant enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization and other similar laws affecting creditors' rights generally and to general principles of equity, to the exercise of judicial discretion in appropriate cases, and to the limitations on legal remedies against municipal corporations in the State of California.

Certain documents that are ancillary to the Power Sales Agreement provide that they are to be governed by the laws of the State of Arizona. We express no opinion as to those laws or their applicability to matters covered by this opinion.

Our opinion in paragraph 3 as to enforceability is subject to the unenforceability of provisions waiving a right to a jury trial. Also, a court may refuse to enforce a provision of the Power Sales Agreement if it deems that such provision is in violation of public policy.

We express no opinion with respect to your ability to collect attorneys' fees and costs in an action if you are not the prevailing party in that action (we call your attention to the effect of Section 1717 of the California Civil Code, which provides that where a contract permits one party thereto to recover attorneys' fees, the prevailing party in any action to enforce any provision of the contract shall be entitled to recover its reasonable attorneys' fees).

We express no opinion as to any provision requiring written amendments or waivers insofar as it suggests that oral or other modifications, amendments or waivers could not be effectively agreed upon by the parties or that the doctrine of promissory estoppel might not apply.

It is our opinion that no person, other than SCPPA, has setoff rights against payments due from Project Participant. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum, choice of venue, severability or waiver provisions contained in the Power Sales Agreement.

We express no opinion as to any agreement or document referred to in the Power Sales Agreement or incorporated into the Power Sales Agreement by reference, or any agreement other than the Power Sales Agreement itself, or the effect of any such agreement or document on the opinions herein stated.

The opinions expressed are matters of professional judgment and are not a guarantee of result. The law covered by this opinion is limited to the present law of the State of California. We express no opinion as to the laws of any other jurisdiction.

This opinion may only be relied upon only by the addressees hereto in connection with the issuance of the Bonds (as described in the Power Sales Agreement). It may not be used or relied upon for any other purpose or by any other person, nor may copies be delivered to any other person, without in each instance our prior written consent, except that this opinion may be included in the closing binder memorializing the Power Sales Agreement.

This opinion is expressly limited to the matters set forth above, and we render no opinion, whether by implication or otherwise, as to any other matters. This letter speaks only as of the date hereof and we assume no obligation to update or supplement this opinion to reflect any facts or circumstances that arise after the date of this opinion and come to our attention, or any future changes in laws.

Very truly yours,

APPENDIX E

OPINION OF COUNSEL TO SCPPA

[Date]

[Project Participants]

[Underwriters of the Bonds]

[Bond Insurer or credit enhancement entity]

Ladies and Gentlemen:

I am acting as counsel to the Southern California Public Power Authority (“SCPPA”) under each La Paz Solar Tower Project Power Sales Agreement dated for convenience as of December 1, 2011, between a Project Participant and SCPPA (collectively, the “Power Sales Agreements”), and I have acted as counsel to SCPPA in connection with the matters referred to herein. As such counsel I have examined and am familiar with (i) those documents relating to the existence, organization and operation of SCPPA, (ii) all necessary documentation of SCPPA relating to the authorization, execution and delivery of the Power Sales Agreements and (iii) the Power Sales Agreements.

Capitalized terms used herein not otherwise defined shall have the respective meanings ascribed thereto in the Power Sales Agreements.

I am of the opinion that:

1. SCPPA is a joint powers authority duly organized and validly existing under the Act, as amended, and the Joint Powers Agreement dated as of November 1, 1980, among SCPPA’s members, as amended, and has full legal right, power and authority to execute and deliver, and to perform its obligations under, the Power Sales Agreements.

2. The Power Sales Agreements have been duly authorized, executed and delivered by SCPPA, and, assuming due authorization, execution and delivery by each of the parties thereto other than SCPPA, the Power Sales Agreements constitute the legal, valid and binding obligations of SCPPA, enforceable against SCPPA in accordance with their respective terms.

3. To the best of my knowledge, SCPPA is not in material breach of or default under, and the authorization, execution and delivery of the Power Sales Agreements and compliance with the provisions thereof, will not conflict with or constitute a breach of, or default under: (i) any instrument relating to the organization existence or operation of SCPPA; (ii) any loan agreement, lease agreement, indenture, bond, note, resolution, commitment, agreement or other instrument to which SCPPA is a party or by which it or its property or assets is bound or

affected, and no event has occurred and is occurring which with the passage of time or the giving of notice, or both, would constitute a material default or event of default under any such instrument, which breach or default would have a material adverse impact on the Power Sales Agreements or the ability of SCPPA to comply with its obligations under the Power Sales Agreements; or (iii) any applicable constitutional provision, law, ruling, administrative regulation, ordinance, judgment, order or decree to which SCPPA (or any of its officers in their respective capacities as such) is subject.

4. To the best of my knowledge, as of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of my knowledge, threatened against or affecting SCPPA or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the right, power or authority of SCPPA referred to in paragraph 2 above or the validity of the proceedings taken by SCPPA in connection with the authorization, execution or delivery of the Power Sales Agreements, or wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by the Power Sales Agreements, or which, in any way, would adversely affect the validity or enforceability of the Power Sales Agreements or the ability of SCPPA to comply with its obligations thereunder.

Insofar as the foregoing opinions relate to the legal, valid and binding effect, and the enforceability, of any instrument, such opinions are subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and are subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

The opinions expressed herein are based upon the law and other matters in effect on the date hereof. The opinions expressed are matters of professional judgment and are not a guarantee of result. I assume no obligation to revise or supplement this opinion should such law or other matters be changed by legislative action, judicial decision, or otherwise, or should any facts or other matters upon which I have relied change.

The opinions which are set forth or which are expressed herein are limited to the laws of the State of California.

This opinion is furnished exclusively for the benefit of the recipients to which it is addressed. This opinion may not be provided to, made available to, or relied upon any other party without prior written consent, except that this opinion may be included in the closing binder memorializing the transaction.

Very truly yours,

Richard M. Helgeson, Esq.
General Counsel
Southern California Public Power Authority

APPENDIX F
POWER PURCHASE AGREEMENT
BETWEEN
SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
AND
LA PAZ SOLAR TOWER LLC
DATED AS OF DECEMBER 1, 2011

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