

**FEED-IN TARIFF  
POWER PURCHASE AGREEMENT  
BETWEEN  
SAN DIEGO COMMUNITY POWER  
AND  
FIT PROJECT OWNER**

TEMPLATE

**FEED-IN TARIFF**  
**POWER PURCHASE AGREEMENT**

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**COVER SHEET**

**Seller:** Seller’s Name, a Seller’s form of business entity and state of organization

**Buyer:** San Diego Community Power, a California Joint Powers Authority

**Facility Name:** The Facility is named Name of Facility.

**Description of Facility:** A System Size as a number kW<sub>AC</sub> Type of resource (e.g., photovoltaic, biomass, wind, etc. generation facility, as further described in Appendix D.

**Facility Location:** Facility address and/or cross streets.

**Interconnection Point:** The San Diego Gas & Electric Company (“SDG&E”) electric system at description of physical interconnection point at a service voltage of voltage number kV.

**Delivery Point:** Interconnection Point

**Milestones:** As further described in Appendix E.

<u>Milestone</u>	<u>Expected Date for Completion</u>
Application	
Evidence of Site Control	
Draft Interconnection Agreement or evidence Project has passed Fast Track screening	
Evidence of Permit Application	
Executed Interconnection Agreement	
CEC Pre-Certification Obtained	
Final Use Permit	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Expected Commercial Operation Date	
Guaranteed Commercial Operation Date	

**Delivery Term:**

- Ten (10) Contract Years
- Fifteen (15) Contract Years
- Twenty (20) Contract Years

**Contract Capacity:** Number of kW<sub>kW<sub>AC</sub></sub>

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**Storage Capacity (if applicable):** Number of kW kW<sub>AC</sub>

**Storage Output (if applicable):** Number of kWh kWh<sub>AC</sub>

**Contract Quantity:**

<b>Contract Year</b>	<b>Contract Quantity (kWh<sub>AC</sub>)</b>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**Capacity Attributes (if applicable):** Capacity Attributes

**Contract Price:**

The Contract Price shall be determined hourly within each day of the Delivery Term as follows:

<b>Time of Day (Hours PPT)</b>	<b>Contract Price (\$/MWh)</b>
Hour Ending (HE) 01 - 18	\$60/MWh
Hour Ending (HE) 19 - 24	\$120/MWh

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**Bonus Incentive:**

The Bonus Incentive paid for the first five (5) Contract Years shall be:

- Local Business: \$2.50/MWh
- Previously Developed Site: \$2.50/MWh
- Sited within a Community of Concern: \$2.50/MWh

**Non-Refundable Application Fee:** \$500

**Reservation Deposit:** \$5 per kW of Contract Capacity

**Development Security Deposit:** \$10 per kW of Contract Capacity

**Performance Security Deposit:** \$20 per kW of Contract Capacity

**TEMPLATE**

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This Feed-In Tariff Power Purchase Agreement (“Agreement”) is entered into as of the Effective Date between San Diego Community Power, a California joint powers authority (“Buyer” or “SDCP”), and Seller’s Name. (“Seller”), a Seller’s form of business entity and state of organization. Seller and Buyer are sometimes referred to in this Agreement jointly as “Parties” or individually as “Party.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Appendix A to this Agreement.

In consideration of the mutual promises and obligations stated in this Agreement and its appendices, the Parties agree as follows:

**1. DOCUMENTS INCLUDED**

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

- Appendix A Definitions
- Appendix B Commercial Operation Date Confirmation Letter
- Appendix C Forecasting Requirements
- Appendix D Description of the Facility
- Appendix E Seller’s Milestone Schedule
- Appendix F Notices List

**2. SELLER’S FACILITY AND COMMERCIAL OPERATION DATE**

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

2.1.1. Facility Location. The Facility is physically located at the address or location identified on the Cover Sheet.

2.1.2. Facility Name. The Facility name is identified on the Cover Sheet.

2.1.3. Type of Facility. The Facility’s renewable resource is identified on the Cover Sheet.

2.1.4. Interconnection Point. The Interconnection Point shall be the point of electrical interconnection as described on the Cover Sheet.

2.1.5. Delivery Point. The Delivery Point is the Interconnection Point.

2.1.6. Facility Description. A description of the Facility, including a summary of its significant components, a drawing showing the general arrangements of the Facility, and a single line diagram illustrating the interconnection of the

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Facility and loads with the Transmission/Distribution Owner's electric distribution system, is attached and incorporated herein as Appendix D.

2.2. Guaranteed Commercial Operation Date.

- 2.2.1. The Expected Commercial Operation Date is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation and which date shall be no later than twenty-four (24) months from the Effective Date.
- 2.2.2. The Guaranteed Commercial Operation Date means the Expected Commercial Operation Date. Seller shall achieve Commercial Operation no later than the Guaranteed Commercial Operation Date (as such date may be extended pursuant to Section 2.2.3 below up to one hundred twenty (180) days).
- 2.2.3. The Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "Development Cure Period") for the duration of any and all delays arising out of the following circumstances:
- 2.2.3.1. a Force Majeure event occurs; or
- 2.2.3.2. the Interconnection Facilities are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or
- 2.2.3.3. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 2.2.3.1 and 2.2.3.2 above under the Development Cure Period shall not exceed one hundred twenty (180) days, for any reason, including a Force Majeure event, and no extension shall be given if the delay was the result of Seller's failure to take all reasonable actions to meet its requirements and deadlines. Notwithstanding anything to the contrary, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide Notice to Buyer as required in the next sentence. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide Notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation

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demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

- 2.2.4. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date, as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2.2.4.
- 2.2.5. If the Facility has not achieved Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement.
- 2.3. Commercial Operation.
- 2.3.1. Seller shall provide Notice to Buyer of the Commercial Operation Date of the Facility no later than thirty (30) days before such date.
- 2.3.2. Commercial Operation shall occur only when all of the following conditions have been satisfied:
- 2.3.2.1. the Facility's status as an ERR is demonstrated by Seller's receipt of pre-certification from the CEC;
  - 2.3.2.2. the Parties have executed and exchanged the "Commercial Operation Date Confirmation Letter" attached as Appendix B;
  - 2.3.2.3. Seller has obtained and is in compliance with the Interconnection Agreement for the Facility, and Seller has satisfied all applicable metering requirements in Sections 6.1 and 6.2;
  - 2.3.2.4. Seller has furnished to Buyer all insurance documents required under Section 10;
  - 2.3.2.5. Seller has provided Notice thirty (30) days prior to the Commercial Operation Date as required under Section 2.3.1;



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- 2.3.2.6. Seller has obtained all permits necessary to operate the Facility and is in compliance with all Laws applicable to the operation of the Facility;
- 2.3.2.7. Seller has successfully installed and tested the Facility at its full Contract Capacity, and the Facility is capable of reliably generating at its full Contract Capacity; and
- 2.3.2.8. Seller has satisfied the Collateral Requirement set forth in Section 3.9.2.

**3. CONTRACT CAPACITY AND QUANTITY; TERM; CONTRACT PRICE; BILLING; COLLATERAL REQUIREMENTS**

- 3.1. Contract Capacity. The “Contract Capacity” is the quantity, expressed in kW alternating current (AC), set forth on the Cover Sheet. The Contract Capacity shall not exceed 1,000 kW AC. Seller shall not modify the Facility to increase the Contract Capacity without the prior written consent of Buyer. Any increase in Contract Capacity must be consistent with the interconnection requirements of the Transmission/Distribution Owner.
- 3.2. Contract Quantity. The “Contract Quantity” during each Contract Year is the quantity set forth in the applicable Contract Year in the Cover Sheet, which amount is net of Station Use.
- 3.3. Transaction. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, all Product produced by or associated with the Facility that is delivered to the Delivery Point. Whenever Facility output is not enough to supply Station Use and transformation and transmission losses to the Delivery Point, Seller shall purchase energy required to serve the Facility’s on-site load from Buyer pursuant to Buyer’s applicable retail rate schedule. In no event shall Seller have the right to procure the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement. Buyer shall have no obligation to receive or purchase the Product from Seller prior to the Commercial Operation Date or after the end of the Delivery Term.
- 3.4. Term of Agreement; Survival of Rights and Obligations.
  - 3.4.1. The term shall commence upon the Effective Date and shall remain in effect until the conclusion of the Delivery Term, unless earlier terminated pursuant to Sections 11.4 or 12 of this Agreement (the “Term”).
  - 3.4.2. Notwithstanding anything to the contrary in this Agreement, applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Section 14.1 shall remain in full force and effect for two (2) years following the termination of this

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Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

3.5. Delivery Term. The Delivery Term shall commence on the Commercial Operation Date and continue for a period of ten (10), fifteen (15), or twenty (20) Contract Years, as specified on the Cover Sheet, unless the Agreement is earlier terminated pursuant to the terms of this Agreement.

3.6. Contract Price.

3.6.1. Throughout the Delivery Term, and subject to and in accordance with the terms of this Agreement, Buyer shall pay the Contract Price to Seller for the Product per MWh of Delivered Energy in accordance with the Cover Sheet.

3.6.2. During the first five (5) Contract Years of the Delivery Term, an additional Bonus Incentive may be paid by Buyer to Seller per MWh of Delivered Energy if elected on the Cover Sheet. If elected on the Cover Sheet, Seller agrees to meet the applicable criteria in the definition of "Bonus Incentive" set forth in Appendix A to qualify for the Bonus Incentive and shall promptly provide Buyer all necessary evidence and/or documents to confirm compliance with the criteria.

3.6.3. In any Contract Year, if the amount of Delivered Energy exceeds one hundred fifteen percent (115%) of the annual Contract Quantity amount, the Contract Price for such Delivered Energy in excess of one hundred fifteen percent (115%) shall be adjusted to be fifty percent (50%) of the applicable Contract Price.

3.6.4. Seller shall curtail production of the Facility upon: (i) Notice from the CAISO or the Transmission/Distribution Owner or any other jurisdictional entity to curtail Energy deliveries; or (ii) Notice that Seller has been given a curtailment order or similar instruction in order to respond to an Emergency. Buyer shall have no obligation to pay Seller for any Product delivered in violation of this Section 3.6.4 or for any Product that Seller would have been able to deliver but for the fact of a curtailment pursuant to this Section 3.6.4. Seller shall assume all liability and reimburse Buyer for any and all costs and charges incurred by Buyer as a result of Seller delivering Energy in violation of this Section 3.6.4.

3.7. Billing.

3.7.1. The amount of Delivered Energy shall be determined by the meter specified in Section 6.2.1 or Check Meter, as applicable. Buyer shall not have any obligation to purchase from Seller any Energy that is not or cannot be delivered to the Delivery Point, regardless of circumstance.

3.7.2. For the purpose of calculating monthly payments under this Agreement, the amount recorded by the meter specified in Section 6.2.1 or Check Meter, as applicable, will be multiplied by the Contract Price set forth in the Cover Sheet,

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as may be adjusted under Section 3.6.2, less any Energy produced by the Facility for which Buyer is not obligated to pay Seller pursuant to Section 3.7.1.

- 3.7.3. On or before the last Business Day of the month immediately following each calendar month, Seller shall determine the amount of Delivered Energy received by Buyer pursuant to this Agreement for each monthly period and issue an invoice showing the calculation of the payment. Seller shall also provide to Buyer: (i) records of metered data sufficient to document and verify the generation of Delivered Energy by the Facility during the preceding month; (ii) access to any records; and (iii) an invoice, in the format specified by Buyer. Buyer shall pay Seller by check or Automated Clearing House transfer no later than thirty (30) days of receipt of invoice from Seller if the value of the purchased energy in a month is at least fifty dollars (\$50.00); if less, Buyer may pay Seller quarterly. Buyer shall have the right, but not the obligation, to read the Facility's meter on a daily basis.
- 3.7.4. In the event an invoice or portion thereof or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. In the event adjustments to payments are required as a result of inaccurate meter(s), Buyer in its reasonable discretion shall determine the correct amount of Delivered Energy received under this Agreement during any period of inaccuracy and recompute the amount due from Buyer to Seller for the Delivered Energy delivered during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within thirty (30) days of such resolution.
- 3.8. Title and Risk of Loss. Title to and risk of loss related to the Energy from the Facility shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product from the Facility free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person.
- 3.9. Collateral Requirements. To secure its obligations under this Agreement, Seller shall deliver to Buyer Development Security and Performance Security (together, "Collateral Requirements") as follows:
- 3.9.1. Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the

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Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (a) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (b) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (c) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

- 3.9.2. On or before the Commercial Operation Date, Seller shall deliver Performance Security to Buyer in the form of cash or Letter of Credit. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (a) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (b) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (c) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

**4. GREEN ATTRIBUTES; RESOURCE ADEQUACY BENEFITS; ERR REQUIREMENTS**

- 4.1. Green Attributes. Seller hereby provides and conveys all rights, title, and interest in all Green Attributes (whether now existing or that hereafter come into existence during the Term) from the Facility to Buyer as part of the Product being delivered to Buyer for the duration of the Delivery Term. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer to the fullest extent allowed by Law as included in the delivery of the Product from the Facility. Seller represents that the Product and Green Attributes from the Facility have not been, nor

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will be, sold or used to satisfy any California Renewables Portfolio Standard obligation other than the RPS Requirements applicable to Buyer.

- 4.2. Conveyance of Product. Throughout the Delivery Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the Green Attributes, Resource Adequacy Benefits, if any, and Capacity Attributes, if any, for Buyer's benefit throughout the Delivery Term.
- 4.3. WREGIS. Prior to the Commercial Operation Date, Seller shall cause and allow Buyer, or Buyer's agent, to be the "Qualified Reporting Entity" and "Account Holder" (as such terms are defined by WREGIS) for the Facility. In the event that Buyer is not the Qualified Reporting Entity, Seller shall, at its sole expense, take all actions necessary and provide any documentation requested by Buyer in support of WREGIS account administration and compliance with the California Renewables Portfolio Standard. In addition, Seller shall, at its sole expense, take all necessary steps and submit or file all necessary documentation to ensure that the Facility remains an ERR throughout the Delivery Term as set forth in Section 4.5 and that all WREGIS Certificates associated with the Product accrue to Buyer and will satisfy the requirements of the California Renewables Portfolio Standard.
- 4.4. Resource Adequacy Benefits. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Contract Capacity, including Capacity Attributes, if any, from the Project to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). If providing any Resource Adequacy, Seller shall (i) comply with the Resource Adequacy Requirements set forth in the CAISO Tariff, including Section 40 thereof, as may be amended from time to time; and (ii) cooperate in good faith with and comply with reasonable requests of Buyer and the CAISO to enable Buyer and/or the CAISO to assign Capacity Attributes and Resource Adequacy Benefits to the Facility.
- 4.5. Eligible Renewable Energy Resource. Seller shall take all actions necessary to achieve and maintain status as an ERR throughout the Delivery Term. Within thirty (30) days after the Commercial Operation Date, Seller shall file an application or other appropriate request with the CEC for CEC Certification for the Facility. Seller shall expeditiously seek CEC Certification, including promptly responding to any requests for information from the requesting authority.

**5. REPRESENTATION AND WARRANTIES; COVENANTS**

- 5.1. Representations and Warranties. On the Effective Date, each Party represents and warrants to the other Party that:
- 5.1.1. it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

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- 5.1.2. the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws;
  - 5.1.3. this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;
  - 5.1.4. it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt; and
  - 5.1.5. there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement.
- 5.2. General Covenants. Each Party covenants that throughout the Term of this Agreement:
- 5.2.1. it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
  - 5.2.2. it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
  - 5.2.3. it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party, or any Law.
- 5.3. Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants specified in Sections 5.1 and 5.2, Seller makes the following additional representations, warranties and covenants to Buyer, as of the Effective Date:
- 5.3.1. Seller has not participated in the Self-Generation Incentive Program (as defined in CPUC Decision 01-03-073), the California Solar Initiative (as defined in CPUC Decision 06-01-024), and/or other similar California ratepayer subsidized program relating to energy production or rebated capacity costs with respect to the Facility.
  - 5.3.2. Seller's execution of this Agreement will not violate Public Utilities Code Section 2821(d)(1), if applicable;
  - 5.3.3. Seller has met all applicable legal and regulatory requirements to sell wholesale electricity in California;

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- 5.3.4. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an ERR as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- 5.3.5. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law;
- 5.3.6. Throughout the Delivery Term, Seller shall: (i) own and operate the Facility; (ii) deliver the Product to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any individual or entity; and (iii) hold the rights to all of the Product;
- 5.3.7. Seller is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of Buyer in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement;
- 5.3.8. Throughout the Delivery Term: (i) Seller shall not convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer; and (ii) Seller shall not start-up or operate the Facility per instruction of or for the benefit of any third party, except as required by other Laws;
- 5.3.9. Seller has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement;
- 5.3.10. The construction of the Facility shall comply with all Laws, including applicable state and local laws, building standards, and interconnection requirements;

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5.3.11. No other person or entity, including any other generating facility, has any rights in connection with Seller's Interconnection Agreement or Seller's Interconnection Facilities and no other persons or entities shall have any such rights during the Term; and

5.3.12. During the Delivery Term, Seller shall not allow any other person or entity, including any other generating facility, to use Seller's Interconnection Facilities.

**6. GENERAL CONDITIONS**

6.1. Interconnection Agreements. If either Buyer or the Transmission/Distribution Owner does not deem Seller's existing interconnection service, equipment and agreement satisfactory for the delivery of Product under this Agreement, Seller shall execute an Interconnection Agreement for the Facility with the Transmission/Distribution Owner and pay and be responsible for designing, installing, operating, and maintaining the Facility in accordance with all applicable laws and regulations and shall comply with all applicable Buyer, Transmission/Distribution Owner, CAISO, CPUC and FERC tariff provisions, including applicable interconnection and metering requirements. Seller shall also comply with any modifications, amendments or additions to the applicable tariff and protocols. Prior to and during the Delivery Term, Seller shall arrange and pay independently for any and all necessary costs under any Interconnection Agreement with the Transmission/Distribution Owner. To make deliveries to Buyer, Seller must maintain the Interconnection Agreement with the Transmission/Distribution Owner in full force and effect.

6.2. Metering Requirements.

6.2.1. All Energy from the Project must be delivered through a single revenue quality meter and that meter must be dedicated exclusively to the Project. Such meter must be installed on the high side of the Facility's step up transformer, unless otherwise approved by Buyer. All Delivered Energy purchased under this Agreement must be measured by the Project's revenue quality meter(s) to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project.

6.2.2. Buyer may, at its sole cost, furnish and install one Check Meter at the interconnection associated with the Facility at a location provided by Seller that is compliant with Buyer's electric service requirements. The Check Meter may be interconnected with Buyer's communication network, or the communication network of Buyer's agent, to permit periodic, remote collection of revenue quality meter data. In the event that Buyer elects to install a Check Meter, Buyer may compare the Check Meter data to the Facility's revenue meter data. If the deviation between the Facility's revenue meter data and the Check Meter data for any comparison is greater than 0.3%, Buyer may provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or the Facility's revenue meter, as applicable. Each Party shall bear its own costs for any meter check or



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recertification. Testing procedures and standards for the Check Meter shall be the same as for a comparable Buyer-owned meter. The Parties shall have the right to have representatives present during all such tests. The Check Meter, if Buyer elects to install a Check Meter, is intended to be used for back-up purposes in the event of a failure or other malfunction of the Facility's revenue meter, and Check Meter data shall only be used to validate the Facility's revenue meter data and, in the event of a failure or other malfunction of the Facility's revenue meter, in place of the Facility's revenue meter until such time that the Facility's revenue meter is recertified.

6.3. Meter Data. Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, including any inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter readings from Seller or Seller's meter reading agent, which may be SDG&E.

6.4. Standard of Care. Seller shall: (i) maintain and operate the Facility and Interconnection Facilities in conformance with all Laws and Prudent Electrical Practices; (ii) obtain any governmental authorizations and permits required for the construction and operation of the Facility and Interconnection Facilities; and (iii) generate, schedule and perform transmission services in compliance with all applicable operating policies, criteria, rules, guidelines and tariffs and Prudent Electrical Practices. Seller shall reimburse Buyer for any and all losses, damages, claims, penalties, or liability Buyer incurs as a result of Seller's failure to obtain or maintain any governmental authorizations and permits required for construction and operation of the Facility throughout the Term of this Agreement.

6.5. Access Rights.

6.5.1. Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption (if applicable), efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within twenty (20) days of Buyer's request.

6.5.2. Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right to inspect the Facility on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement. Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; and (ii) not interfere with the operation of the Project. Buyer shall make reasonable efforts to coordinate its emergency activities with the safety and security departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's safety and security departments, if any exist.

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- 6.6. Protection of Property. Seller shall be solely responsible for protecting the Facility from possible damage resulting from electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the Transmission/Distribution Owner's facilities. Buyer shall not be liable for any such damages so caused.
- 6.7. Forecasting. Seller shall comply with the forecasting in Appendix C.
- 6.8. Greenhouse Gas Emissions. Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Facility reasonably necessary to permit Buyer to comply with such requirements, if any.
- 6.9. Reporting and Record Retention.
- 6.9.1. Seller shall use commercially reasonable efforts to meet the Milestone Schedule set forth in Appendix E and avoid or minimize any delays in meeting such schedule. Seller shall provide Project development status reports in a format and a frequency, which shall not exceed one (1) report per month, specified by Buyer. The report shall describe Seller's progress relative to the development, construction, and startup of the Facility, as well as provide Notice of any anticipated change to the Commercial Operation Date and whether Seller is on schedule to meet the Commercial Operation Date.
- 6.9.2. Seller shall within ten (10) Business Days of receipt thereof provide to Buyer copies of any Interconnection Agreement and all other material reports, studies and analyses furnished by any Transmission/Distribution Owner, and any correspondence with the Transmission/Distribution Owner related thereto, concerning the interconnection of the Facility to the Transmission/Distribution Owner's electric system or the transmission of Energy on the Transmission/Distribution Owners' electric system.
- 6.9.3. Seller shall provide to Buyer on the Commercial Operation Date, and within thirty (30) days after the completion of each Contract Year thereafter during the Delivery Term, a copy of any inspection and maintenance report regarding the Facility that was also provided to the Transmission/Distribution Owner during the previous Contract Year.
- 6.10. Tax Withholding Documentation. Upon Buyer's request, Seller shall promptly provide to Buyer Internal Revenue Service tax Form W-9 and California tax Form 590 (or their equivalent), completed with Seller's information, and any other documentation necessary for Buyer to comply with its tax reporting or withholding obligations with respect to Seller.

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- 6.11. Modifications to Facility. During the Delivery Term, Seller shall not repower or materially modify or alter the Facility without the written consent of Buyer. Material modifications or alterations include, but are not limited to, (i) movement of the Site, (ii) changes that may increase or decrease the expected output of the Facility, (iii) changes that may affect the generation profile of the Facility, (iv) changes that may affect the ability to accurately measure the output of Product from the Facility and (v) changes that conflict with elections, information or requirements specified elsewhere in this Agreement. Material modifications or alterations do not include maintenance and repairs performed in accordance with Prudent Electrical Practices. Seller shall provide to Buyer Notice not less than ninety (90) days before any proposed repowering, modification or alteration occurs describing the repowering, modification or alteration to Buyer's reasonable satisfaction.
- 6.12. No Additional Incentives. Seller agrees that, during the Term of this Agreement, it shall not seek additional compensation or other benefits pursuant to the Self-Generation Incentive Program, as defined in CPUC Decision 01-03-073, the California Solar Initiative, as defined in CPUC Decision 06-01-024, Buyer's net energy metering tariff, or other similar California ratepayer subsidized program relating to energy production with respect to the Facility.
- 6.13. Small Hydro/Private Energy Producer. Seller agrees to provide to Buyer copies of each of the documents identified in California Public Utilities Code Section 2821(d)(1), if applicable, as may be amended from time to time, as evidence of Seller's compliance with such Public Utilities Code section prior to the Commercial Operation Date and, after the Commercial Operation Date, within thirty (30) days of Seller's receipt of written request.
- 6.14. Prevailing Wages. Pursuant to the requirements of Buyer's Inclusive and Sustainable Workforce Policy, Seller and any of its contractors and subcontractors performing construction, alteration, demolition, installation, repair, or maintenance work on the Project shall pay at least the general prevailing rate of per diem wages in a manner consistent with the requirements of California Labor Code section 1770, et seq. and its implementing regulations, as may be amended from time to time ("Prevailing Wage Laws"). Seller shall defend, indemnify and hold the Buyer, its officials, officers, employees and authorized volunteers free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with this section or the Prevailing Wage Laws. Buyer shall not be liable or responsible in any manner to any subcontractor or worker who is paid less than the prevailing wage required by this section or the Prevailing Wage Laws. Consistent with the Prevailing Wage Laws, Seller and any of its contractors and subcontractors shall keep an accurate certified payroll record of the name, address, social security number, work classification, occupation, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice, worker or other employee performing the types of work described in this section on the Project. Seller and its contractors and subcontractors shall make such records available in the manner required under the Prevailing Wage Laws.

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6.15. Site Control. Seller shall have Site Control as of the earlier of: (i) the Commercial Operation Date; or (ii) any date before the Commercial Operation Date to the extent necessary for Seller to perform its obligations under this Agreement and, in each case, Seller shall maintain Site Control throughout the Delivery Term. Seller shall promptly provide Buyer with Notice if there is any change in the status of Seller's Site Control.

**7. INDEMNITY**

7.1. Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, and employees of such other Party against and from any and all loss and liability (including reasonable attorneys' fees) for injuries to persons, including employees of either Party, and physical damage to property, including property of either Party, resulting from or arising out of: (i) the engineering, design, construction, maintenance, or operation of the indemnitor's facilities; (ii) the installation of replacements, additions, or betterments to the indemnitor's facilities; or (iii) the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity and save harmless provision shall apply notwithstanding the active or passive negligence of the indemnitee. Neither Party shall be indemnified for liability or loss resulting from its sole negligence or willful misconduct. The indemnitor shall, on the other Party's request, defend any suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable attorneys' fees that may be incurred by the other Party in enforcing this indemnity.

7.2. Each Party shall defend, save harmless and indemnify the other Party, its directors, officers, employees, and agents, assigns, and successors in interest, for and against any penalty imposed upon the other Party to the extent caused by the Party's failure to fulfill its obligations under this Agreement.

7.3. Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss and liability (including reasonable attorneys' fees) in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in this Agreement.

**8. LIMITATION OF DAMAGES**

**EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.**

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**UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 7 (INDEMNITY), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.**

**9. NOTICES**

Notices (other than forecasts and scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after such Notice is sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such Notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All Notices, requests, invoices, statements or payments for this Facility must reference this Agreement's identification number. Notices shall be provided as indicated in Appendix F.

**10. INSURANCE**

10.1. Insurance Coverage. Seller shall, at its own expense, starting on the Effective Date and until the end of the Term, and for such additional periods as may be specified below, provide and maintain in effect the following insurance policies and minimum limits of coverage as specified below, and such additional coverage as may be required by Law, with insurance companies authorized to do business in the State of California, with an A.M. Best's Insurance Rating of not less than A-:VII.

10.1.1. Commercial general liability insurance, written on an occurrence, not claims-made basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, contractual liability, premises-operations, owners and contractors protective, hazard, explosion, collapse and underground. Such insurance must bear a combined single limit per occurrence and annual aggregate of not less than one million dollars (\$1,000,000.00), exclusive of defense costs, for all coverages. Such insurance must contain standard cross-liability and severability of interest provisions. If Seller elects, with Buyer's written

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concurrence, to use a “claims made” form of commercial general liability insurance, then the following additional requirements apply: (i) the retroactive date of the policy must be prior to the Effective Date; and (ii) either the coverage must be maintained for a period of not less than four (4) years after this Agreement terminates, or the policy must provide for a supplemental extended reporting period of not less than four (4) years after this Agreement terminates.

- 10.1.2. Workers’ compensation insurance with statutory limits, as required by the state having jurisdiction over Seller’s employees, and employer’s liability insurance with limits of not less than: (i) bodily injury by accident - one million dollars (\$1,000,000.00) each accident; (ii) bodily injury by disease - one million dollars (\$1,000,000.00) policy limit; and (iii) bodily injury by disease - one million dollars (\$1,000,000.00) each employee.
- 10.1.3. Commercial automobile liability insurance covering bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000.00) per occurrence. Such insurance must cover liability arising out of Seller’s use of all owned, non-owned and hired automobiles in the performance of the Agreement.
- 10.1.4. Umbrella/excess liability insurance, written on an occurrence, not claims-made basis, providing coverage excess of the underlying commercial general liability and commercial automobile liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than one million dollars (\$1,000,000.00) per occurrence and in the annual aggregate.

10.2. Additional Insurance Provisions.

- 10.2.1. On or before the later of (i) sixty (60) days after the Effective Date and (ii) the date immediately preceding commencement of construction of the Facility, and again within a reasonable time after coverage is renewed or replaced, Seller shall furnish to Buyer certificates of insurance evidencing the coverage required above, written on forms and with deductibles reasonably acceptable to Buyer. Notwithstanding the foregoing sentence, Seller shall in no event furnish Buyer certificates of insurance evidencing required coverage later than the Commercial Operation Date. All deductibles, co-insurance and self-insured retentions applicable to the insurance above must be paid by Seller. Such certificates shall specify that Buyer shall be given at least thirty (30) days’ prior Notice in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Buyer’s receipt of certificates that do not comply with the requirements stated herein, or Seller’s failure to provide such certificates, do not limit or relieve Seller of the duties and responsibility of maintaining insurance in compliance with the requirements in this Section 10 and do not constitute a waiver of any of the requirements of Section 10.
- 10.2.2. All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance must be issued, clearly

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labeled with this Agreement's identification number and submitted in accordance with Section 9 and Appendix F. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

10.2.3. The insurance requirements set forth herein shall apply as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, and employees, regardless of any conflicting provision in Seller's policies to the contrary. To the extent permitted by Law, Seller and its insurers shall be required to waive all rights of recovery from or subrogation against Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees and insurers. The commercial general liability insurance and umbrella/excess liability insurance required herein must name Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents and employees, as additional insureds for liability arising out of Seller's construction, use or ownership of the Facility.

10.2.4. Seller shall remain liable for all acts, omissions or default of any subcontractor or subsupplier and shall indemnify, defend and hold harmless Buyer for any and all loss or damages, as well as all costs, charges and expenses which Buyer may suffer, incur, or bear as a result of any acts, omissions or default by or on behalf of any subcontractor or subsupplier.

10.2.5. If Seller fails to comply with any of the provisions of this Section 10, Seller, among other things and without restricting Buyer's remedies under Law or otherwise, shall, at its own cost, act as an insurer and provide insurance in accordance with the terms and conditions of this Section 10. With respect to the required commercial general liability insurance, umbrella/excess liability insurance, and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above.

**11. FORCE MAJEURE**

11.1. No Default for Force Majeure. Notwithstanding the limitation set forth in Section 2.2.3.1 with respect to an extension of the Guaranteed Commercial Operation Date due to Force Majeure, once Seller has achieved Commercial Operation, neither Party shall be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

11.2. Requirements Applicable to Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever

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performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure, (i) the Claiming Party must, as soon as practicable, give the other Party Notice of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance; and (ii) the Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

11.3. Limitations. The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

11.4. Termination. If an event of Force Majeure has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party, save and except for those obligations specified in Section 3.4.2, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

**12. EVENTS OF DEFAULT AND TERMINATION**

12.1. Termination. Unless terminated earlier pursuant to Section 11.4 or this Section 12, this Agreement shall automatically terminate immediately following the last day of the Delivery Term.

12.2. Events of Default. An "Event of Default" means, with respect to a Party, the occurrence of any of the following:

12.2.1. With respect to either Party:

12.2.1.1. A Party fails to make any payment due and owing under this Agreement, if such failure is not cured within five (5) Business Days after Notice from the non-breaching Party;

12.2.1.2. Except for an obligation to make payment when due, if there is a failure of a Party to perform any material covenant or obligation set forth in this Agreement (except to the extent such failure provides a separate termination right for the non-breaching Party or to the extent excused by Force Majeure), if such failure is not remedied within thirty (30) days after Notice thereof;

12.2.1.3. Any representation or warranty made by a Party (a) is false or misleading in any material respect when made or (b) becomes false or



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misleading in any material respect during the Term, and such default is not remedied within thirty (30) days after Notice thereof; or

12.2.1.4. A Party becomes Bankrupt.

12.2.2. With respect to Seller:

- 12.2.2.1. Seller fails to take all corrective actions specified in any Buyer Notice, within the time frame set forth in such Notice, that the Facility is out of compliance with any term of this Agreement; provided that if such corrective action falls under a specific termination right under Section 12.2.2, then the time frame, if any, set forth for such right shall apply;
- 12.2.2.2. The Facility has not achieved Commercial Operation by the Expected Commercial Operation Date specified in Section 2.2.1 and Seller has not elected to pay Commercial Operation Delay Damages pursuant to Section 2.2.4;
- 12.2.2.3. Subject to Section 11, Seller delivers less than eighty percent (80%) of the applicable Contract Quantity from the Facility to Buyer for a period of two (2) consecutive Contract Years, and Seller fails to (i) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the eighty percent (80%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition within a reasonable period of time, not to exceed one hundred eighty (180) days (the “Cure Plan”) and (ii) completes such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;
- 12.2.2.4. Seller fails to maintain its status as an ERR as set forth in Section 4.5 of the Agreement and does not restore such status following thirty (30) days’ Notice from Buyer;
- 12.2.2.5. Seller abandons the Facility;
- 12.2.2.6. Seller installs generating equipment at the Facility that exceeds the Contract Capacity and such excess generating capacity is not removed within five (5) Business Days after Notice from Buyer;
- 12.2.2.7. Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement product that was not generated by the Facility;
- 12.2.2.8. Seller fails to install any of the equipment or devices necessary for the Facility to satisfy the Contract Capacity set forth in Section 3.1;
- 12.2.2.9. An unauthorized assignment of the Agreement, as set forth in Section 15;

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- 12.2.2.10. Seller fails to reimburse Buyer any amounts due under this Agreement and such failure is not cured within five (5) Business Days after Notice from Buyer;
- 12.2.2.11. Seller has not sold or delivered Energy from the Facility to Buyer for a period of twelve (12) consecutive months;
- 12.2.2.12. Seller breaches the requirements in Section 6.12 regarding incentives; or
- 12.2.2.13. Seller fails to maintain the Collateral Requirement set forth in Section 3.9 and such failure is not cured within five (5) Business Days after Notice from Buyer.
- 12.2.2.14. Seller or its contractors or subcontractors breaches the requirements of Section 6.14 relating to prevailing wages.
- 12.3. Declaration of an Event of Default. If an Event of Default has occurred, the non-defaulting Party shall have the right to: (i) send Notice, designating a day, no earlier than five (5) days after such Notice and no later than twenty (20) days after such Notice, as an early termination date of this Agreement (“Early Termination Date”); (ii) accelerate all amounts owing between the Parties; (iii) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date; and (iv) collect any Termination Payment under Section 12.5. If the defaulting party is Seller and Buyer terminates this Agreement prior to the start of the Commercial Operation Date, Buyer shall have the right to retain the entire Development Security as the Damage Payment.
- 12.4. Release of Liability for Termination. If an Event of Default shall have occurred, the non-defaulting Party shall have the right to immediately suspend performance under this Agreement and pursue all remedies available at Law or in equity against the defaulting Party (including monetary damages), except to the extent that such remedies are limited by the terms of this Agreement.
- 12.5. Calculation of Termination Payment. If either Party exercises a termination right under Section 12 after the Commercial Operation Date, the payment owed by the defaulting Party to the non-defaulting Party (the “Termination Payment”) shall be the aggregate of all Settlement Amounts, plus any and all other amounts due to or from the the non-defaulting Party (as of the Early Termination Date) netted into a single amount. The non-defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment as of the Early Termination Date. Prior to the Commercial Operation Date, if Buyer is the defaulting Party, the Settlement Amount shall be Zero dollars (\$0). Buyer shall not have to enter into replacement transactions to establish a Settlement Amount. Buyer shall have the right to draw upon the Collateral Requirement to collect any Settlement Amount owed to Buyer.

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12.6. Rights and Remedies Are Cumulative. The rights and remedies of the Parties pursuant to this Section 12 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

12.7. Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

12.8. Right of First Refusal.

12.8.1. If Seller terminates this Agreement pursuant to Section 11.4, or if Seller has an Event of Default prior to the Commercial Operation Date, neither Seller nor Seller's Affiliates may sell, or enter into a contract to sell, Energy, Green Attributes, Capacity Attributes, or Resource Adequacy Benefits, generated by, associated with or attributable to a generating facility installed at the Site to a party other than Buyer for a period of two (2) years following the effective date of such termination ("Restricted Period").

12.8.2. This prohibition on contracting and sale shall not apply if, before entering into such contract or making a sale to a party other than Buyer, Seller or Seller's Affiliate provides Buyer with a written offer to sell the Energy, Green Attributes, Capacity Attributes and Resource Adequacy Benefits to Buyer at the Contract Price and on other terms and conditions materially similar to the terms and conditions contained in this Agreement and Buyer fails to accept such offer within forty-five (45) days after Buyer's receipt thereof.

12.8.3. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site of the proposed Facility during the Restricted Period so long as the limitations contained in this Section 12.8 apply, unless the transferee agrees to be bound by the terms set forth in this Section 12.8 pursuant to a written agreement reasonably approved by Buyer.

12.8.4. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach of the covenants contained within this Section 12.8.

**13. GOVERNMENTAL CHARGES**

13.1. Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall reimburse Seller for such Governmental Charges within thirty (30) days of Notice by Seller. If Buyer is

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required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall reimburse Buyer for such amounts within thirty (30) days of Notice from Buyer. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section 13.1.

**14. CONFIDENTIALITY; RELEASE OF INFORMATION**

14.1. Confidentiality. The Parties hereto acknowledge and agree that this Agreement and any transactions entered into in connection herewith are subject to the provisions of the California Public Records Act (Cal. Government Code Section 6250 et seq.). In the event that Seller contends that any information disclosed or required to be disclosed by Seller pursuant to this Agreement is confidential, Seller shall clearly identify such documents as such before transmitting the same to Buyer. In the event that any claim or action is filed against Buyer pursuant to the Public Records Act seeking the disclosure of any records or documents provided by Seller which were marked confidential hereunder, Buyer shall notify Seller in writing of such fact and Seller shall thereupon defend, save harmless and indemnify Buyer from all costs and expenses in connection with said claim or litigation, including attorney's fees, and agrees to abide by the final decision of a court of competent jurisdiction in connection therewith.

14.2. Release of Information. Seller authorizes Buyer to release to the FERC, CEC, the CPUC, or other Governmental Authority, information regarding the Facility, including Seller's name and location, and the size, location and operational characteristics of the Facility, the Term, the ERR type, photographs of the Project, the Commercial Operation Date, greenhouse gas emissions data and the net power rating of the Facility, as requested from time to time pursuant to the CEC's, CPUC's or applicable Governmental Authority's rules and regulations.

**15. ASSIGNMENT**

15.1. General Assignment. Except as provided in this Section, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party, provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and

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enforceability assurance as the non-transferring Party may reasonably request. Notwithstanding anything to the contrary set forth herein, Seller may transfer or assign its interest under this Agreement without the consent of Buyer, to (a) an Affiliate of Seller, or a corporation, partnership or other legal entity wholly owned by Seller, or (b) a successor to Seller by purchase, merger, consolidation or reorganization (each such transfer a “Permitted Transfer” and any such assignee or transferee of a Permitted Transfer, a “Permitted Transferee”); provided that (i) the Permitted Transferee is of equal or greater creditworthiness than Seller, and (ii) Seller shall give Buyer Notice of the Permitted Transfer and any such Permitted Transferee shall agree in writing to be bound by the terms and conditions hereof.

15.2. Notice of Change of Control. Seller shall provide Buyer at least thirty (30) days’ prior Notice of any Change of Control of Seller (whether voluntary or by operation of Law) and any such Change of Control will be deemed an assignment and require the prior written consent of Buyer, which consent shall not be unreasonably withheld.

**16. GOVERNING LAW**

16.1. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

**17. DISPUTE RESOLUTION**

17.1. Intent of the Parties. The sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Section 17, except that either Party may seek an injunction in Superior Court in San Diego, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

17.2. Management Negotiations.

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

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

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17.2.3. If the matter is not resolved within forty-five (45) days of commencement of negotiations under Section 17.2.1, or if the Party receiving the written request to meet refuses or does not meet within the ten (10) Business Day period specified in Section 17.2.1, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

**18. MISCELLANEOUS**

- 18.1. Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.
- 18.2. Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.
- 18.3. General. No amendment to or modification of this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.
- 18.4. Interpretation. Whenever this Agreement specifically refers to any Law, tariff, Governmental Authority, regional reliability council, Transmission/Distribution Owner, or credit rating agency, the Parties hereby agree that the references also refers to any successor to such Law, tariff or organization.
- 18.5. Construction. The Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof.
- 18.6. Joint Powers Authority. Seller hereby acknowledges and agrees that Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, and Seller agrees that it shall have no rights against, and shall not

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make any claim, take any actions or assert any remedies against, any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, or any of Buyer's retail customers in connection with this Agreement.

- 18.7. Mobile-Sierra. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

*[Signature page follows on next page.]*

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

(Seller)	<b><u>SAN DIEGO COMMUNITY POWER</u></b> (Buyer)
(Signature)	(Signature)
(Print Name)	(Print Name)
(Title)	(Title)
(Date)	(Date)

TEMPLATE



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**Appendix A - Definitions**

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with that Party.

“AC” means alternating current.

“Application Fee” means the fee submitted by Seller to Buyer in the amount specified on the Cover Sheet at the time Seller submitted an application for a Feed-In Tariff Power Purchase Agreement. The Application Fee is non-refundable.

“Available Capacity” means the rated AC generating capacity of the Facility, expressed in whole kilowatts, that is available to generate Product.

“Bankrupt” means with respect to any entity, such entity that: (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days; (c) makes an assignment or any general arrangement for the benefit of creditors; (d) otherwise becomes bankrupt or insolvent (however evidenced); (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to such entity or any substantial portion of its property or assets; or (f) is generally unable to pay its debts as they fall due.

“Bonus Incentive” means an additional amount, as specified in the Cover Sheet, added to the Contract Price for the first five (5) Contract Years of the Delivery Term for Projects that meet any of the following criteria:

- (a) **Local Business:** The applicant and/or prime contractor must have a place of business (i.e., possesses a business license) physically headquartered within a member community of SDCP, as such membership exists on the date of submission of the FIT Application.
- (b) **Previously Developed Sites:** Such sites are defined as areas that either contain or have contained structures or were used for parking, loading or storage related to a previous or existing land use other than agricultural grazing or crop production within the last twenty (20) years. To claim this bonus, the previously developed land must make up at least twenty percent (20%) of the project footprint. Development documentation, in the form of building permits or verifiable ground, aerial, or satellite photography, as solely determined by Buyer, must be provided by Seller.
- (c) **Sited within a Community of Concern:** To qualify for the Sited within Communities of Concern incentive, the Eligible Resource must be located entirely within a Disadvantaged Community, as defined by the California Office of Environmental Health Hazard Assessment (<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>), or within a very

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low to low access census tract found in the City of San Diego's Climate Equity Index (<https://www.sandiego.gov/sustainability/social-equity-and-job-creation>), at the time of submission of the FIT Application. The geographical eligibility of Communities of Concern may expand as SDCP member cities enact their own Climate Equity Index designated census tracts.

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

"CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.

"CAISO Tariff" means the CAISO FERC Electric Tariff, Fifth Replacement Volume No. 1, as amended from time to time.

"California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies codified in California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions may be amended or supplemented from time to time.

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

"CEC" means the California Energy Commission or its successor agency.

"CEC Certification" means certification by the CEC that the Facility is an ERR and that all Energy produced by the Facility qualifies as generation from an ERR.

"CEC Pre-Certification" means provisional certification of the proposed Facility as an ERR by the CEC upon submission by a facility of a complete CEC-RPS-1B application and required supplemental information.

"Change of Control" means, except in connection with public market transactions of equity interests or capital stock of Seller's Parent, any circumstance in which Seller's Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Seller's Parent indirectly through one or more intermediate entities shall not be counted towards Seller's Parent's ownership interest in

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Seller unless Seller's Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

For purposes of this definition, "Seller's Parent" means an entity which owns a majority of Seller's voting equity.

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

"Claiming Party" has the meaning set forth in Section 11.2.

"Collateral Requirement" has the meaning set forth in Section 3.9.

"Commercial Operation" means the Contract Capacity has been installed and the Facility is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

"Commercial Operation Date" means the date on which the Facility achieves Commercial Operation.

"Commercial Operation Delay Damages" means an amount equal to \$0.20/kW per day.

"Contract Capacity" means the amount of electric energy generating capacity, set forth in the Cover Sheet, that Seller commits to install at the Site.

"Contract Price" has the meaning set forth in the Cover Sheet.

"Contract Quantity" has the meaning set forth in the Cover Sheet.

"Contract Year" means a period of twelve (12) consecutive months with the first Contract Year commencing on the Commercial Operation Date and each subsequent Contract Year commencing on the anniversary of the Commercial Operation Date.

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

"CPUC" means the California Public Utilities Commission, or successor entity.

"Credit Rating" means, with respect to any entity, (a) the rating then assigned to such entity's unsecured senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the

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two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

"Cure Plan" has the meaning set forth in Section 12.2.2.3.

"Damage Payment" means the amount to be paid by Seller as the defaulting Party to Buyer as the non-defaulting Party after a termination of this Agreement prior to the Commercial Operation Date which shall be equal to the entire Development Security amount.

"Delivered Energy" means all Energy, expressed in kWh, produced by the Facility throughout the Delivery Term and delivered to the Delivery Point, net of Station Use and electrical losses from the Facility, as recorded by the meter specified in Section 6.2.1 or the Check Meter, as applicable.

"Delivery Point" has the meaning set forth in the Cover Sheet.

"Delivery Term" has the meaning set forth in the Cover Sheet.

"Development Security" means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

"Early Termination Date" has the meaning set forth in Section 12.3.

"Eligible Renewable Energy Resource" or "ERR" has the meaning set forth in Public Utilities Code Sections 399.12 and California Public Resources Code Section 25741, as either code provision may be amended or supplemented from time to time.

"Emergency" means (a) an actual or imminent condition or situation which jeopardizes the integrity of the electric system or the integrity of any other systems to which the electric system is connected or any condition so defined and declared by the CAISO; or (b) an emergency condition as defined under an Interconnection Agreement and any abnormal interconnection or system condition that requires automatic or immediate manual action to prevent or limit loss of load or generation supply, that could adversely affect the reliability of the electric system or generation supply, that could adversely affect the reliability of any interconnected system, or that could otherwise pose a threat to public safety.

"Energy" means three-phase, 60-cycle alternating current electric energy measured in kWh, net of Station Use. For purposes of the definition of "Green Attributes," the word "energy" shall have the meaning set forth in this definition.

"Effective Date" means the latest signature date found at the end of the Agreement.

"Facility" has the meaning set forth in Section 2. The terms "Facility" or "Project" as used in this Agreement are interchangeable.

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

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“FIT Application” means the Feed-in Tariff Application that each developer is required to submit through Buyer’s website.

“Force Majeure” means any occurrence that was not anticipated as of the Effective Date that:

- (a) in whole or in part: (i) delays a Party’s performance under this Agreement; (ii) causes a Party to be unable to perform its obligations; or (iii) prevents a Party from complying with or satisfying the conditions of this Agreement;
- (b) is not within the control of that Party; and
- (c) the Party has been unable to overcome by the exercise of due diligence, including an act of God, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civil disturbance or disobedience, terrorism, sabotage, strike or labor dispute, or curtailment or reduction in deliveries at the direction of a Transmission/Distribution Owner.

Force Majeure does not include:

- (a) the lack of wind, sun or other fuel source of an inherently intermittent nature;
- (b) reductions in generation from the Facility resulting from ordinary wear and tear, deferred maintenance or operator error; or
- (c) any delay in providing, or cancellation of, interconnection service by a Transmission/Distribution Owner, except to the extent such delay or cancellation is the result of a force majeure claimed by the Transmission/Distribution Owner.

“Gains” means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 12.5. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

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

“Governmental Charges” has the meaning set forth in Section 13.1.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided

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emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere<sup>1</sup>; and (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production or investment tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

"Interconnection Agreement" means the small generator interconnection agreement entered into separately between Seller and Transmission/Distribution Owner obtained by Seller pursuant to Transmission/Distribution Owner's Wholesale Distribution Tariff.

"Interconnection Facilities" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with Seller's Interconnection Agreement.

"Interconnection Point" has the meaning set forth in the Cover Sheet.

"JAMS" means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

"Joint Powers Act" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

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

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“Joint Powers Agreement” means that certain Joint Powers Agreement dated October 1, 2019, as amended by the First Amendment to the Joint Powers Agreement dated November 22, 2019, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kW” means kilowatt.

“kWh” means kilowatt-hour.

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

“Letter of Credit” means an irrevocable, non-transferable, standby letter of credit issued either by a U.S. commercial bank or a foreign bank with a U.S. branch office with a Credit Rating of at least “A-” by S&P and “A3” by Moody’s (without a “credit watch”, “negative outlook” or other rating decline alert if its Credit Rating is “A-” by S&P or “A3” by Moody’s).

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 12.5. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

“Manager” has the meaning set forth in Section 17.2.1.

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

“MW” means megawatt (AC).

“MWh” means megawatt-hour.

“Notice” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

“Party” means Buyer or Seller individually, and “Parties” means both collectively.

“Performance Security” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet.

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“Permitted Transfer” has the meaning set forth in Section 15.1.

“Permitted Transferee” has the meaning set forth in Section 15.1.

“Product” means all Delivered Energy; all Green Attributes; all Capacity Attributes, if any; and all Resource Adequacy Benefits, if any; generated by, associated with, or attributable to the Facility throughout the Delivery Term.

“Project” has the meaning set forth in Section 2. The terms “Facility” and “Project” as used in this Agreement are interchangeable.

“Prudent Electrical Practices” means those practices, methods and acts that would be implemented and followed by prudent operators of electric energy generating facilities in the Western United States, similar to the Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with manufacturers’ warranties, restrictions in this Agreement, and the requirements of Governmental Authorities, WECC standards, the CAISO and Laws. Prudent Electrical Practices also includes taking reasonable steps to ensure that:

(a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Facility’s needs;

(b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Facility and Emergencies whether caused by events on or off the Site;

(c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Facility, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(e) Equipment is not operated in a reckless manner, in violation of manufacturer’s guidelines or in a manner unsafe to workers, the general public, or the Transmission/Distribution Owner’s electric system or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

(f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generating facilities operating in the Western United States and will function properly over the full range of ambient temperature



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and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

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

“Reservation Deposit” means the deposit submitted by Seller to Buyer in the amount specified on the Cover Sheet at the time Buyer has accepted as complete Seller’s application for a Feed-In Tariff Power Purchase Agreement. Buyer shall return the Reservation Deposit to Seller upon receipt of the Development Security.

“Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

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

“Resource Adequacy Requirements” has the meaning set forth in Section 4.4.1.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022 and any subsequent CPUC ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time during the Delivery Term.

“Restricted Period” has the meaning set forth in Section 12.8.1.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

“Settlement Amount” means the non-defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the non-defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the non-defaulting Party. If the non-defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“Site” means the real property on which the Facility is, or will be, located, as further described in Appendix D.

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“Site Control” means Seller: (a) owns the Site, (b) leases the Site, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) prior to the Commercial Operation Date, has the unilaterally exercisable contractual right to acquire or cause to be acquired on its behalf any of (a), (b), or (c).

“Station Use” means energy consumed within the Facility’s electric energy distribution system as losses, as well as energy used to operate the Facility’s auxiliary equipment. The auxiliary equipment may include, but is not limited to, forced and induced draft fans, cooling towers, boiler feeds pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps. This use is not to exceed 1% of average annual output.

“Term” has the meaning set forth in Section 3.4.1.

“Termination Payment” has the meaning set forth in Section 12.5.1.

“Transaction” means the particular transaction described in Section 3.3.

“Transmission/Distribution Owner” means any entity or entities responsible for operating the electric distribution system or transmission system, as applicable, at and beyond the Interconnection Point.

“WECC” means the Western Electricity Coordinating Council, the regional reliability council for the Western United States, Northwestern Mexico and Southwestern Canada.

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

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard. *[for Facilities (1) 500 kW or greater and (2) eligible for a CAISO revenue meter.]*

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time. *[for Facilities (1) 500 kW or greater and (2) eligible for a CAISO revenue meter.]*

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\*\*\* End of Appendix A \*\*\*

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**Appendix B – Commercial Operation Date Certificate**

This certification (“**Certification**”) of Commercial Operation is delivered by Name of licensed professional engineer (“**Engineer**”) to San Diego Community Power, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Feed-In Tariff Power Purchase Agreement dated Agreement Effective Date] (“Agreement”) by and between Seller’s Name (“Seller”) and Buyer. All capitalized terms used in this Certificate but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of Date, Engineer hereby certifies and represents to Buyer the following:

1. The Facility is operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Contract Capacity.
3. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Contract Capacity for the Facility at the Delivery Point, adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was Peak output in MW<sub>AC</sub>.
4. *[If installing storage]* The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Output and is receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
5. Authorization to parallel the Facility was obtained by the PTO, Name of Participating Transmission Owner as appropriate on Date of Authorization.
6. The PTO has provided documentation supporting full unrestricted release for Commercial Operation by Name of Participating Transmission Owner as appropriate on Date of release.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER] this Day day of Month, 20Year.

[LICENSED PROFESSIONAL ENGINEER]

X: \_\_\_\_\_

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

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

\*\*\* End of Appendix B \*\*\*

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**Appendix C – Forecasting Requirements**

Seller shall provide the Available Capacity forecasts described below. *[The following bracketed language applies to As-Available solar or wind Projects only]* [Seller’s availability forecasts below shall include Project availability and updated status of *[The following bracketed language applies to solar Projects only]* [photovoltaic panels, inverters, transformers, and any other equipment that may impact availability] or *[The following bracketed language applies to wind Projects only]* [transformers, wind turbine unit status, and any other equipment that may impact availability].] *[The following bracketed language applies to As-Available Product only]* Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary.

1. Annual Forecast of Available Capacity. No later than (a) the earlier of July 1 of the first calendar year following the Effective Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term (“First Annual Forecast Date”), and (b) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

2. Monthly Forecast of Available Capacity. Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

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\*\*\* End of Appendix C \*\*\*

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**Appendix D – Description of the Facility**

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

Name of the Facility: Insert Name of the Facility

Address of the Facility: Insert Street Address , City, State, ZIP

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

Drawing showing the general arrangement of the Facility:

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

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

Longitude and latitude of the centroid of the Site:

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\*\*\*End of Appendix D\*\*\*

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**Appendix E – Seller’s Milestone Schedule**

<b>Action Steps</b>	<b>Time Allowance</b>		<b>Due On*</b>	<b>Date Completed</b>	<b>Responsible Party</b>
STEP 1. Submit Application & Tendered Interconnection Agreement <sup>1</sup>				10/1/2021	Developer
1A. Submit Documentation in Support of Bonuses (if applicable)	<i>Due with Initial Application</i>				Developer
1B. Review Application for Eligibility & Assign FIT Record Number	20 BD	from Step 1	10/29/2021		SDCP
STEP 2. Approve Application	30 BD	from Step 1	11/12/2021		SDCP
STEP 3. Sign conditional PPA	30 BD	from Step 2	12/24/2021		Both
STEP 4. Submit Proof of Insurance	30 CD	from Step 3	1/23/2022		Developer
STEP 5. Acquire Full Interconnection Agreement	60 CD	from Step 3	2/22/2022		Developer
5A. Submit Interconnection Agreement to SDCP within 10 days of receipt	10 CD	from Step 5	3/4/2022		Developer
STEP 6. Pay Interconnection Fees & submit proof to SDCP	30 CD	from Step 5	3/24/2022		Developer
STEP 7. Submit confirmation of RPS request receipt by CEC and copy of CEC-RPS 1.	30 CD	from Step 5	3/24/2022		Developer
STEP 8. File project with WREGIS & submit proof to SDCP	30 CD	from Step 5	3/24/2022		Developer
STEP 9. Acquire conditional use & construction permits	180 CD	from Step 3	6/22/2022		Developer
9A. Submit proof of permits to SDCP	5 BD	from Step 9	6/29/2022		Developer
STEP 10. Notify SCP 10 business days in advance of ground breaking	10 BD	prior to ground breaking			Developer
STEP 11. Mechanical Completion	360 CD	from Step 9	6/17/2023		Developer
STEP 12. Notify SDCP 90 business days in advance of commercial operation	90 BD	prior to Step 13	4/12/2023		Developer
STEP 13. Start of Commercial Operation	60 CD	from Step 11	8/16/2023		Developer
STEP 14. Submit CEC Certification	90 CD	from Step 13	11/14/2023		Developer
* Please note that once FIT application is received and processed by San Diego Community Power the due dates become binding milestones. Missing due dates may be grounds for changing a project's queue position and/or contract termination.					
<sup>1</sup> For clarity, the tendered interconnection agreement is the final draft from SDG&E's Wholesale Interconnection Services prior to execution of that agreement.					
BD = Business Days, CD = Calendar Days					

\*\*\* End of Appendix E \*\*\*

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**Appendix F – Notices List**

**SELLER**

**BUYER**

Name: Seller’s Name, a include place of formation and business type. (“Seller”)

Name: **SAN DIEGO COMMUNITY POWER**, a California joint powers authority (“Buyer” or “SDCP”)

**All Notices:**

Delivery Address:

Street Address

City, State ZIP

Mail Address: *(if different from above)*

Street Address

City, State ZIP

Attn: Contract Manager’s Name.

Phone: Phone Number

Facsimile: Fax Number

**All Notices:**

Delivery Address:

815 E Street, Suite 12716

San Diego, CA 92112

Mail Address:

815 E Street, Suite 12716

San Diego, CA 92112

Attn:

Phone:

Facsimile:

**D-U-N-S:** D-U-N-S

**DUNS:**

**Federal Tax ID Number:**

Federal Tax ID Number

**Federal Tax ID Number:**

**Invoices:**

Attn: Invoice Contact Person

Phone: Phone Number

Facsimile: Fax Number

**Invoices:**

Attn:

Phone:

Facsimile:

**Payments:**

Attn: Payments Contact Person

Phone: Phone Number

Facsimile: Fax Number

**Payments:**

Attn:

Phone:

Facsimile:

**Wire Transfer:**

BNK: Name of Bank

ABA: ABA Routing Number

ACCT: Account Number

**Wire Transfer:**

BNK:

ABA:

ACCT:

**Credit and Collections:**

Attn: Credit/Collect. Contact Person

Phone: Phone Number

Facsimile: Fax Number

**Credit and Collections:**

Attn:

Phone:

Facsimile:

**With additional Notices of an Event of Default to Contract Manager:**

Attn: Contract Manager Name

Phone: Phone Number

**SDCP Contract Manager:**

Attn:

Phone:

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Facsimile: Fax Number

*\*\*\* End of Appendix F\*\*\**

TEMPLATE