

EXHIBIT “C”

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POWER PURCHASE AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

MILFORD WIND CORRIDOR PHASE I, LLC

DATED AS OF MARCH 16, 2007

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS AND INTERPRETATION.....1
 Section 1.1 Definitions.....1
 Section 1.2 Interpretation.....14
ARTICLE II EFFECTIVE DATE, TERM, PRODUCTION TAX CREDITS, EARLY
TERMINATION AND FACILITY PROPERTIES15
 Section 2.1 Effective Date15
 Section 2.2 Agreement Term and Delivery Term.....15
 Section 2.3 Survivability.....15
 Section 2.4 Early Termination by Seller.....15
 Section 2.5 Extension of Production Tax Credits; Early Termination by Buyer or
 Exercise of Purchase Option.....15
 Section 2.6 Early Termination for Change in Requirement of Law20
 Section 2.7 Early Termination by Mutual Agreement.....21
 Section 2.8 Early Termination for Certain Force Majeure22
 Section 2.9 Milestone Schedule.....22
 Section 2.10 The Facility Generating Premises.....22
 Section 2.11 Site Common Facilities and Facility Common Facilities' Interests23
 Section 2.12 Transmission Line and Facility Transmission Line Interests.23
ARTICLE III PURCHASE AND SALE OF POWER.....24
 Section 3.1 Purchases by Buyer.....24
 Section 3.2 Dispatch Procedures.....25
 Section 3.3 Energy to Come Exclusively from Facility25
ARTICLE IV POINT OF DELIVERY AND INTERCONNECTION AGREEMENT25
 Section 4.1 Point of Delivery.....25
 Section 4.2 Interconnection Agreement.....25
 Section 4.3 Transmission Service Agreement26
 Section 4.4 Use of Transmission Line26
ARTICLE V OWNERSHIP OF THE FACILITY26
 Section 5.1 Ownership of the Facility.....26
 Section 5.2 Certification of Commercial Operation Date.....27
 Section 5.3 Additional Capacity after Early Completion in the Early Completion Facility
 Configuration27
 Section 5.4 Other Information27
ARTICLE VI OPERATION AND MAINTENANCE OF THE FACILITY.....28
 Section 6.1 Compliance with Electrical Service Requirements.....28
 Section 6.2 General Operational Requirements.....28
 Section 6.3 Taxes.....28
 Section 6.4 Environmental Credits29
 Section 6.5 Scheduling of Energy and Scheduled Outages.....29
 Section 6.6 Performance Security.....31
ARTICLE VII COMPLIANCE DURING CONSTRUCTION AND OPERATION PERIOD....31
 Section 7.1 Facility Construction Warranty.....31
 Section 7.2 Compliance With Standards32

TABLE OF CONTENTS
(continued)

	Page
Section 7.3 Quality Assurance Program	32
ARTICLE VIII BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS	32
Section 8.1 Billing and Payment.....	32
Section 8.2 Records and Audits	33
Section 8.3 Delivery Arrangements.....	34
Section 8.4 Electric Metering Devices.....	34
ARTICLE IX ENVIRONMENTAL ATTRIBUTES AND OTHER COSTS	35
Section 9.1 Transfer of Environmental Attributes.....	35
Section 9.2 Decommissioning and Other Costs.....	36
ARTICLE X REPRESENTATIONS AND WARRANTIES; COVENANT OF SELLER.....	36
Section 10.1 Representations and Warranties by Buyer	36
Section 10.2 Representations and Warranties by Seller	37
Section 10.3 Covenant of Seller Related to Seller's Status as Special Purpose Entity	38
Section 10.4 Covenants of Seller Related to Leases and Property Agreements.....	38
ARTICLE XI DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE	40
Section 11.1 Default.....	40
Section 11.2 Default Remedy.	40
Section 11.3 Performance Damages.	41
Section 11.4 Effect of Termination on Interconnection Agreement.....	41
Section 11.5 Termination for Default.	41
Section 11.6 Calculation of Termination Payment	42
ARTICLE XII MAKEUP OF SHORTFALL ENERGY	44
Section 12.1 Makeup of Shortfall	44
Section 12.2 No Excess Energy During Shortfall Periods.....	44
Section 12.3 Replacement Energy	44
ARTICLE XIII CAPACITY RIGHTS	44
Section 13.1 Purchase and Sale of Capacity Rights	44
Section 13.2 Representation Regarding Ownership of Capacity Rights	44
Section 13.3 Further Assurances.....	45
ARTICLE XIV MISCELLANEOUS	45
Section 14.1 Authorized Representative.....	45
Section 14.2 Notices	45
Section 14.3 Dispute Resolution.....	45
Section 14.4 Regulatory Compliance	46
Section 14.5 No Dedication of Facilities	46
Section 14.6 Force Majeure.....	46
Section 14.7 Assignment of Agreement.	47
Section 14.8 Ambiguity	48
Section 14.9 Attorney Fees & Costs.....	48
Section 14.10 Voluntary Execution.....	48
Section 14.11 Entire Agreement.....	48

TABLE OF CONTENTS
(continued)

Page

Section 14.12 Contract Approvals	49
Section 14.13 Governing Law	49
Section 14.14 Execution in Counterparts.....	49
Section 14.15 Effect of Section Headings	49
Section 14.16 Waiver.....	49
Section 14.17 Relationship of the Parties	49
Section 14.18 Third Party Beneficiaries	49
Section 14.19 Indemnification; Damage or Destruction; Insurance; Limit of Liability...49	
Section 14.20 Severability	51
Section 14.21 Status of Review by Buyer	51
Section 14.22 Confidentiality.....	52
Section 14.23 No Immunity Claim	53
Section 14.24 Fixed-Rate Contract: Mobile-Sierra Clause.....	54
APPENDIX A	MONTHLY PAYMENT SCHEDULE
APPENDIX B	FACILITY DESCRIPTION AND MILESTONE SCHEDULE
APPENDIX C	BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION
APPENDIX D	FORM OF ATTESTATION
APPENDIX E	FORM OF SECURITY INTEREST
APPENDIX F	INSURANCE
APPENDIX G	REMAINING PREPAYMENT AMOUNT
APPENDIX H	CIRCLE FOUR LEASE
APPENDIX I	GUARANTEED GENERATION AND PREPAYMENT AMOUNT TABLE
APPENDIX J	QUALITY ASSURANCE PROGRAM

1 **POWER PURCHASE AGREEMENT**

2 **PARTIES**

3 THIS POWER PURCHASE AGREEMENT ("Agreement") is entered into as of this
4 16TH day of March, 2007 by and between Southern California Public Power Authority,
5 ("Buyer"), a public entity and joint powers agency formed and organized pursuant to the
6 California Joint Exercise of Powers Act (California Government section 6500 et seq.), and
7 Milford Wind Corridor Phase I, LLC ("Seller"), a limited liability corporation organized and
8 existing under the laws of the State of Delaware. Each of Buyer and Seller is referred to
9 individually under this Agreement as a "Party" and together they are referred to as the "Parties".

10 **RECITALS**

11 WHEREAS, Buyer seeks to provide to certain of its members energy from renewable
12 power sources;

13 WHEREAS, in response to a Request for Proposals issued by Buyer on August 30, 2005,
14 Seller proposes to own and operate a nominal 200 MW wind electric generating and transmission
15 facilities (the "Facility" as further described herein), located near Milford, Utah, which will
16 utilize wind energy technology and sell power to Buyer beginning from the effective date of this
17 Agreement and extending for a term of twenty (20) years from the Commercial Operation Date
18 with an early termination and purchase option exercisable by Buyer as provided herein;

19 WHEREAS, Buyer desires to purchase Energy from the Facility from Seller, and Seller
20 desires to sell Energy from the Facility to Buyer; and

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

23 **AGREEMENT**

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

26 **ARTICLE I**
27 **DEFINITIONS AND INTERPRETATION**

28 **Section 1.1 Definitions.** The following capitalized terms shall have the
29 following meanings:

30 "**Achieved Generation**" means, in respect of each Contract Year, the total Delivered Energy, in
31 MWh, achieved during such Contract Year.

32 "**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in control of,
33 is controlled by or is under common control with such Person or is a director or officer of such
34 Person or of an Affiliate of such Person.

1 **“Agreement”** means this Power Purchase Agreement.

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

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

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

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

7 **“Authorized Representative”** means, with respect to each Party, the person designated as such
8 Party’s authorized representative pursuant to Section 14.1.

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

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

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

18 **“Buyer’s Agent”** means any member of the Buyer authorized or designated by Buyer to make
19 the determination or perform, carry out or provide the service or action as provided in this
20 Agreement.

21 **“Buyer Approvals”** means the authorizations and approvals required in order for Buyer to
22 execute and deliver this Agreement.

23 **“CAMD”** means the Clean Air Markets Division of the United States Environmental Protection
24 Agency, any successor agency and any other state or federal entity or person that is given
25 jurisdiction over a program involving transferability of Environmental Attributes.

26 **“Capacity Rights”** means the right to capacity, resource adequacy, and/or reserves associated
27 with the electric generating capability of the Facility, measured in MW.

28 **“CEC”** means the California Energy Commission or any successor agency thereto.

29 **“Circle Four Lease”** means the Land Lease Agreement, dated February 22, 2007 between Circle
30 Four LLC, as lessor, and Seller, as lessee, attached to this Agreement as Appendix H

31 **“Closing”** means the consummation of the transaction contemplated by this Agreement in
32 Section 2.5.

1 “COD Notice” has the meaning set forth in Section 5.2 hereof.

2 “Commercial Operation” means the date on which all of the following have occurred:

3 (a) The Facility interconnection to the Point of Delivery is completed and
4 tested in accordance with the requirements of the Interconnection Agreement.

5 (b) Seller shall have provided Buyer with evidence reasonably satisfactory to
6 Buyer that the Facility meets the requirements for Early Completion Facility Configuration and
7 has successfully completed all testing required prior to normal operations.

8 (c) Seller shall have certified to Buyer that environmental and all other
9 required permits necessary for the operation and maintenance of the Facility have been obtained
10 in a final form no longer subject to appeal.

11 (d) Seller shall have certified to Buyer that the Facility meets the requirements
12 for Early Completion Facility Configuration and has been completed in all material respects;
13 and

14 (e) Seller shall have certified that it has obtained Insurance coverage for the
15 Facility consistent with Appendix F.

16 “Commercial Operation Date” means the date on which Commercial Operation shall have
17 occurred; provided, that Seller shall have the right to declare Commercial Operation as to all
18 additional wind turbines following the Commercial Operation Date if Commercial Operation is
19 achieved as to the Facility in the Early Completion Facility Configuration in accordance with
20 Section 5.3.

21 “Contract Capacity” means the maximum net continuous output level at the Point of Delivery
22 that the Facility is designed to produce and that Buyer is obligated to purchase; provided, that
23 Seller shall have the right to declare Commercial Operation as to the Early Completion Facility
24 Configuration at the Commercial Operation Date, and thereafter on or before ninety (90) days
25 following the Commercial Operation Date may declare Commercial Operation as to all
26 additional wind turbines in accordance with Section 5.3 which shall also constitute Contract
27 Capacity.

28 “Contract Year” means each 12-month period of the Delivery Term commencing with the
29 Commercial Operation Date.

30 “Costs” has the meaning set forth in Section 11.6(f) hereof.

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

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

1 **“Delivered Energy”** means the MWh of Energy as metered at the Point of Delivery, which
2 amount will be adjusted to include the MWh of curtailed Energy in accordance with
3 Section 6.5(i).

4 **“Delivered Excess Energy”** means the portion of the Delivered Energy which is designated as
5 Excess Energy.

6 **“Delivered Guaranteed Generation”** means the portion of the Delivered Energy which is
7 designated as Guaranteed Generation.

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

9 **“Early Completion Facility Configuration”** means a configuration of the Facility with the
10 interconnection facilities and installed wind turbines aggregating not less than 130 MW of
11 nameplate capacity and no more than 200 MW of nameplate capacity.

12 **“EEI”** means Edison Electric Institute.

13 **“Effective Date”** means the date of this Agreement as set forth in Section 2.1 hereof.

14 **“Electric Metering Device(s)”** means all meters, metering equipment, and data processing
15 equipment used to measure, record, or transmit data relating to the Energy output from the
16 Facility. Electric Metering Devices include the metering current transformers and the metering
17 voltage transformers.

18 **“Energy”** means the energy and Capacity Rights produced by wind turbines at the Facility and
19 delivered to the Point of Delivery.

20 **“Energy Rate”** has the meaning set forth in Section 2.6 hereof.

21 **“Environmental Attribute Reporting Rights”** means all rights to report the ownership of the
22 Environmental Attributes to any Person, without limitation.

23 **“Environmental Attributes”** means any and all credits, benefits (other than Tax Benefits),
24 offsets, reductions, or allowances, howsoever entitled, resulting from the generation of
25 renewable Energy and its subsequent displacement of conventional Energy generation.
26 Environmental Attributes include without limitation: (1) any avoided emission of carbon dioxide
27 (CO₂), methane (CH₄), or any other greenhouse gas, and (2) any avoided emission of sulfur
28 oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), particulate matter (PM), or any
29 other sources or air, soil, or water pollution. Environmental Attributes received hereunder may
30 be applied under any governmental, regulatory, or voluntary program, including but not limited
31 to the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto
32 Protocol to the UNFCCC, in accordance with applicable law. Environmental Attributes created by
33 the Facility shall be assigned so that one MWh of Facility Metered Output is equivalent to one
34 MWh of Environmental Attributes. Environmental Attributes associated with the Replacement
35 Energy shall be derived from a renewable energy resource which (i) is eligible for compliance
36 with the renewable portfolio standards and greenhouse gas reporting requirements established

1 under California law and (ii) does not emit carbon dioxide or other greenhouse gas emissions.
2 Environmental Attributes are also commonly known as renewable energy credits (RECs) and
3 green tags, and the terms shall have identical meanings for the purposes of this Agreement.

4 “EPA” means Environmental Protection Agency and any successor agency.

5 “Excess Energy” means the Energy delivered to the Point of Delivery which is in excess of the
6 Guaranteed Annual Quantity.

7 “Excess Energy Price” means the \$/MWh payment made to Seller by Buyer for Excess Energy
8 according to the provisions in Appendix A.

9 “Excess PTC Value” has the meaning set forth in Section 2.5(g) hereof.

10 “Expected Production Tax Credits” means a renewable electricity production credit of
11 1.5 cents per kWh in accordance with Section 45 of the Internal Revenue Code (as the same
12 exists on the Effective Date), as heretofore adjusted and as hereafter to be adjusted by the
13 inflation adjustment factor specified in Section 45, as the same exists on the Effective Date,
14 which tax credit shall be available for a 10-year period beginning on Commercial Operation
15 Date, measured on Facility Metered Output.

16 “Facility” means the wind powered electric generating facility, including but not limited to the
17 Facility Premises, the structures, facilities, equipment, fixtures, improvements and associated
18 real and personal property and the other rights and interests, all as described in Appendix B.

19 “Facility Common Facilities Interests” means the rights and interests in and to the properties,
20 structures, equipment and facilities described in Appendix B as constituting the Facility
21 Common Facilities Interests.

22 “Facility Generating Premises” means the land described in Appendix B as constituting the
23 Facility Generating Premises.

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

31 “Facility Metered Output” means the energy produced by the Facility wind turbine generators
32 as measured at the site of the wind turbine generators.

33 “Facility Premises” means the Facility Generating Premises, the land and rights and interests in
34 land included in the Facility Common Facilities Interests and the Facility Transmission Line
35 Interests.

1 **“Facility Transmission Line Interests”** means the rights and interests in and to the properties,
2 structures and facilities described in Appendix B as constituting the Facility Transmission Line
3 Interests.

4 **“Fair Market Value”** means the amount the Buyer and Seller agree is the current value of the
5 Facility and, failing agreement, what an appraiser, selected jointly by Buyer and Seller, reports is
6 the value. The value will be based on the value that a third party would be willing to pay if it
7 acquired the Facility subject to this Agreement.

8 **“FERC”** means the Federal Energy Regulatory Commission or any successor agency thereto.

9 **“Force Majeure”** has the meaning set forth in Section 14.6 hereof.

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

13 **“GAAP”** means generally accepted accounting principles set forth in the opinions and
14 pronouncements of the Accounting Principles Board of the American Institute of Certified Public
15 Accountants and statements and pronouncements of the Financial Accounting Standards Board
16 or in such other statements by such other entity as have been approved by a significant segment
17 of the accounting profession, which are in effect as of the relevant date of determination.

18 **“Gains”** has the meaning set forth in Section 11.6.

19 **“GDPIPD”** means the implicit price deflator for the gross domestic product as computed and
20 published from time to time by the U.S. Department of Commerce.

21 **“Guaranteed Annual Quantity”** means Guaranteed Generation divided by twenty (20).

22 **“Guaranteed Generation”** means the MWh of Energy specified in Section 3.1 to be guaranteed
23 to be delivered from the Facility to the Point of Delivery as measured at the Point of Delivery;
24 provided, that such Guaranteed Generation and the applicable Guaranteed Annual Quantity shall
25 be reduced for each MWh that the Facility is unable to generate as a result of a Buyer Default, a
26 curtailment pursuant to Section 6.5(i), or Force Majeure declared by the Buyer.

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

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

29 **“Interconnection Agreement”** has the meaning set forth in Section 4.2.

30 **“Intermountain Power Agency”** means the Intermountain Power Agency, a political
31 subdivision of the State of Utah.

32 **“Intermountain Power Project Switchyard”** means the transmission switchyard owned by the
33 Intermountain Power Agency, which is located in Delta, Utah, which interconnects through
34 Intermountain Power Project transmission systems to the interstate transmission grid.

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

2 **“KW”** means kilowatt.

3 **“KWh”** means kilowatt-hour.

4 **“Lien”** means any lien, mortgage, encumbrance, attachment, pledge, charge, lease, sublease,
5 easement or security interest of any kind.

6 **“Leases and Property Agreements”** means (A) the following leases and property agreements
7 and instruments under which Seller shall acquire the Facility Generating Premises, as well as
8 other undeveloped property in connection therewith: (i) the Circle Four Lease, and all other
9 leases to Seller, as lessee, from third parties (other than the State of Utah) as set forth in Section
10 2.10, (ii) a grant or grants of right of way to Seller by the USBLM, (iii) the lease or leases to
11 Seller, as lessee, from the State of Utah, and (iv) agreements or instruments providing for the
12 acquisition and fee ownership by Seller of parcels of land, and (B) the grants of rights of way
13 and the leases, agreements, deeds and other instruments providing for the acquisition by Seller of
14 the Transmission Line right of way and associated property rights and interests.

15 **“Losses”** has the meaning set forth in Section 11.6(f) hereof.

16 **“Monthly Payment”** means the amount to be paid to Seller by Buyer on a monthly basis for all
17 items set forth in Appendix A.

18 **“MW”** means megawatt or megawatts, as applicable.

19 **“MWh”** means megawatt-hour or megawatt-hours, as applicable.

20 **“NERC”** means the North American Electric Reliability Council or its successor organization, if
21 any.

22 **“Non-Consolidation Opinion”** means a reasoned opinion of Chadbourne & Parke LLP
23 addressed and delivered to the Buyer on or before the date on which the Buyer pays the
24 Prepayment Amount to Seller as to the non-consolidation of the Seller in a bankruptcy
25 proceeding of any member of Seller.

26 **“Non-Defaulting Party”** has the meaning set forth in Section 11.5(a) hereof.

27 **“OATT”** means Open Access Transmission Tariff approved by FERC or approved by the
28 governing body(s) of a non jurisdictional public utility.

29 **“Off Peak”** means all hours other than On Peak hours.

30 **“On Peak”** means 6:00 a.m. - 10:00 p.m., Monday through Friday.

31 **“Operating Insurance”** means the Insurance associated with the Facility after final completion
32 of the Facility construction phase, specifically excluding Marine/Inland Marine Cargo, Marine

1 Delay in Start Up, Builder's Risk, and Workers Compensation coverages, as set forth in
2 Appendix F, which are associated with construction or personnel.

3 "**Option Exercise Date**" has the meaning set forth in Section 2.5(h) hereof.

4 "**OSHA**" means Occupational Safety & Health Administration and any successor thereto.

5 "**P99 Energy**" means the amount of Energy predicted to be available for delivery to the Point of
6 Delivery annually with a probability of exceedance of 99%, or the predicted one year Energy
7 production at a 99% probability of exceedance.

8 "**Pacific Prevailing Time**" means the time in Los Angeles, California when actual transactions
9 are made.

10 "**Performance Security**" means the performance security described in Section 6.6 that is
11 required to be provided by Seller to Buyer, prior to Buyer's obligation to pay the Prepayment
12 Amount, to secure Seller's performance under this Agreement.

13 "**Permitted Encumbrances**" means (i) any Lien expressly provided for or permitted by the
14 terms of the Agreement, (ii) Liens for taxes not yet due or for taxes being contested in good faith
15 by appropriate proceedings so long as such proceedings do not involve a material risk of the sale,
16 forfeiture, loss or restriction on the use of the Facility or any part thereof, provided that such
17 proceedings end by the expiration of the Agreement Term, (iii) suppliers', vendors', mechanics',
18 workman's, repairman's, employees' or other like Liens arising in the ordinary course of
19 business for work or service performed or materials furnished in connection with the Facility for
20 amounts the payment of which is either not yet delinquent or is being contested in good faith by
21 appropriate proceedings so long as such proceedings do not involve a material risk of the sale,
22 forfeiture, loss or restriction on use of the Facility or any part thereof, provided that such
23 proceedings end by the expiration of the Agreement Term, and (iv) easements, rights of way, use
24 rights, exceptions, encroachments, reservations, restrictions, conditions or limitations, provided
25 that in each case the same do not interfere with or impair the operation or use of the Facility or
26 any interest therein as contemplated by the Agreement, or have a material adverse effect on the
27 value, the remaining useful life or the utility of the Facility or any interest therein.

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

31 "**Point of Delivery**" means the interconnection facilities of Seller located at the point of
32 interconnection between the Facility's transmission line and the Intermountain Power Project
33 Switchyard bus as further described in the Interconnection Agreement.

34 "**Prepayment Amount**" means the amount to be paid by Buyer for the Guaranteed Generation
35 as set forth in Section 3.1.

36 "**Present Value Rate**" means the sum of 0.50% plus the yield reported on page "USD" of the
37 Bloomberg Financial Markets Services Screen (or, if not available, any other nationally

- 1 recognized trading screen reporting on-line intraday trading in United States government
2 securities) at 11:00 a.m. (New York City, New York time) for the United States government
3 securities having a maturity that matches the average remaining Agreement Term.
- 4 **“Production Tax Credits” or “PTCs”** means the Production Tax Credit under Section 45 of the
5 Internal Revenue Code, as the same may be amended, supplemented, extended or replaced from
6 time to time, and including all successor enactments or legislation relating thereto, measured on
7 the Facility Metered Output.
- 8 **“Prudent Utility Practices”** means those practices, methods, and acts, that are commonly used
9 by a significant portion of the electric wind power generation industry in prudent engineering
10 and operations to design and operate electric equipment (including wind powered facilities)
11 lawfully and with safety, dependability, efficiency, and economy, including any applicable
12 practices, methods, acts, guidelines, standards and criteria of FERC, NERC, WECC and all
13 applicable Requirements of Law.
- 14 **“Quality Assurance Program”** has the meaning set forth in Appendix J.
- 15 **“Remaining Prepayment Amount”** means, for any Contract Year, the amount set forth in
16 Appendix G for 8,500,000 MWh of Guaranteed Generation; provided however that if the
17 Guaranteed Generation calculated pursuant to Section 3.1 is less than 8,500,000 MWh, then the
18 Remaining Prepayment Amounts shown in Appendix G shall also be reduced pro-rata.
- 19 **“Replacement Energy”** has the meaning set forth in Section 12.3.
- 20 **“Requirement of Law”** means federal, state and local laws, statutes, regulations, rules, codes or
21 ordinances (other than those relating to Taxes) enacted, adopted, issued or promulgated by any
22 federal, state, local or other governmental authority or regulatory body (including those
23 pertaining to electrical, building, zoning, environmental and occupational safety and health
24 requirements).
- 25 **“Scheduled Outage”** means any outage with respect to the Facility other than a Forced Outage.
- 26 **“Scheduled Outage Projection”** has the meaning set forth in Section 6.5(g).
- 27 **“Scheduler”** means an employee or agent of a Party hereto who has, among other duties, the
28 responsibility for preparing preliminary interchange energy schedules. The contact information
29 for Buyer and Seller Schedulers is provided in Appendix C (item 4) and will be revised by the
30 Parties as needed.
- 31 **“Security Interest”** has the meaning set forth in Section 6.6(iii) hereof.
- 32 **“Shortfall Energy”** has the meaning set forth in Section 12.1 hereof.
- 33 **“Site Common Facilities”** means and includes:

- 1 (i) a substation, including switching facilities, and interconnections with the
2 Transmission Line and collection systems and related transmission facilities and the
3 site thereof, including fee ownership interests, leaseholds, rights of way, easements
4 and other related property rights and interests and associated buildings, structures
5 and other improvements therefor;
- 6 (ii) approximately 36 miles of newly constructed access roads and turnaround areas;
- 7 (iii) supervisory control and data acquisition (SCADA) systems;
- 8 (iv) operation, maintenance and storage buildings, structures and facilities; and
- 9 (v) all equipment and other personal property necessary or useful to provide operational
10 and support services to any of the foregoing.

11 **“Special Investor”** means the equity investor in Seller receiving the majority of the Production
12 Tax Credits.

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

15 (a) shall not (i) engage in any dissolution, liquidation or consolidation or merger with
16 or into any other business entity, (ii) transfer, lease or sell, in one transaction or any combination
17 of transactions, all or substantially all of its properties or assets except to the extent permitted
18 herein, (iii) modify, amend or waive any provisions of its organizational documents related to its
19 status as a Special Purpose Entity or terminate its organizational documents or its qualifications
20 and good standing in any jurisdiction.

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

25 (c) Except for the ownership of undeveloped or unused leased land, has not been, is
26 not, and will not be engaged in any business unrelated to the acquisition, development,
27 ownership, management or operation of the Facility, other than the sale of Energy from the
28 Facility to third parties as permitted by this Agreement, the removal and divestiture of leaseholds
29 as provided in Section 2.10, or the sale, transfer or disposal of rights or interests in and to Site
30 Common Facilities as provided in Section 2.11 or in and to the Transmission Line as provided in
31 Section 2.12; provided however that (i) Seller shall divest of all property rights and interests of
32 undeveloped or unused leased land not included in the Facility, as permitted under Sections 2.10,
33 2.11 and 2.12, prior to any development or usage of said property rights and interests for
34 purposes other than those provided for in this Agreement; and provided further that said
35 divestiture shall not alter or affect Buyer’s Security Interest, except as permitted by Sections
36 2.10, 2.11 or 2.12. For the purpose of owning and divesting of undeveloped or unused leased
37 land, as provided under Section 2.10 prior to any development or usage thereof for purposes
38 other than this Agreement, Seller shall amend or terminate, as applicable, the Leases and

1 Property Agreements to remove such leased land from the Leases and Property Agreements and
2 cause the lessor(s) to execute replacement leases or other property agreements with other Persons
3 applicable to the leased land divested.

4 (d) Except for the ownership of undeveloped or unused leased land or those portions
5 of the Transmission Line and Site Common Facilities not included in the Facility as described in
6 (c) above, has not had, does not have and will not have, any assets other than those related to the
7 Facility;

8 (e) has not failed and will not fail to correct any known misunderstanding regarding
9 the separate identity of such entity;

10 (f) has maintained and will maintain its accounts, books, resolutions, agreements and
11 records separate from any other Person and has filed and will file its own tax returns;

12 (g) has held itself out and identified itself and will hold itself out and identify itself as
13 a separate and distinct entity under its own name or in a name franchised or licensed to it by a
14 Person other than an Affiliate of Seller and not as a division or part of any other Person, except
15 for services rendered under a business management services agreement with an Affiliate that
16 complies with the terms contained in Subsection (k) below, so long as the manager, or equivalent
17 thereof, under such business management services agreement holds itself out as an agent of
18 Seller;

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

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

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

28 (k) has not entered into or been a party to, and will not enter into or be a party to, any
29 transaction with its members or Affiliates, except (i) in the ordinary course of its business and on
30 terms which are intrinsically fair, commercially reasonable and are no less favorable to it than
31 would be obtained in a comparable arm's-length transaction with an unrelated third party or
32 (ii) in connection with this Agreement;

33 (l) has not had and will not have any obligation to indemnify, and has not
34 indemnified and will not indemnify its officers or members, as the case may be;

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

- 1 (n) does not and will not have any of its obligations guaranteed by any Affiliate; and
- 2 (o) has complied and will comply with all of the terms and provisions contained in its
3 organizational documents. The statement of facts contained in its organizational documents are
4 true and correct and will remain true and correct;
- 5 (p) has not commingled, and will not commingle, its funds or assets with those of any
6 Person and has not participated and will not participate in any cash management system with any
7 other Person;
- 8 (q) has held and will hold its assets in its own name;
- 9 (r) has maintained and will maintain its financial statements, accounting records and
10 other entity documents separate from any other Person and has not permitted and will not permit
11 its assets to be listed as assets on the financial statement of any other entity except as required by
12 GAAP; provided, however, that any such consolidated financial statement shall contain a note
13 indicating that its separate assets and liabilities are neither available to pay the debts of the
14 consolidated entity nor constitute obligations of the consolidated entity;
- 15 (s) has paid and will pay its own liabilities and expenses, including the salaries of its
16 own employees, out of its own funds and assets, and has maintained and will maintain a
17 sufficient number of employees in light of its contemplated business operations;
- 18 (t) has observed and will observe all limited liability company formalities;
- 19 (u) has not assumed or guaranteed or become obligated for, and will not assume or
20 guarantee or become obligated for the debts of any other Person and has not held out and will not
21 hold out its credit as being available to satisfy the obligations of any other Person except as
22 permitted pursuant to this Agreement;
- 23 (v) has not acquired and will not acquire obligations or securities of its members or
24 any Affiliate;
- 25 (w) has allocated and will allocate fairly and reasonably any overhead expenses that
26 are shared with any Affiliate, including, but not limited to, paying for shared space and services
27 performed by any employee of an Affiliate;
- 28 (x) has maintained and used, now maintains and uses, and will maintain and use
29 separate stationery, invoice and checks bearing its name; such stationery, invoices and checks
30 utilized by the Special Purpose Entity or utilized to collect its funds or pay its expenses have
31 borne and shall bear its own name and have not borne and shall not bear the name of any other
32 entity unless such entity is clearly designated as being the Special Purpose Entity's agent;
- 33 (y) has not pledged and will not pledge its assets for the benefit of any other Person;
- 34 (z) has had, now has, and will have articles of organization, a certificate of formation
35 and/or an operating agreement, as applicable, that provides that it will not: (A) dissolve, merge,

1 liquidate or consolidate; (B) sell all or substantially all of its assets; (C) engage in any other
2 business activity, or amend its organizational documents with respect to the matters set forth in
3 this definition without the consent of Buyer; or (D) without the affirmative vote of all of its
4 members, file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings
5 with respect to itself or to any other Person in which it has a direct or indirect legal or beneficial
6 ownership interest;

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

12 (bb) has and will have no indebtedness other than (i) the loan made by the Facility
13 Lender providing construction financing for the Facility, (ii) Taxes and Insurance premiums, (iii)
14 liabilities incurred in the ordinary course of business relating to its ownership, leasing and
15 operation of the Facility and its routine administration, in amounts not to exceed \$1.8 million
16 which liabilities are not more than sixty (60) days past due, are not evidenced by a note and are
17 paid when due, and which amounts are normal and reasonable under the circumstances, and (iv)
18 such other liabilities that are permitted pursuant to this Agreement.

19 **“Startup and Test Energy”** means the energy produced by the Facility prior to the Commercial
20 Operation Date.

21 **“System Emergency”** means an emergency condition or abnormal interconnection situation
22 which in Buyer’s sole reasonable judgment affects the ability of Buyer, or Buyer’s Agent, to
23 receive the Delivered Energy in a manner which is deemed to minimize the risk of injury to
24 persons and/or property.

25 **“Targeted Rate of Return”** means the Special Investor’s target, after-tax, internal rate of return
26 on its investment as established in the Seller’s equity agreement, not to exceed 15%, and the
27 return shall consist of all tax benefits (including, but not limited to Production Tax Credits and
28 the value of tax deductions) and taxable income received by the Special Investor from the date of
29 its initial investment in the Facility until the tenth (10th) anniversary of the Commercial
30 Operation Date at the Special Investor’s effective tax rate as established in the Seller’s equity
31 agreement, plus cash distributions allocated to the Special Investor.

32 **“Tariff Rate”** has the meaning set forth in Section 4.4 hereof.

33 **“Tax Benefits”** means all tax deductions and tax credits available under applicable laws to
34 owners or operators of the Facility, including Production Tax Credits, or such substantially
35 equivalent tax credits that provide Seller with a tax credit based on energy production from any
36 portion of the Facility and all tax deductions and tax credits that are now or may in the future be,
37 applicable to owners and/or operators of the Facility under the laws of the State of California or
38 Utah.

39 **“Taxes”** has the meaning set forth in Section 6.3.

1 “Termination Payment” means in the case of a Default, the amount to liquidate this
2 Agreement, as calculated pursuant to Section 11.6.

3 “Transmission Line” means the transmission line extending from the Site Common Facilities
4 substation at the wind generation site to the Intermountain Power Project (IPP) Switchyard in
5 Delta, Utah, a distance of approximately 90 miles, including the rights of way, easements and
6 other property interests constituting the right of way of such transmission line and the
7 interconnection facilities at the Site Common Facilities substation and the interconnection
8 facilities at the IPP Switchyard, together with all related structures, facilities and equipment and
9 associated real or personal properties.

10 “USBLM” means the Bureau of Land Management of the United States Department of Interior.

11 “WECC” means the Western Electricity Coordinating Council, or any successor entity thereto.

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

14 (a) the singular number includes the plural number and vice versa;

15 (b) reference to any Person includes such Person’s successors and assigns but, in
16 case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and
17 reference to a Person in a particular capacity excludes such Person in any other capacity or
18 individually;

19 (c) reference to any gender includes the other;

20 (d) reference to any agreement (including this Agreement), document, instrument or
21 tariff means such agreement, document, instrument or tariff as amended or modified and in effect
22 from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

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

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

30 (g) “including” (and with correlative meaning “include”) means including without
31 limiting the generality of any description preceding such term;

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

34 (i) reference to time shall always refer to Pacific Prevailing Time; and

1 (j) reference to any "day" shall mean a calendar day unless otherwise indicated.

2 **ARTICLE II**
3 **EFFECTIVE DATE, TERM, PRODUCTION TAX CREDITS,**
4 **EARLY TERMINATION AND FACILITY PROPERTIES**

5 **Section 2.1 Effective Date.** This Agreement shall become effective when
6 duly executed and delivered by both Parties.

7 **Section 2.2 Agreement Term and Delivery Term.** Subject to Buyer's
8 purchase option described in Section 2.5, this Agreement shall have a delivery term
9 (the "Delivery Term") of twenty (20) Contract Years commencing on the
10 Commercial Operation Date. The term of this Agreement (the "Agreement Term")
11 shall commence on the Effective Date and shall end upon the expiration or
12 termination for any reason of the Delivery Term.

13 **Section 2.3 Survivability.** The provisions of this Article II, Article VIII,
14 Article X, and Article XI shall survive the termination of this Agreement. The
15 provisions of Article III and Article VIII shall continue in effect after termination to
16 the extent necessary to provide for final billing and adjustments related to the period
17 prior to termination of this Agreement, including payment of any money due and
18 owing to Seller or Buyer pursuant to this Agreement.

19 **Section 2.4 Early Termination by Seller.** Notwithstanding any provisions
20 of this Agreement to the contrary, (a) if no financial closing for the construction of
21 the Facility occurs before December 31, 2007, or (b) if Seller reasonably determines
22 that the requirements of the permits issued for the Facility would make development
23 or operation of the Facility infeasible or uneconomic, Seller shall, on the terms and
24 subject to the conditions of this Section 2.4, have the right to terminate this
25 Agreement, without any further financial or other obligation to Buyer as a result of
26 such termination (except as expressly provided herein), by providing written notice of
27 such determination to Buyer at any time before December 31, 2007. Seller shall
28 provide written notice to Buyer of financial closing for the construction financing of
29 the Facility within five (5) Business Days after such financial closing has occurred.

30 **Section 2.5 Extension of Production Tax Credits; Early Termination by**
31 **Buyer or Exercise of Purchase Option.**

32 (a) In the event that the Commercial Operation Date shall not occur by December 31,
33 2008 but shall occur prior to any default under Section 11.1(e) arising from a failure to achieve
34 the Commercial Operation Date, and on or prior to the Commercial Operation Date the
35 Production Tax Credits for wind generating facilities shall have been extended so as to apply to
36 the Facility at a value that is at least equal to 95% (but does not exceed 100%) of the value of the
37 Expected Production Tax Credits on the Commercial Operation Date, the Buyer shall pay to the
38 Seller (A) within 90 days following the Commercial Operation Date the Prepayment Amount
39 and (B) all other payments as provided in Section 3.1 and Appendix A.

1 (b) In the event that the Commercial Operation Date shall not occur by December 31,
2 2008 but shall occur prior to any default under Section 11.1(e) arising from a failure to achieve
3 the Commercial Operation Date, and on or prior to the Commercial Operation Date the
4 Production Tax Credits for wind generating facilities shall have been extended so as to apply to
5 the Facility at a value that is at least equal to 75% (but less than 95%) of the value of the
6 Expected Production Tax Credits, the Buyer shall pay to the Seller:

- 7 (1) within 90 days following the Commercial Operation Date the Prepayment
8 Amount, and
- 9 (2) all other payments as provided in Section 3.1 and Appendix A, and
- 10 (3) an additional monthly payment equal to the difference between the value
11 of the reduced (or eliminated) Production Tax Credits for such applicable
12 month and 95% of the value of the Expected Production Tax Credits for
13 such applicable month, multiplied by the Delivered Energy for such
14 applicable month, and all divided by 0.65 as a gross-up of the amount of
15 such difference to account for Seller income taxes which would not have
16 been applicable to the reduced (or eliminated) Production Tax Credits.

17 (c) In the event that the Commercial Operation Date shall not occur by December 31,
18 2008 but shall occur prior to any default under Section 11.1(e) arising from a failure to achieve
19 the Commercial Operation Date, and on or prior to the Commercial Operation Date the
20 Production Tax Credits for wind generating facilities shall have been extended so as to apply to
21 the Facility at a value that is less than 75% of the value of the Expected Production Tax Credits,
22 the Buyer shall exercise one of the following options:

- 23 (1) Buyer shall purchase the Facility from Seller within 90 days following the
24 Commercial Operation Date at a purchase price of \$2,050 per installed
25 KW of Contract Capacity, or
- 26 (2) Buyer shall pay to Seller (A) within 90 days following the Commercial
27 Operation Date the Prepayment Amount, (B) all other payments set forth
28 in Section 3.1 and Appendix A, and (C) an additional monthly payment
29 equal to the difference between the value of the reduced (or eliminated)
30 Production Tax Credits for such applicable month and 95% of the value of
31 the Expected Production Tax Credits for such applicable month,
32 multiplied by the Delivered Energy for such applicable month, and all
33 divided by 0.65 as a gross-up of the amount of such difference to account
34 for Seller income taxes which would not have been applicable to the
35 reduced (or eliminated) Production Tax Credits.

36 (d) In the event that the Commercial Operation Date shall not occur by December 31,
37 2008 but shall occur prior to any default under Section 11.1(e) arising from a failure to achieve
38 the Commercial Operation Date, and on or prior to the Commercial Operation Date the
39 Production Tax Credits for wind generating facilities shall not have been extended and at least
40 one of the Parties shall have determined on or prior to the Commercial Operation Date that it is

1 likely that the Production Tax Credits will be extended prior to the first anniversary of the
2 Commercial Operation Date so as to apply to the Facility, Buyer shall not pay to Seller the
3 Prepayment Amount on or prior to the Commercial Operation Date, but instead Buyer shall pay
4 Seller \$52.50 per MWh for all Delivered Guaranteed Generation and shall make all other
5 payments as provided in Section 3.1 and Appendix A; provided however that such payment for
6 the Delivered Guaranteed Generation shall terminate upon payment by the Buyer of the
7 Prepayment Amount or upon the purchase by the Buyer of the Facility as set forth herein below
8 in this Section 2.5(d). If prior to the first anniversary of the Commercial Operation Date the
9 Production Tax Credits for wind generation facilities shall have been extended so as to apply to
10 the Facility and:

- 11 (1) such extended Production Tax Credits shall have a value that is at least
12 equal to 95% (but does not exceed 100%) of the value of the Expected
13 Production Tax Credits, then the Buyer shall pay to the Seller (A) within
14 90 days following such first anniversary of the Commercial Operation
15 Date the Prepayment Amount and (B) all other payments as provided in
16 Section 3.1 and Appendix A, or
- 17 (2) such Extended Production Tax Credits shall have a value that is at least
18 equal to 75% (but less than 95%) of the value of the Expected Production
19 Tax Credits, then the Buyer shall (AA) pay to Seller within 90 days
20 following such first anniversary of the Commercial Operation Date the
21 Prepayment Amount, (BB) continue the other payments set forth in
22 Section 3.1 and Appendix A, and (CC) pay to Seller an additional monthly
23 payment equal to the difference between the value of the reduced (or
24 eliminated) Production Tax Credits for such applicable month and 95% of
25 the value of the Expected Production Tax Credits for such applicable
26 month, multiplied by the Delivered Energy for such applicable month, and
27 all divided by 0.65 as a gross-up of the amount of such difference to
28 account for Seller income taxes which would not have been applicable to
29 the reduced (or eliminated) Production Tax Credits, or
- 30 (3) such extended Production Tax Credits have a value that is less than 75%
31 of the value of the Expected Production Tax Credits, then the Buyer shall
32 exercise one of the following options:
- 33 (A) Buyer shall purchase the Facility from Seller within (90) days
34 following such first anniversary of the Commercial Operation Date
35 at a purchase price of \$2,050 of installed KW of Contract
36 Capacity, or
- 37 (B) Buyer shall (a) pay to Seller within 90 days following such first
38 anniversary of the Commercial Operation Date the Prepayment
39 Amount, (b) continue all other payments to Seller as provided in
40 Section 3.1 and Appendix A, and (c) pay to Seller an additional
41 monthly payment equal to the difference between the value of the

1 reduced (or eliminated) Production Tax Credits for such applicable
2 month and 95% of the value of the Expected Production Credits
3 for such applicable month, multiplied by the Delivered Energy for
4 such applicable month, and all divided by 0.65 as a gross-up of the
5 amount of such difference to account for Seller income taxes
6 which would have been applicable to the reduced (or eliminated)
7 Production Tax Credits.

8 In the event, however, that in such case that the Production Tax Credits for wind generating
9 facilities shall not have been extended prior to such first anniversary of the Commercial
10 Operation Date, then Buyer shall purchase the Facility from the Seller within 90 days following
11 such first anniversary of the Commercial Operation Date at a purchase price of \$2,050 per
12 installed KW of Contract Capacity.

13 (e) In the event that the Commercial Operation date shall not occur by December 31,
14 2008, but shall occur prior to any default under Section 11.1(e) arising from a failure to achieve
15 the Commercial Operation Date, and prior to the Commercial Operation Date the Production Tax
16 Credits for wind generating facilities shall not have been extended and neither of the Parties is
17 able to determine prior to the Commercial Operation Date that it is likely that the Production Tax
18 Credits will be extended by the first anniversary of the Commercial Operation Date so as to
19 apply to the Facility, the Buyer shall purchase the Facility from Seller within 90 days following
20 the Commercial Operation Date at a purchase price of \$2,050 per installed KW of Contract
21 Capacity.

22 (f) The failure by Buyer to exercise its option to purchase the Facility or to pay the
23 Prepayment Amount as set forth in paragraphs (c) or (d) above or to purchase the Facility as set
24 forth in paragraph (e) above shall be considered to be a payment default under Section 11.1(a).

25 (g) If under Section 2.5(a) or Section 2.5(d)(1) Production Tax Credits for wind
26 generating facilities are extended at a value that exceeds one hundred percent (100%) of their
27 current value for the first ten Contract Years ("Excess PTC Value"), the Prepayment Amount to
28 be paid in each such case shall be reduced by the same percentage that the Excess PTC Value
29 exceeds 100% of the current value.

30 (h) Buyer shall have the right at any time on or prior to the date that is six months
31 prior to the later of (i) the tenth anniversary of the Commercial Operation Date or (ii) the tenth
32 anniversary of the date of enactment of Production Tax Credits in the event such credits are not
33 in place at the Commercial Operation Date but become effective within twelve (12) months
34 thereafter ("Option Exercise Date"), to exercise its option to purchase the Facility and the related
35 assets from Seller and terminate this Agreement at the Option Exercise Date by providing written
36 notice of its intent to exercise its purchase option effective as of the Option Exercise Date for the
37 Fair Market Value of the Facility, but in no event less than the value that the Special Investor
38 requires to reach a Targeted Rate of Return and in no event more than one hundred fifty million
39 dollars (\$150,000,000). Buyer may request in writing Seller's reasonable estimate of the
40 purchase price for the Facility at any time following the eighth (8th) anniversary of the
41 Commercial Operation Date, and Seller shall provide such estimate with supporting

1 documentation within 60 days of such written request. The reasonable estimate will be based on
2 the actual Delivered Energy from the Commercial Operation Date through the most recent
3 anniversary of the Commercial Operation Date, and the expected Delivered Energy from that
4 date until the Option Exercise Date. The calculation of the expected Delivered Energy will be
5 based on the average annual Delivered Energy since the Commercial Operation Date.

6 (i) In the event the Buyer does not exercise its option to purchase the Facility at the
7 Option Exercise Date, Buyer shall have the option to purchase the Facility from the Seller at the
8 expiration of the Agreement Term at the Fair Market Value calculated as of the expiration of the
9 Term by providing notice to the Seller at least 180 days prior to the expiration of the Agreement
10 Term. This Agreement will be terminated upon the effective date of the consummation of such
11 purchase by Buyer and (i) the payment in full to Seller of the purchase price, (ii) the payment of
12 all other obligations due hereunder, and (iii) the release and return to Seller of any Performance
13 Security provided under this Agreement. If Buyer does not provide written notice of its intent to
14 exercise its purchase option on or before the date that is six months prior to the twentieth (20th)
15 anniversary of the Commercial Operation Date, Buyer shall be deemed to have forfeited all
16 rights to purchase the Facility at the expiration of the Agreement Term.

17 (j) **Closing Conditions.** The Closing for the purchase and sale of the Facility shall
18 take place at the offices of Southern California Public Power Authority, 225 South Lake Ave,
19 Pasadena, CA 91101 on the third Business Day after the conditions to Closing have been
20 satisfied or waived, or at such place as Buyer and Seller mutually agree in writing. The Closing
21 shall be deemed effective as of 12:01 a.m. (Pacific Prevailing Time) on the Closing Date:

22 (1) Except as provided in Article VII, Seller shall transfer the Facility to
23 Buyer on an "as is" basis, and Seller shall not make any representations
24 and warranties to Buyer relating to the condition of the Facility in
25 connection with such transfer, either express or implied by statute or
26 otherwise, including warranties as to merchantability and/or fitness for any
27 particular purpose, the absence of patent or inherent defects, description or
28 otherwise of whatsoever nature, other than a warranty of title. Seller shall
29 have no liability of any kind whatsoever to Buyer under this Agreement or
30 in respect of the operation or otherwise of the Facility by Buyer or Buyer's
31 designee from and after the transfer of the Facility to Buyer; provided,
32 however, that no such transfer shall relieve Seller of any liability
33 whatsoever arising from the violation, breach or default by Seller, prior to
34 the transfer date, of any transferred contract, transferred permit,
35 transferred intellectual property or other transferred asset, or resulting
36 from any act or omission by Seller or its Affiliates that occurred prior to
37 the transfer date.

38 (2) Seller shall transfer the Facility to Buyer, free and clear of all liens and
39 encumbrances, other than Permitted Encumbrances. Seller shall assign and
40 transfer to Buyer all of its right, title and interest in: (i) all raw materials,
41 consumables and spare parts; (ii) all tangible personal property; (iii) all
42 intangible personal property, including permits, patents, patent licenses,

1 patent applications, trade names, trademarks, trademark registrations and
2 applications therefore, trade secrets, copyrights, know-how, secret
3 formulae and any other intellectual property rights; (iv) all buildings and
4 fixtures; (v) computerized and non-computerized records, reports, data,
5 files, and information; (vi) all design, construction and equipment
6 warranties and guarantees related to the Facility in which Seller has any
7 remaining rights against engineers, contractors, suppliers, equipment
8 manufacturers or other Persons; and (vii) the Leases and Property
9 Agreements, Interconnection Agreement, and all common or joint
10 ownership, construction and operating agreements entered into by Seller
11 as provided in Sections 2.11 and 2.12 and all other agreements with a total
12 market value in excess of \$50,000 for third-party joint operation or use of
13 the Facility or any portion thereof or of any capacity or capability of the
14 Site Common Facilities or the Transmission Line, all of which shall be
15 assignable and transferable to Buyer in accordance with the terms thereof;
16 provided, however, that assignments of interest of the USBLM and the
17 State of Utah may be subject to the prior approval of the USBLM and the
18 State of Utah, respectively.

- 19 (3) All items relating to the ownership and operation of the Facility, which are
20 customarily prorated, including without limitation Taxes, Operating
21 Insurance premiums, and rentals or other payments under Leases and
22 Property Agreements, shall be prorated as of the Closing Date. Seller shall
23 be liable with respect to items or obligations that relate to any time period
24 prior to the Closing Date and Buyer shall be liable with respect to items or
25 obligations relating to time periods after the Closing Date, and to the
26 extent practicable, there shall be a cash settlement on the Closing Date,
27 provided that any monthly payments made by Buyer for Taxes and
28 Operating Insurance premiums shall be credited to Buyer's settlement
29 account.

30 **Section 2.6 Early Termination for Change in Requirement of Law.** If at
31 any time after the Effective Date there is a change in Requirement of Law that either
32 has (a) a material adverse effect on the performance by Seller of its obligations under
33 this Agreement or on the Seller's ownership, construction and/or operation and
34 maintenance of the Facility or (b) a disproportionate adverse impact to Seller or the
35 Facility, such that in either such case development or operation of the Facility would
36 be infeasible or uneconomic, Seller shall have the right unless waived by Seller in
37 writing, to terminate this Agreement, without any further financial or other obligation
38 to Buyer as a result of such termination, by providing written notice of such
39 determination to Buyer at any time within thirty (30) days after Seller becomes aware
40 of such change in Requirement of Law and such termination of this Agreement shall
41 become effective ninety (90) days after such notice, but only if Buyer shall have been
42 paid the Remaining Prepayment Amount and all other amounts owed to Buyer under
43 this Agreement, less all amounts owed to Seller under this Agreement. Seller shall
44 include as part of any such notice documentation reasonably substantiating that the

1 change in Requirement of Law would have a material adverse effect on the
2 performance by Seller of its obligations under this Agreement or on Seller's
3 ownership, construction, and/or operation and maintenance of the Facility, or make
4 development or operation of the Facility infeasible or uneconomic. If Seller
5 determines that this Agreement is sustainable with an additional payment to cover the
6 additional costs directly associated with this change in Requirement of Law, then
7 Seller may propose to continue the Agreement with an additional payment per MWh
8 of Delivered Energy ("Energy Rate"), with reference to the cost projections used by
9 the Seller to determine the Energy Rate. If Buyer, in its sole and absolute discretion,
10 determines that it is willing to increase the Energy Rate to the amount Seller has
11 determined to be necessary to offset such cost increases, Buyer shall, within ninety
12 (90) days of receipt of Seller's termination notice, notify Seller thereof, and the
13 Parties shall amend this Agreement to reflect such Energy Rate and this Agreement,
14 as so amended, shall continue in full force and effect. If Buyer fails to provide such
15 notice, this Agreement shall terminate effective immediately upon the expiration of
16 such ninety (90) day period, but only if Buyer shall have been paid the Remaining
17 Prepayment Amount for all other amounts owed to Buyer under this Agreement, less
18 all amounts owed to Seller under this Agreement; provided, however, that in the
19 event that, prior to the expiration of such ninety (90)-day period, Buyer notifies Seller
20 that Buyer wishes to negotiate the amount of the increase in the Energy Rate
21 requested by Seller, this Agreement shall terminate on the thirtieth (30th) day
22 following Seller's receipt of such written notice, subject however to the receipt by
23 Buyer of the payments by Seller referred to above in this Section 2.6, unless prior to
24 the expiration of such thirty (30)-day period the Parties reach agreement regarding the
25 amount of the increase in the Energy Rate (in which event the Parties shall mutually
26 amend this Agreement to reflect such agreed increase in the Energy Rate and this
27 Agreement, as so amended, shall continue in full force and effect). In the event of
28 early termination under this Section, Buyer agrees at the cost and expense of Seller to
29 cooperate with Seller in arrangements to be made by Seller for the transmission of
30 Energy from the Facility by one or more members of the Buyer under an OATT. It is
31 acknowledged by Seller that Buyer has no rights, interests or entitlements in any
32 system or facilities for the transmission of such Energy or under any OATT. The
33 Parties acknowledge and agree that the Facility covered by this Agreement will be
34 subject to environmental review pursuant to the National Environmental Policy Act
35 of 1969 (NEPA) and pursuant to Utah laws requiring preparation of a document
36 containing essentially the same points of analysis as in an environmental assessment
37 or environmental impact statement prepared under NEPA, and is therefore statutorily
38 exempt from the California Environmental Quality Act ("CEQA") pursuant to Title
39 14 California Code of Regulations, Section 15277. Neither Party shall be bound by
40 this Agreement unless and until a Notice of Exemption pursuant to said Title 14,
41 California Code Regulations, Section 15277 is prepared and duly filed in the
42 appropriate state and county and the statute of limitations pertaining to that filing has
43 expired without a legal challenge.

44 **Section 2.7 Early Termination by Mutual Agreement.** This Agreement
45 may be terminated upon mutual written agreement of the Parties

1 **Section 2.8 Early Termination for Certain Force Majeure.** Buyer may
2 terminate this Agreement effective upon written notice to Seller if, as a result of
3 Force Majeure involving action or inaction by, or failure to obtain necessary
4 authorizations or approvals from, any governmental agency or authority, including as
5 a result of any appeals of such authorizations or approvals, the Commercial Operation
6 Date is not achieved within four (4) years after the Effective Date.

7 **Section 2.9 Milestone Schedule.** Seller has provided a milestone schedule
8 with estimated deadlines for the development of the Facility through the Commercial
9 Operation Date in Appendix B. Seller shall inform Buyer on a quarterly basis of the
10 status of each milestone, including any slippage in an estimated deadline.

11 **Section 2.10 The Facility Generating Premises.**

12 (a) Seller shall enter into such Leases and Property Agreements which, together with
13 the Circle Four Lease, provide Seller with leaseholds or other property rights and interests which
14 shall include the entire Facility Generating Premises, as well as leaseholds and property interests
15 in other undeveloped lands. The terms and provisions of the leases hereafter entered into by
16 Seller (other than those with the State of Utah) shall be substantially the same as the terms and
17 provisions of the Circle Four Lease, except as otherwise approved by Buyer, which approval
18 shall not be unreasonably withheld. The terms and provisions of a grant or grants of right of way
19 from the USBLM and a lease or leases from the State of Utah to be entered into by Seller shall
20 be subject to review, comment and approval by Buyer, which approval shall be granted upon
21 confirmation by Buyer that its rights and interests under this Agreement and the Security Interest
22 afforded by its Performance Security are not adversely affected. In the event that Buyer fails to
23 approve the terms and conditions negotiated between the Seller and (i) USBLM or (ii) the State
24 of Utah within 30 days of receipt by Buyer of such terms and conditions, such delay shall be
25 deemed to be an event of Force Majeure until such approval is received by the Seller. All Leases
26 and Property Agreements, to the extent recordable under federal or state law, shall be duly
27 recorded in the land records of the applicable county or counties of the State of Utah or as
28 otherwise provided by applicable law.

29 (b) All such Leases and Property Agreements referred to in (a) above shall be entered
30 into by Seller so as to enable Seller to construct and install the wind turbine generators and
31 related transmission facilities and other improvements constituting the portion of the Facility
32 located on the Facility Generating Premises.

33 (c) Seller agrees not to develop or improve the areas of such Leases and Property
34 Agreements, other than the Facility Generating Premises which shall be developed and
35 improved so as to provide for the facilities and improvements of the Facility to be located on the
36 Facility Generating Premises in accordance with this Agreement. Seller shall be entitled,
37 however, by amendment or termination of any of the Leases and Property Agreements to remove
38 any portions of or rights or interests in the premises, other than the Facility Generating Premises,
39 acquired thereunder; provided that, upon the granting of the Performance Security to Buyer all
40 the property rights and interests under the Leases and Property Agreements then in effect shall
41 become subject to the lien and security interest of the Performance Security. Thereafter, Seller

1 may remove any portions of or interests in the premises under such Leases and Property
2 Agreements, other than the Facility Generating Premises, with consent of the Buyer to an
3 amendment of the Performance Security releasing such portion of or interests in such premises
4 from the lien and security interest of the Performance Security, which consent shall be granted
5 upon confirmation by Buyer that such removal does not interfere with the operation or use of the
6 Facility under this Agreement.

7 **Section 2.11 Site Common Facilities and Facility Common Facilities'**

8 **Interests.** The construction and installation of structures, facilities and other
9 improvements of the Facility on the Facility Generating Premises as provided in this
10 Agreement shall include the Site Common Facilities. The Seller may sell, transfer or
11 otherwise dispose of undivided interests or rights in such Site Common Facilities
12 including the use of the capacity or capabilities thereof to other entities in accordance
13 with agreements as to the common ownership, use, construction and operation of such
14 Site Common Facilities including provisions for sharing of the costs thereof and
15 rights and entitlements to the capacity and services thereof; provided that Seller shall
16 not sell, transfer or dispose of the Facility Common Facilities' Interests or any portion
17 thereof but shall retain the same as part of the Facility under this Agreement.
18 However, upon the granting of the Performance Security to Buyer all the ownership,
19 rights and interests of the Seller in the Site Common Facilities, other than those
20 theretofore sold, transferred or disposed of, shall become subject to the lien and
21 security interest of the Performance Security. Thereafter, any such sale, transfer or
22 disposal by Seller of rights or interests in such Site Common Facilities shall require
23 the consent of Buyer to an amendment of the Performance Security releasing such
24 rights and interests from the lien and security interest of the Performance Security,
25 which consent shall be granted upon confirmation by Buyer that such sale, transfer or
26 disposal does not interfere with the operation or use of the Facility Common Facilities
27 Interests. Except for third party contracts having a total market value of less than
28 \$50,000, Buyer shall have the right to review any agreement that provides for any
29 third party ownership and related joint operation of the Site Common Facilities or any
30 capacity or capability thereof, and such agreement shall be subject to approval by
31 Buyer prior to execution thereof by Seller which approval shall be granted upon
32 confirmation by Buyer that its rights and interests under this Agreement and the
33 Security Interest afforded by its Performance Security are not adversely affected
34 thereby. Seller shall not enter into any use agreement for the Site Common Facilities
35 that would have a material adverse effect on the Buyer, provided that Buyer shall
36 have the right to review and comment on said use agreements prior to execution.

37 **Section 2.12 Transmission Line and Facility Transmission Line Interests.**

38 (a) Seller shall acquire such rights of way, easements and other property rights and
39 interests necessary for the Transmission Line right of way and shall locate and construct thereon
40 the facilities and improvements of the Transmission Line.

41 (b) Seller may sell, transfer or otherwise dispose of undivided interests or rights in
42 the Transmission Line including the rights to use the capacity or transfer capability thereof;

1 provided that Seller shall not sell, transfer or otherwise dispose of and shall retain the Facility
2 Transmission Line Interests. However, upon the granting of the Performance Security to Buyer,
3 the ownership, rights and interests of the Seller in the Transmission Line shall become subject to
4 the lien and security interest of the Performance Security. Thereafter any sale, transfer or
5 disposal by Seller of rights or interests in the Transmission Line shall require the consent of
6 Buyer to an amendment of the Performance Security releasing such rights or interests from the
7 lien and security interest of the Performance Security, which consent shall be granted upon
8 confirmation by Buyer that such sale, transfer or disposal does not interfere with the operation or
9 the use of the Facility Transmission Line Interests. Except for third party contracts having a total
10 market value of less than \$50,000, Buyer shall have the right to review any agreement that
11 provides for any third party ownership or related joint operation of the Transmission Line or any
12 capacity or capability thereof, and such agreement shall be subject to approval by Buyer prior to
13 execution thereof by Seller which approval shall be granted upon confirmation by Buyer that its
14 rights and interests under this Agreement and the Security Interest afforded by its Performance
15 Security are not adversely affected thereby. Seller shall not enter into any use agreement for the
16 Transmission Line except as provided in Section 4.4, and Buyer shall have the right to review
17 any such use agreement prior to its submission to FERC.

18 **ARTICLE III**
19 **PURCHASE AND SALE OF POWER**

20 **Section 3.1 Purchases by Buyer.**

21 (a) The Facility shall have a Contract Capacity of up to 200 MW and a Guaranteed
22 Generation of 8,500,000 MWh based on a Contract Capacity of 200 MW. On or before the
23 Commercial Operation Date (or such date as specified in Section 2.5 if the Prepayment Amount
24 is deferred as provided therein), Buyer shall pay to Seller the Prepayment Amount set forth in
25 Appendix I for the Guaranteed Generation calculated as provided in Section 3.1(c), except as
26 otherwise provided in Section 2.5(g).

27 (b) Subject to the terms and conditions of this Agreement, all of the Energy from the
28 Facility shall be dedicated to the Buyer.

29 (c) At least 90 days prior to the anticipated Commercial Operation Date, as set forth
30 in the COD Notice pursuant to Section 5.2, Seller shall deliver to Buyer a written declaration of
31 the planned Contract Capacity and the planned Guaranteed Generation. The calculation of such
32 planned Guaranteed Generation shall be based on a written certification, to be furnished to Buyer
33 with such declaration, of the P99 Energy for the planned Contract Capacity, multiplied by twenty
34 (20) years; provided, however, that such calculation of the planned Guaranteed Generation shall
35 in no event be based on an amount of planned Contract Capacity greater than 110% of the Early
36 Completion Facility Configuration consisting of the actual Contract Capacity installed on the
37 Commercial Operation Date. Such certification of P99 Energy shall be prepared by a recognized
38 wind expert, to be selected by Seller subject to Buyer's approval, which approval shall not be
39 unreasonably withheld by Buyer.

1 (d) Following the Commercial Operation Date and continuing for the Delivery Term,
2 Seller shall make available, schedule and deliver, and Buyer shall accept and purchase, the
3 Delivered Energy from the Facility for the Delivery Term.

4 (e) Prior to the Commercial Operation Date, Seller shall sell and deliver, and Buyer
5 shall accept and purchase the Delivered Energy at the Startup and Test Energy rate in accordance
6 with paragraph 2 of the payment schedule set forth in Appendix A.

7 (f) For all Excess Energy delivered following the Commercial Operation Date, Buyer
8 shall pay Seller the Excess Energy Price in accordance with paragraph 1 of the payment schedule
9 set forth in Appendix A.

10 (g) For all Delivered Energy following the Commercial Operation Date, Buyer shall
11 pay Seller the Environmental Attributes Payment in accordance with paragraph 3 of the payment
12 schedule set forth in Appendix A.

13 (h) Commencing on the Commercial Operation Date, Buyer shall pursuant to
14 Appendix A reimburse Seller for all Taxes and Operating Insurance premiums following the
15 Commercial Operation Date, except as otherwise provided in Appendix A. Such reimbursement
16 amounts will be estimated by Seller prior to the year of payment, divided by 12, and paid
17 monthly by Buyer. Any overpayment or underpayment by Buyer of reimbursement amounts for
18 such actual Taxes and Operating Insurance premiums paid by Seller will be reconciled through
19 an adjustment to the invoice sent to Buyer in the month following the applicable year of
20 payment.

21 **Section 3.2 Dispatch Procedures.** For purposes of helping Buyer or Buyer's
22 Agent schedule its resources, Seller shall follow the applicable scheduling procedures
23 set forth in Section 6.5.

24 **Section 3.3 Energy to Come Exclusively from Facility.** Except as provided
25 in Article XII, in no event shall Seller have the right to procure energy from sources
26 other than the Facility for sale and delivery pursuant to this Agreement.

27 **ARTICLE IV**
28 **POINT OF DELIVERY AND INTERCONNECTION AGREEMENT**

29 **Section 4.1 Point of Delivery.** Seller shall deliver Energy to Buyer, and
30 Buyer, or its designee, shall receive Energy from Seller, under this Agreement at the
31 Point of Delivery. Seller will be responsible for all losses to the Point of Delivery.
32 Buyer will be responsible for all losses from the Point of Delivery.

33 **Section 4.2 Interconnection Agreement.** Prior to the Commercial
34 Operation Date, Intermountain Power Agency and Seller will enter into an
35 interconnection agreement, to define the equipment to be installed at the Point of
36 Delivery to interconnect the Facility at the Point of Delivery and all other
37 interconnection issues, including the Parties' rights and obligations in respect of the
38 design, construction and operation of the Intermountain Power Switchyard (the

1 “Interconnection Agreement”). In the event that the total capital costs of incremental
2 interconnection facilities associated with the Facility exceed two-million dollars (\$2
3 million), Seller will have the right to terminate this Agreement without liability to
4 Buyer following thirty (30) days’ written notice to Buyer; provided however that if
5 Buyer agrees, in its sole discretion, to reimburse Seller for incremental
6 interconnection facilities costs in excess of two-million dollars (\$2 million), then
7 Seller shall not have the right to terminate this Agreement pursuant to this Section
8 4.2. In connection with any sales, transfers, use, or disposal of any rights or interests
9 in the Transmission Line by Seller as permitted by Section 2.12, Buyer shall be
10 entitled to recover a pro-rata share of Buyer’s reimbursement for such incremental
11 interconnection facilities costs in excess of two-million dollars (\$2 million). Such
12 pro-rata reimbursement due to Buyer shall offset amounts otherwise due to Seller
13 pursuant to the Monthly Payment hereunder.

14 **Section 4.3 Transmission Service Agreement.** Buyer agrees to cooperate
15 with Seller at the cost and expense of Seller in Seller’s arranging of transmission
16 service, pursuant to the applicable OATTs, which could enable Seller to sell Energy
17 to other parties during any period during which Buyer is unable to accept Energy
18 from the Facility and/or a Buyer Default has occurred and is continuing. It is
19 acknowledged by Seller that Buyer has no rights, interests or entitlements in any
20 systems or facilities for the transmission of such Energy or under any OATT.

21 **Section 4.4 Use of Transmission Line.** Seller agrees to charge cost based
22 tariff rates (“Tariff Rates”) subject to FERC jurisdiction under the Federal Power Act
23 for third party use of any Transmission Line capacity or entitlement rights that are in
24 excess of the capacity or entitlement rights thereon provided for the Facility under
25 this Agreement. Such Tariff Rates as filed with FERC by Seller shall provide for the
26 full recovery of all capital, fixed, and variable costs incurred for, or properly allocated
27 to, the portion of the Transmission Line associated with such third party capacity
28 rights thereon, in accordance with standard FERC cost of service ratemaking policies
29 and practices. In no event, however, shall (i) the rates charged to any such third party
30 be less than the Tariff Rates or (ii) the use afforded such third party with respect to
31 the Transmission Line interfere with Buyer’s rights or interests under this Agreement,
32 and provided, further, that the terms and conditions of such tariff service shall be
33 consistent with the rules and regulations of FERC or, in the absence of such rules and
34 regulations, standard industry practice.

35 **ARTICLE V**
36 **OWNERSHIP OF THE FACILITY**

37 **Section 5.1 Ownership of the Facility.** Seller shall use commercially
38 reasonable and diligent efforts to site, permit, develop, finance and construct the
39 Facility. The Facility shall be owned by Seller during the Agreement Term. Seller
40 shall operate and maintain, at its sole risk and expense, the Facility in compliance
41 with all Requirements of Law, Prudent Utility Practices, and applicable
42 manufacturer’s and operator’s specifications and recommended procedures. Meeting

1 this requirement shall not relieve Seller of its other obligations pursuant to the terms
2 and conditions of this Agreement. Seller shall be responsible, at its sole expense, for:

3 (a) the development and commercial operation of the Facility in accordance with
4 Prudent Utility Practices; and

5 (b) seeking, obtaining, maintaining, complying with and, as necessary, renewing and
6 modifying from time to time, all permits, certificates or other authorizations which are required
7 by any Requirement of Law, governmental authority or regulatory agency as prerequisites to
8 engaging in the activities envisioned by this Agreement and to meeting Seller's obligation to
9 operate the Facility consistently with the terms of this Agreement. Buyer and Buyer's Agent
10 shall be responsible, at Buyer's sole expense, to the extent required, for seeking, obtaining,
11 maintaining, complying with and, as necessary, reviewing and modifying from time to time, all
12 permits, certificates or other authorizations which are required to meet Buyer's obligations under
13 this Agreement. Each party will cooperate with the other Party with respect to the other Party's
14 obtaining and maintaining and complying with required permits, certificates, or other
15 authorizations.

16 **Section 5.2 Certification of Commercial Operation Date.** Seller shall
17 provide Buyer with a written notice when Seller believes that all conditions precedent
18 to achieving Commercial Operation of the Facility have been satisfied (such notice,
19 the "COD Notice").

20 **Section 5.3 Additional Capacity after Early Completion in the Early**
21 **Completion Facility Configuration.** In the event that Seller shall achieve
22 Commercial Operation as to the Facility in the Early Completion Facility
23 Configuration, then Seller shall nevertheless have the right to install additional wind
24 turbines (for a maximum aggregate Contract Capacity of 200 MW) up to ninety (90)
25 days following the Commercial Operation Date. Seller shall have the right to modify
26 the Facility configuration shown in Appendix B to incorporate additional wind
27 turbines installed and completed after achievement of Commercial Operation of the
28 Facility in the Early Completion Facility Configuration by providing written notice to
29 Buyer. Any such installation of additional wind turbines shall have no effect on the
30 Prepayment Amount.

31 **Section 5.4 Other Information.** Seller shall provide to Buyer such other
32 information regarding the permitting, engineering, construction or operations, of
33 Seller, its subcontractors or the Facility, financial or otherwise, and other data
34 concerning the Seller, its subcontractors or the Facility as Buyer may, from time to
35 time, reasonably request. Until the Commercial Operation Date, Seller shall provide
36 to Buyer quarterly written reports describing permitting and development activities in
37 the previous quarter and anticipated progress and activities for the upcoming quarter.
38 Buyer shall be permitted to inspect the Facility from time to time upon reasonable
39 notice to Seller and during reasonable business hours, provided that Buyer is
40 accompanied by Seller's employees made available for such purpose.

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ARTICLE VI
OPERATION AND MAINTENANCE OF THE FACILITY

3 **Section 6.1 Compliance with Electrical Service Requirements.** Seller
4 shall, at its sole expense, operate and maintain the Facility in accordance with Prudent
5 Utility Practices. Seller shall comply with standard operating procedures such that
6 the Facility has on-site or on-call operations management twenty-four (24) hours per
7 day.

8 **Section 6.2 General Operational Requirements.**

9 Seller shall, at all times:

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

14 (b) Operate and maintain the Facility with due regard for the safety, security and
15 reliability of the interconnected system.

16 (c) Comply with operating and maintenance standards recommended by, and
17 required by, the Facility's equipment suppliers.

18 **Section 6.3 Taxes.** Buyer will be responsible for, and will reimburse Seller if
19 paid by Seller, lawful state and local taxes assessed within the State of Utah, which
20 are directly associated with the Facility or the delivery or sale of Energy or
21 Environmental Attributes, if any, including all property taxes or payments in lieu of
22 property taxes directly associated with the Facility and excluding income, payroll,
23 and sales taxes other than sales taxes directly imposed on the delivery or sale of
24 Energy or Environmental Attributes, if any, ("Taxes"). To the extent reasonably able
25 to do so, either Party, upon written request of the other, shall provide a certificate of
26 exemption or other reasonably satisfactory evidence of exemption if either Party is
27 exempt from any Taxes, and shall use all reasonable efforts to obtain or maintain, or
28 to enable the other Party to obtain or maintain, any exemption from or reduction of
29 any Taxes, whether currently available or becoming available in the future. Seller
30 will pay all lawful Taxes and will use reasonable efforts to minimize Taxes, and will
31 consult with the Buyer on any negotiations Seller may undertake with governmental
32 authorities responsible for imposing Taxes. Promptly following its payment of any
33 Taxes Seller shall provide Buyer with copies of receipts or other evidence of the
34 payment of such Taxes. Seller shall also promptly provide to Buyer copies of all
35 notices, correspondence or other items (including, without limitation, written reports
36 on any verbal exchanges with the relevant taxing authorities) to the extent relating to
37 Taxes, and shall afford Buyer a reasonable opportunity to participate in any
38 discussions or other communications with any taxing authority relating to Taxes. To
39 the extent it is legally able to do so, Seller will follow the written instructions of
40 Buyer with respect to the negotiation, reporting, payment and contest (and shall

1 permit Buyer to conduct such contest, to the extent it is legally able to do so) of any
2 Taxes for which Seller is liable hereunder. Seller shall promptly pay to Buyer the
3 amount of any refunds or other credits against any Taxes or other economic benefits
4 which Seller receives or to which it is entitled with respect to any Taxes for which
5 Buyer is responsible hereunder. Without limiting the generality of the foregoing, the
6 Parties agree that, if beneficial to the efforts of either Party to obtain or maintain any
7 exemption from or reduction of any Taxes, whether currently available or becoming
8 available in the future, the Parties will cooperate to restructure the transactions
9 contemplated by this Agreement so as to enable either Party to obtain or maintain
10 such exemption or reduction, as the case may be, provided, however, that any such
11 restructuring shall not affect adversely the economic consequences to either Party.
12 Buyer shall have no obligations with respect to any Taxes to the extent such Taxes
13 (1) are attributable to any period prior to the Commercial Operation Date for the
14 Facility, or following the expiration or termination of this Agreement in accordance
15 with the terms hereof, (2) are imposed as a result of the gross negligence or willful
16 misconduct by the Seller, the breach by the Seller of any of its obligations under this
17 Agreement or any related transaction document, (3) are imposed as a result of any
18 transfers by Seller of any interest in the Facility, this Agreement or any transaction
19 contemplated hereby or related hereto (except to the extent resulting from a breach by
20 Buyer if its obligations under this Agreement).

21 **Section 6.4 Environmental Credits.** Seller shall, if applicable, obtain in its
22 own name and at its own expense any and all pollution or environmental credits or
23 offsets necessary to operate the Facility in compliance with the Requirements of Law.

24 **Section 6.5 Scheduling of Energy and Scheduled Outages.**

25 (a) Seller or Seller's designee shall be responsible for scheduling the forecast of
26 Energy to the Point of Delivery during the Agreement Term in accordance with the dispatch and
27 scheduling procedures that may be updated from time to time by Buyer or Buyer's Agent. Seller
28 shall submit schedules, and any updates to such schedules, to Buyer or Buyer's Agent designated
29 by Buyer based on the most current forecast of Energy. All generation scheduling and
30 transmission services shall be performed in accordance with the applicable NERC and WECC
31 operating policies, criteria, and any other applicable guidelines. Seller shall also fulfill the
32 contractual, metering and interconnection requirements set forth in this Agreement, so as to be
33 able to deliver Energy to the Point of Delivery.

34 (b) [Intentionally omitted]

35 (c) [Intentionally omitted]

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

1 (e) Ten (10) Business Days before the beginning of each month, Seller or Seller's
2 designee shall provide, or cause to be provided, a non-binding forecast of each day's average
3 deliveries of Energy, by hour, for the following month.

4 (f) By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding
5 the date of delivery, Seller or Seller's designee shall cause the Facility's scheduling coordinator
6 to provide Buyer, or Buyer's Agent as designated by Buyer, with a copy of a non-binding hourly
7 forecast of deliveries of Energy for each hour of the immediately succeeding day. A forecast
8 provided a day prior to any non-Business Day(s) shall include forecasts for the immediate day,
9 each succeeding non-Business Day and the next Business Day. Seller shall provide Buyer, or
10 Buyer's Agent as designated by Buyer, with a copy of any and all updates to such forecast
11 indicating a change in forecasted Energy from the then current forecast.

12 (g) No later than sixty (60) days prior to the Commercial Operation Date, and on
13 each January 1 thereafter, Seller shall provide Buyer, or Buyer's Agent as designated by Buyer,
14 with a non-binding written projection of all Scheduled Outages for the succeeding three (3) years
15 (the "Scheduled Outage Projection"). The Scheduled Outage Projection shall include
16 information concerning all projected Scheduled Outages during such period, including (i) the
17 anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance
18 and/or repair work to be performed during the Scheduled Outage; and (iii) the anticipated
19 operational MW capacity, if any, during the Scheduled Outage. Seller shall notify Buyer, or
20 Buyer's Agent as designated by Buyer, of any change in the Scheduled Outage Projection as
21 soon as practicable, but in no event later than thirty (30) days prior to the originally scheduled
22 date of the Scheduled Outage. Seller will use commercially reasonable efforts to accommodate
23 reasonable requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to
24 the extent feasible and consistent with Prudent Utility Practices, arrange for Scheduled Outages
25 to occur between October 1 and May 1 of each year and coincident with planned transmission
26 outages. In the event of a System Emergency, Seller shall make all reasonable efforts to
27 reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

28 (h) In the event of a Forced Outage affecting at least 10% of the wind turbines
29 comprising the Facility, to the extent practicable, Seller shall notify Buyer, or Buyer's Agent as
30 designated by Buyer, within two (2) hours of the Forced Outage and provide detailed
31 information concerning the Forced Outage, including (i) the start and anticipated end dates of the
32 Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the
33 maintenance and/or repair work to be performed during the Forced Outage; and (iv) the
34 anticipated operational MW capacity, if any, during the Forced Outage. Seller shall take all
35 reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and
36 to limit the duration and extent of any such outages.

37 (i) Seller shall reduce deliveries of Energy for curtailments required by Buyer in the
38 event of a System Emergency or due to scheduled and unscheduled maintenance on Buyer's side
39 of the Point of Delivery that prevent it from accepting Energy at the Point of Delivery. Such
40 curtailments shall not reduce the Achieved Generation, and the Guaranteed Annual Quantity or
41 the Guaranteed Generation calculations shall include MWh that would have been realized had
42 the curtailment not occurred. Seller shall be credited for all such curtailed Energy that would

1 and maintenance of the Facility and that said operation and maintenance is, and will
2 be, in full compliance of all requirements, including, but not limited to, vendor's
3 operation and maintenance requirements, and safety and environmental
4 requirements. Any recommended or required updates or modifications to equipment
5 and materials, including procedures, programming and software will be instituted in a
6 timely manner.

7 **Section 7.2 Compliance With Standards.** The equipment and structures
8 furnished under this Agreement shall be designed, constructed, tested, operated and
9 maintained to meet all of the applicable requirements of the latest revision of the
10 ASTM, ASME, AWS, EPA, EEI, IEEE, ISA (or any successors thereto), National
11 Electrical Code, National Electric Safety Code, OSHA, Cal-OSHA as applicable,
12 Uniform Building Code, Uniform Plumbing Code, and the local County Fire
13 Department Standards of the applicable county, and other codes and standards and
14 operations and maintenance requirements applicable to the services, equipment, and
15 work as generally shown in this Agreement.

16 **Section 7.3 Quality Assurance Program.** Seller agrees to maintain and
17 comply with a written quality assurance policy ("Quality Assurance Program")
18 attached hereto as Appendix J, and Seller shall cause all work performed pursuant to
19 this Agreement to comply with said Quality Assurance Program.

20 **ARTICLE VIII**
21 **BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS**

22 **Section 8.1 Billing and Payment.** Billing and payment for the Energy
23 purchases by Buyer under this Agreement and for any other amounts due and payable
24 by Buyer hereunder shall be as follows:

25 (a) On or before the tenth (10th) day of the month following a month in which
26 transactions occur hereunder, Seller shall render one (1) invoice to Buyer showing the following:

27 (1) Delivered Energy allocated to:

28 (A) Delivered Guaranteed Generation to be credited toward the
29 Guaranteed Annual Quantity for the applicable Contract Year,
30 including an accounting of new or made-up Shortfall Energy
31 and/or Replacement Energy.

32 (B) Delivered Excess Energy billed pursuant to Appendix A.

33 (2) Any Startup and Test Energy billed pursuant to Appendix A.

34 (3) Environmental Attributes billed pursuant to Appendix A based on Facility
35 Metered Output.

1 (4) Any reimbursement to Seller for Taxes and Operating Insurance
2 premiums, and adjustments for actual Taxes and Operating Insurance
3 premiums, pursuant to Section 3.1(h).

4 (5) Any reimbursement to Buyer for the purchase of Replacement Energy.

5 (b) Monthly invoices shall be based on meter readings, or if such readings are
6 unavailable, the best available data.

7 (c) Monthly invoices shall be sent to the address set forth in Appendix C or such
8 other address as is provided by Buyer in writing.

9 (d) Buyer shall pay such invoices rendered by Seller by wire transfer to the accounts
10 designated on the invoices rendered by Seller on or before the twenty-fifth (25th) day of the
11 month or 15-days following their receipt. Bills or portions of bills which are not paid by the due
12 date shall thereafter accrue an interest charge at the rate of one percent (1.0%) per month or the
13 maximum rate permitted by law, whichever is less, from and including the date payment was due
14 to but excluding the date such payment is made. Seller shall pay to Buyer any reimbursement
15 owed to Buyer as set forth in Section 8.1(a)(5).

16 (e) Attestations of Environmental Attribute transfers to Buyer shall accompany
17 monthly invoices pursuant to Section 9.1(b).

18 (f) In the event any portion of any bill is in dispute, the disputed amount shall
19 nonetheless be paid under protest when due. The Party hereto disputing a payment shall
20 promptly notify the other Party in writing of the basis for the dispute. Disputes shall be
21 discussed and resolved by the Authorized Representatives, who shall use their best efforts to
22 amicably and promptly resolve the disputes, and any failure to agree shall be subject to
23 resolution in accordance with Section 14.3. Upon resolution of any dispute, the required amount
24 of payment or refund shall be paid within ten (10) days after such determination, with interest
25 accrued at the rate of one percent (1.0%) per month or the maximum rate permitted by law,
26 whichever is less, computed from and including the due date to but excluding the date such
27 payment or refund is paid.

28 **Section 8.2 Records and Audits.** Seller shall be subject, at any time with 7
29 calendar days' prior written notice, to audits by Authorized Auditors relating to the
30 accuracy of all billings and of all costs for which Buyer is required to reimburse the
31 Seller pursuant to Article III. The Authorized Auditors shall have access to all
32 records and data relating to such billings, costs, metering, and Environmental
33 Attribute attestations. Seller shall maintain and the Authorized Auditors will have the
34 right to examine and audit all books, records, documents, accounting procedures and
35 practices, and other evidence, regardless of form (e.g., machine readable media such
36 as disk, tape, etc.) or type (e.g., databases, applications software, database
37 management software, utilities, etc.), sufficient to properly reflect all such billings
38 and costs. Any information provided on machine-readable media shall be provided in
39 a format accessible and readable by the Authorized Auditors. Seller shall not,
40 however, be required to furnish the Authorized Auditors with commonly available

1 software. The Authorized Auditors will also have the right to reproduce, photocopy,
2 download, or transcribe, such billing and cost records. Seller shall make such
3 records, or to the extent accepted by the Authorized Auditors, photographs, micro-
4 photographs etc. or other authentic reproductions thereof available to the Authorized
5 Auditors at Seller's offices at all reasonable times and without charge. Seller shall
6 keep and preserve all such records for a period of not less than 3 years from and after
7 final payment or, if the Agreement is terminated in whole or in part, until 3 years after
8 the Delivery Term.

9 Notwithstanding the foregoing, if the audit reveals that the overpayment is more than 5%
10 of the billing, Seller shall pay all expenses and costs incurred by the Authorized Auditors arising
11 out of or related to the audit.

12 **Section 8.3 Delivery Arrangements.** Seller shall be responsible for all
13 interconnection, electric losses, transmission and ancillary service arrangements and
14 costs required to deliver, the Energy from the Facility to Buyer or Buyer's Agent at
15 the Point of Delivery. Buyer shall be responsible for all electric losses, transmission
16 and ancillary service arrangements and costs required to receive the Energy beyond
17 the Point of Delivery. Seller shall have title to the Energy on its side of the Point of
18 Delivery. Buyer, or Buyer's Agent, shall have title to the Energy on its side of the
19 Point of Delivery.

20 **Section 8.4 Electric Metering Devices.**

21 (a) The Delivered Energy and Facility Metered Output made available to Buyer, or
22 Buyer's Agent, by Seller under this Agreement shall be measured using the Electric Metering
23 Devices installed, owned and maintained by the Seller or its designee in accordance with the
24 Interconnection Agreement, if applicable, and Prudent Utility Practices. If Electric Metering
25 Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to
26 reflect losses from the Electric Metering Devices to the Point of Delivery. All Electric Metering
27 Devices used to provide data for the computation of payments shall be sealed and the Seller or its
28 designee shall only break the seal when such Electric Metering Devices are to be inspected and
29 tested or adjusted in accordance with this Section 8.4. Seller or its designee shall specify the
30 number, type, and location of such Electric Metering Devices.

31 (b) Seller or its designee, at no expense to Buyer, shall inspect and test all Electric
32 Metering Devices upon installation and at least annually thereafter. Seller shall provide Buyer
33 with reasonable advance notice of, and permit a representative of Buyer to witness and verify,
34 such inspections and tests, provided, however, that Buyer shall not unreasonably interfere with or
35 disrupt the activities of Seller or its designee and shall comply with all safety standards. Upon
36 request by Buyer, Seller or its designee shall perform additional inspections or tests of any
37 Electric Metering Device and shall permit a qualified representative of Buyer to inspect or
38 witness the testing of any Electric Metering Device; provided, however, that Buyer shall not
39 unreasonably interfere with or disrupt the activities of Seller or its designee and shall comply
40 with all safety standards. The actual expense of any such requested additional inspection or
41 testing shall be borne by Buyer, unless upon such inspection or testing an Electric Metering

1 Device is found to register inaccurately by more than the allowable limits established in this
2 Section 8.4, in which event the expense of the requested additional inspection or testing shall be
3 borne by Seller. Seller shall provide copies of any inspection or testing reports to Buyer.

4 (c) Adjustment for Inaccurate Meters. If an Electric Metering Device fails to
5 register, or if the measurement made by an Electric Metering Device is found upon testing to be
6 inaccurate by more than one percent (1.0%), an adjustment shall be made correcting all
7 measurements by the inaccurate or defective Electric Metering Device for both the amount of the
8 inaccuracy and the period of the inaccuracy. To the extent that the adjustment period covers a
9 period of deliveries for which payment has already been made by Buyer, Seller shall use the
10 corrected measurements as determined in accordance with this Section 8.4 to recompute the
11 amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer
12 for this period from such recomputed amount. If the difference is a positive number, the
13 difference shall be paid by Seller to Buyer or at the discretion of Seller, may take the form of an
14 offset to payments due Seller by Buyer; if the difference is a negative number, the difference
15 shall be paid by Buyer to Seller. Payment of such difference by the owing Party shall be made
16 not later than thirty (30) days after the owing Party receives notice of the amount due, unless
17 Seller elects payment via an offset.

18 **ARTICLE IX**
19 **ENVIRONMENTAL ATTRIBUTES AND OTHER COSTS**

20 **Section 9.1 Transfer of Environmental Attributes.** For and in
21 consideration of Buyer entering into this Agreement, and in addition to the agreement
22 by Buyer and Seller to purchase and sell, respectively, the Energy on the terms and
23 conditions set forth herein, Seller shall transfer to Buyer, and Buyer shall receive
24 from Seller, all right, title, and interest in and to all Environmental Attributes,
25 whether now existing or acquired by Seller or that hereafter come into existence or
26 are acquired by Seller during the Agreement Term, for the Facility Metered Output
27 and Replacement Energy pursuant to this Agreement. Buyer agrees to make the
28 monthly payments for such Environmental Attributes as set forth in paragraph 3 of
29 Appendix A. Seller agrees to transfer and make such Environmental Attributes
30 available to Buyer immediately to the fullest extent allowed by applicable law upon
31 Seller's production of the Environmental Attributes. Seller shall not assign, transfer,
32 convey, encumber, sell or otherwise dispose of all or any portion of such
33 Environmental Attributes to any Person other than Buyer.

34 (a) Reporting of Ownership of Environmental Attributes. During the Agreement
35 Term, Seller shall not report to any person or entity that the Environmental Attributes granted
36 hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any program
37 that such Environmental Attributes purchased hereunder belong to it.

38 (b) Further Assurances. Seller will document the production of Environmental
39 Attributes under this Agreement by delivering with each invoice to Buyer an attestation for
40 Environmental Attributes (i) produced by the Facility and (ii) included with Replacement Energy
41 for the preceding calendar month. The form of attestation is set forth as Appendix D. At

1 (e) There is no pending, or to the knowledge of Buyer, threatened action or
2 proceeding affecting Buyer before any governmental authority, which purports to affect the
3 legality, validity or enforceability of this Agreement.

4 **Section 10.2 Representations and Warranties by Seller.** Seller makes the
5 following representations and warranties to Buyer:

6 (a) Seller is a limited liability company, duly organized, validly existing and in good
7 standing under the laws of the State of Delaware, is qualified to do business in the States of
8 California and Utah and has the legal power and authority to own its properties, to carry on its
9 business as now being conducted and to enter into this Agreement and, subject to the receipt of
10 the regulatory approvals, carry out the transactions contemplated hereby and perform and carry
11 out all covenants and obligations on its part to be performed under and pursuant to this
12 Agreement.

13 (b) The execution, delivery and performance by Seller of this Agreement have been
14 duly authorized by all necessary action, and do not and will not require any consent or approval
15 of Seller's managing member or equity holders other than that which has been obtained.

16 (c) The execution and delivery of this Agreement, the consummation of the
17 transactions contemplated hereby and the fulfillment of and compliance with the provisions of
18 this Agreement, do not and will not conflict with or constitute a breach of or a default under, any
19 of the terms, conditions or provisions of any Requirement of Law, or any organizational
20 documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness
21 or any other agreement or instrument to which Seller is a party or by which it or any of its
22 property is bound, or result in a breach of or a default under any of the foregoing, and Seller has
23 obtained or shall obtain all permits, licenses, approvals and consents of governmental authorities
24 required for the lawful performance of its obligations hereunder. Further, Seller warrants that it
25 shall maintain in good standing all permits, licenses, approvals, and consents of governmental
26 authorities required for the lawful operation of the Facility in accordance with this Agreement,
27 Prudent Utility Practices, and all Requirements of Law.

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

33 (e) There is no pending, or to the knowledge of Seller, threatened action or
34 proceeding affecting Seller before any governmental authority, which purports to affect the
35 legality, validity or enforceability of this Agreement.

36 (f) Seller shall inform all investors in the Seller of the existence of this Agreement on
37 or before the date of such investment in the Seller.

38 (g) Seller has been, is and will be a Special Purpose Entity.

1 (h) Seller has (i) not entered into this Agreement or any other documents related
2 thereto with the actual intent to hinder, delay or defraud any creditor and (ii) received reasonably
3 equivalent value in exchange for its obligations under this Agreement. No petition in bankruptcy
4 has been filed against Seller, and neither Seller nor any of its constituent Persons has ever made
5 an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit
6 as a debtor.

7 (i) All of the assumptions made in the Non-Consolidation Opinion, including, but not
8 limited to, any exhibits attached thereto, are true and correct in all material respects. Seller has
9 complied with all of the assumptions made with respect to Seller in the Non-Consolidation
10 Opinion.

11 (j) There are no mineral rights or interests underlying the Facility Premises or
12 otherwise underlying any premises leased or acquired under the Leases and Property Agreements
13 the development or exploration of which would interfere with the construction or operation of
14 the Facility.

15 **Section 10.3 Covenant of Seller Related to Seller's Status as Special**
16 **Purpose Entity.** Seller shall at all times comply with the requirements of, and
17 qualify as, a Special Purpose Entity.

18 **Section 10.4 Covenants of Seller Related to Leases and Property**
19 **Agreements.**

20 (a) In the event that the lessor under any lease included under the Leases and
21 Property Agreements is the subject of a bankruptcy, reorganization or other insolvency case
22 proceeding, Seller as lessee under such lease shall elect to retain its rights under such lease
23 pursuant to Section 365(h) of the U.S. Bankruptcy Code or other similar applicable law in the
24 event that such lessor seeks to reject or otherwise disaffirm such lease, unless Buyer agrees
25 otherwise in writing provided to the Seller in accordance with the notice provisions of this
26 Agreement. Seller, as lessee under such lease, shall provide to Buyer all notices, motions and
27 pleadings it receives in any such proceeding promptly, but no later than three business days
28 following receipt. Seller, as lessee under such lease, hereby appoints Buyer as attorney in fact to
29 appear and be heard on behalf of Seller, as lessee under such lease, in any such proceeding and
30 Seller, as lessee under such lease, shall take no action in such proceeding without the prior
31 written consent of Buyer.

32 (b) In the event that Seller is the subject of a bankruptcy, reorganization or other
33 insolvency case or proceeding, Seller, as lessee under any lease included under the Leases and
34 Property Agreements, shall not reject or otherwise disaffirm such lease pursuant to Section 365
35 of the U.S. Bankruptcy Code or other similar applicable law unless Buyer is first granted by the
36 applicable court or courts appropriate relief including any relief from any stay, such that Buyer
37 may enforce all of its rights and interests and has taken possession of the Facility pursuant to the
38 Performance Security.

39 (c) Seller agrees to enforce the provisions of the Leases and Property Agreements
40 and duly perform its covenants and agreements thereunder. Seller further agrees not to consent,

1 agree to or permit, or to take or cause to be taken any action or non-action, to bring about any
2 rescission or termination of or amendment to any of the Leases and Property Agreements or to
3 take any action in connection with any of the Leases and Property Agreements which will
4 materially impair or have a material adverse effect on the rights, interest or security of the Buyer,
5 or elect to arbitrate any controversy, claim or dispute under an arbitration provision in the Leases
6 and Property Agreements, or to assign, sublease, encumber, mortgage, or grant any security
7 interest in or otherwise dispose of any of the Leases and Property Agreements or any portion
8 thereof or interest therein without the consent of the Buyer, except as expressly permitted in this
9 Agreement.

10 (d) Upon any payment by Buyer, as Beneficiary under the Performance Security,
11 under any of the Leases and Property Agreements to cure any default of Seller thereunder, and
12 thereby prevent termination of any of the Leases or Property Agreements, or the exercise of any
13 other remedy of the other party or parties thereunder arising out of such default, Buyer shall be
14 entitled to offset amounts otherwise due Seller pursuant to the Monthly Payment hereunder by
15 the amount of such cure payment or remedy cost until Buyer has been fully repaid.

16 (e) In the event of a complete taking of the Facility or any substantial portion thereof
17 or a partial taking of a portion of the Facility under a statute or by right of eminent domain or
18 private purchase in lieu thereof, Seller shall pay to Buyer from the sum awarded to and received
19 by Seller, including damages and interest, the amount of the loss in value of this Agreement to
20 Buyer resulting from such complete or partial taking; provided that in the event of a complete
21 taking, such payment to Buyer shall not be less than the Remaining Prepayment Amount, if
22 Seller is awarded and receives at least this amount.

23 (f) Upon the receipt by Seller of any offer to acquire or purchase from any other
24 party under the Leases and Property Agreements all or any portion of such party's interest in the
25 Facility Premises, Seller shall promptly notify Buyer in writing of its receipt of such offer and
26 furnish Buyer with a copy thereof. Seller agrees not to elect to exercise its option to purchase
27 such offered interest in the Facility Premises unless it shall first reach agreement with Buyer as
28 to any amendment or modification of the Performance Security and/or this Agreement
29 reasonably requested by Buyer to reflect such purchase by Seller of the offered interest in the
30 Facility Premises.

31 (g) Seller shall use its commercially reasonable efforts to obtain and deliver to Buyer
32 executed waivers from each party owning or leasing a mineral interest underlying any portion of
33 the premises under the Leases and Property Agreements of its right to explore and/or develop
34 minerals, on, in or under such premises which exploration and/or development might interfere
35 with Seller's rights under the Leases and Property Agreements.

36 (h) From and after the Commercial Operation Date, Seller shall provide Buyer, as
37 Beneficiary under the Performance Security, with evidence that the rent, fees or other payments
38 payable by Seller under the Leases and Property Agreements have been paid at least ten days
39 prior to the date on which such rent, fees or other payments would be delinquent. If Seller does
40 not provide Buyer with such evidence within five days after receipt of written request for the
41 same and if such rent, fees or other payments have not been paid, Buyer, as Beneficiary under

1 the Performance Security, may, but shall not be obligated to, cure such default by Seller as
2 provided under Section 10.4(d).

3 **ARTICLE XI**
4 **DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE**

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

7 (a) *Payment Default.* Failure by either Party to pay any amount when due under this
8 Agreement which is not cured within ten (10) Business Days after receiving written notice
9 thereof from the other Party hereto.

10 (b) *Performance Default.* Failure by any Party to perform any of its material duties
11 or obligations under this Agreement when and as due (other than the failure to make any
12 payment) which is not cured within thirty (30) calendar days after receipt of written notice
13 thereof from the other Party hereto.

14 (c) *Inaccuracy of Representations and Warranties.* Inaccuracy of any material
15 representations and warranties made herein at the time made or deemed to be made that has a
16 material adverse effect on the other Party.

17 (d) *Bankruptcy.* Bankruptcy of either Party hereto.

18 (e) *Seller Commercial Operation Date Default.* Failure by Seller to achieve the
19 Commercial Operation Date within 270 days following December 31, 2008, and such failure is
20 not cured within thirty (30) calendar days or more after receipt of written notice thereof from
21 Buyer to Seller.

22 (f) *Buyer Commercial Operation Date Default.* Failure by Buyer to accept Delivered
23 Energy on or after the Commercial Operation Date.

24 **Section 11.2 Default Remedy.**

25 (a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this
26 Agreement, Seller may, at its sole option, suspend service and sell Energy to third parties or
27 continue to provide services pursuant to its obligations under this Agreement; provided that
28 nothing in this Section 11.2(a) shall affect Seller's rights and remedies set forth in this
29 Section 11.2; and provided, further, that Energy sold to third parties shall not count as Achieved
30 Generation. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties
31 or obligations under this Agreement.

32 (b) Notwithstanding any other provision herein, if any Default has occurred and is
33 continuing, the affected Party may, whether or not the dispute resolution procedure set forth in
34 Section 14.3 has been invoked or completed, bring an action in any court of competent
35 jurisdiction as required by Section 14.13 seeking injunctive relief in accordance with applicable
36 California or Federal rules of civil procedure.

1 (c) Except as expressly limited by this Agreement, if a Default has occurred and is
2 continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any
3 rights and remedies provided herein or otherwise available at law or in equity, including the right
4 to terminate this Agreement pursuant to Section 11.5 upon giving notice of intent to terminate to
5 Buyer. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power
6 hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of
7 any right, remedy or power hereunder preclude any other or future exercise of any right, remedy
8 or power.

9 (d) Except as expressly limited by this Agreement, if a Default has occurred and is
10 continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any
11 rights and remedies provided for herein, or otherwise available at law or equity, including
12 termination of this Agreement pursuant to Section 11.5 and foreclosure of Buyer's Performance
13 Security, upon notice of intent to terminate to Seller. No failure of Buyer to exercise, and no
14 delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor
15 shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude
16 any other or future exercise of any right, remedy or power.

17 **Section 11.3 Performance Damages.**

18 (a) If Seller fails to achieve the Commercial Operation Date by March 31, 2009,
19 except to the extent due to a Force Majeure event, Seller shall pay liquidated damages to Buyer
20 in an amount equal to \$40,000/day for each day of delay thereafter, provided, however, that the
21 maximum liability of Seller under this Section 11.3(a) during the Agreement Term shall not
22 exceed \$7.2 million.

23 (b) [Deleted]

24 **Section 11.4 Effect of Termination on Interconnection Agreement.** The
25 expiration or termination for any reason of this Agreement shall not affect the Leases
26 and Property Agreements or the Interconnection Agreement or the continuing
27 effectiveness thereof.

28 **Section 11.5 Termination for Default.**

29 (a) If Default occurs, the Party that is not the Defaulting Party (the "Non Defaulting
30 Party") shall, without limiting any other rights or remedies available to the Non-Defaulting Party
31 under this Agreement, possess the right to terminate this Agreement upon notice (by facsimile or
32 other reasonable means) to the Defaulting Party, such notice of termination shall specify the date
33 on which the termination is to become effective. If the Non-Defaulting Party fails to furnish such
34 notice of termination within one-hundred eighty (180) days following the time when the Default
35 becomes known (or such later date if the Non Defaulting and Defaulting Parties agree to an
36 extension), then such right of termination shall no longer be available to the Non Defaulting
37 Party as a remedy for the event(s) of Default.

38 (b) Upon termination, the Non Defaulting Party shall liquidate this Agreement as
39 soon as practicable. The Termination Payment shall be calculated in accordance with

1 Section 11.6. The Termination Payment shall be the sole and exclusive remedy for the Non
2 Defaulting Party for termination of this Agreement for the time period beginning at the time
3 notice of termination under this Section 11.5 is received, provided that Buyer shall in any event
4 be entitled to exercise foreclosure and other rights under the Performance Security to enforce
5 payment of the Termination Payment and any other amounts due and owing to Buyer.

6 Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting
7 Party for any obligations incurred prior to termination under this Agreement until the Defaulting
8 Party pays the Termination Payment to the Non Defaulting Party. The Non Defaulting Party
9 shall possess the right to set off the amount due it under this Section 11.5 by any such payments
10 due the Defaulting Party.

11 **Section 11.6 Calculation of Termination Payment.** The Non Defaulting
12 Party shall calculate the Termination Payment as follows:

13 (a) If the Non-Defaulting Party is the Buyer, then Buyer shall be entitled to receive
14 from the Seller the Remaining Prepayment Amount. If the Non-Defaulting Party is the Seller,
15 then Seller shall be required to pay to the Buyer the Remaining Prepayment Amount. In addition
16 to the Remaining Prepayment Amount, the Gains, Losses, and costs shall include those for the
17 Excess Energy and the Environmental Attributes, which shall be determined by comparing the
18 value of the Excess Energy and Environmental Attributes projected to be delivered for the
19 remaining term giving effect to the Excess Energy Price and the value derived from the
20 Environmental Attributes under this Agreement had it not been terminated to the equivalent
21 quantities and relevant market prices for the remaining Agreement Term either quoted by a bona
22 fide third party offer or which are reasonably expected to be available in the market under a
23 replacement contract for this Agreement. To ascertain the market prices of a replacement
24 contract, the Non-Defaulting Party may consider, among other valuations, quotations from
25 dealers in energy contracts and bona fide third party offers, all adjusted for the length of the
26 remaining Agreement Term and differences in transmission. It is expressly agreed that the Non
27 Defaulting Party shall not be required to enter into replacement transactions in order to determine
28 the Termination Payment.

29 (b) The Gains and Losses for Excess Energy and Environmental Attributes calculated
30 under Section 11.6(a) shall be discounted to present value using the Present Value Rate as of the
31 time of termination (to take account of the period between the time notice of termination was
32 effective and when such amount would have otherwise been due if this Agreement had been
33 performed in full).

34 (c) The Non Defaulting Party shall set off or aggregate, as appropriate, the Gains and
35 Losses (as calculated in Section 11.6(a)) and Costs and notify the Defaulting Party. If the Non
36 Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains with respect to Excess
37 Energy and Environmental Attributes, the Defaulting Party shall, within three (3) Business Days
38 of receipt of such notice, pay the resulting Termination Payment, after any aggregation or set off
39 as provided in Section 11.6(d), to the Non Defaulting Party, which amount shall bear interest at
40 the Present Value Rate from the time notice of termination was received until paid. If the Non

1 Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Termination
2 Payment shall be zero.

3 (d) The Non Defaulting Party shall aggregate or set off, as applicable, at its election,
4 any or all other amounts owing between the Parties under this Agreement with or against the
5 Termination Payment so that all such amounts are aggregated and/or netted to a single liquidated
6 amount, which shall be the amount of the Termination Payment. Such Termination Payment
7 shall be paid within three (3) Business Days following the date notice of termination is received.
8 Notwithstanding any other provision of this Section 11.6, if Buyer shall be the Non-Defaulting
9 Party, in no event shall the amount of the Termination Payment due Buyer be less than the
10 Remaining Prepayment Amount, subject, however, to aggregation or setoff, as applicable, of any
11 amounts owing between the Parties under this Agreement other than Gains, Losses and Costs.

12 (e) If the Defaulting Party disagrees with the calculation of the Termination Payment
13 and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted
14 to informal dispute resolution as provided in Section 14.3(a). Pending resolution of the dispute,
15 the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non
16 Defaulting Party within three (3) Business Days of receipt of notice of termination as set forth in
17 Section 11.5(a) subject to the Non Defaulting Party refunding, with interest, at the Present Value
18 Rate, any amounts determined to have been overpaid.

19 (f) For purposes of this Section 11.6:

20 (1) "Gains" means the economic benefit (exclusive of Costs), if any, resulting
21 from the termination of this Agreement, determined in a commercially
22 reasonable manner as calculated in accordance with this Section 11.6;

23 (2) "Losses" means the economic loss (exclusive of Costs), if any, resulting
24 from the termination of this Agreement, including, in the case of the
25 Buyer, the Unamortized Prepayment Amount, determined in a
26 commercially reasonable manner as calculated in accordance with this
27 Section 11.6;

28 (3) "Costs" means brokerage fees, commissions and other similar transaction
29 costs and expenses reasonably incurred in terminating any specifically
30 related arrangements or entering into arrangements which replace this
31 Agreement, as well as Facility operation and maintenance costs and
32 expenses, including transmission and ancillary service costs associated
33 therewith, and excluding attorneys' fees, if any, incurred in connection
34 with the Non Defaulting Party enforcing its rights with regard to this
35 Agreement. The Non Defaulting Party shall use reasonable efforts to
36 mitigate or eliminate these Costs.

37 (4) In no event, however, shall a Party's Gains, Losses or Costs include any
38 penalties or similar charges imposed by the Non Defaulting Party.

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**ARTICLE XII
MAKEUP OF SHORTFALL ENERGY**

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Section 12.1 Makeup of Shortfall. If Seller fails to deliver the full Guaranteed Annual Quantity during any Contract Year, then Seller shall make up this shortfall of Delivered Guaranteed Generation (“Shortfall Energy”) by delivery of Energy to Buyer as provided in Section 12.2 no later than three (3) Contract Years following the shortfall, or four (4) Contract Years if said shortfall is caused by a Force Majeure.

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Section 12.2 No Excess Energy During Shortfall Periods. During periods in which there is Shortfall Energy due to Buyer, Seller shall deliver to Buyer all Energy that would otherwise be designated as Excess Energy until all Shortfall Energy is provided to Buyer. Notwithstanding any other provision in this Agreement, there will be no payment of the Excess Energy Price for this Energy until the Shortfall Energy has been fully made up.

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Section 12.3 Replacement Energy. If Seller fails to provide the full amount of Shortfall Energy by the end of the third Contract Year following the Contract Year of the shortfall, or the fourth Contract Year if the shortfall is caused by a Force Majeure event, Seller shall provide to Buyer replacement energy at the Point of Delivery including associated Environmental Attributes comparable to those associated with the Energy produced by the Facility (“Replacement Energy”) within 180-days after the third anniversary, or fourth anniversary if shortfall is caused by a Force Majeure, on a delivery schedule consistent with the Facility’s historic percentage of On Peak and Off Peak Delivered Energy, or other delivery schedules as mutually agreed to by the Parties, provided that such schedule shall not cause the Delivered Energy to be delivered at a rate greater than 200 MW. If Seller fails to deliver Replacement Energy as described above then Buyer shall purchase Replacement Energy and Seller shall reimburse Buyer for said Replacement Energy and promptly notify Seller of the cost of such Replacement Energy.

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**ARTICLE XIII
CAPACITY RIGHTS**

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Section 13.1 Purchase and Sale of Capacity Rights. For and in consideration of Buyer’s agreement to purchase from Seller the Energy and Environmental Attributes on the terms and conditions set forth in this Agreement, Seller transfers to Buyer, and Buyer accepts from Seller, any and all right, title, and interest that Seller has in and to Capacity Rights, if any, associated with the Facility. Seller makes no written or oral representation or warranty, either express or implied, regarding the production or existence of Capacity Rights.

Section 13.2 Representation Regarding Ownership of Capacity Rights. Seller represents that it has not sold and will not in the future sell or attempt to sell to any Person other than Buyer the Capacity Rights, if any, associated with the Facility. During the Agreement Term of this Agreement, Seller shall not report to any Person

1 that the Capacity Rights, if any, associated with the Facility belong to any Person
2 other than Buyer. Buyer may, at its own risk and expense, report to any Person that
3 the Capacity Rights, if any, associated with the Facility belong to Buyer. Seller makes
4 no written or oral representation or warranty, either express or implied, regarding the
5 production or existence of Capacity Rights.

6 **Section 13.3 Further Assurances.** At Buyer's request, the Seller shall
7 execute such documents and instruments as may be reasonably required to effect
8 recognition and transfer of the Capacity Rights, if any, to Buyer. Buyer shall bear the
9 costs associated with preparing and executing any such documents and instruments.

10 **ARTICLE XIV**
11 **MISCELLANEOUS**

12 **Section 14.1 Authorized Representative.** Each Party hereto shall designate
13 an authorized representative who shall be authorized to act on its behalf with respect
14 to those matters contained herein (each an "Authorized Representative"), which shall
15 be the functions and responsibilities of such Authorized Representatives. Each Party
16 may also designate an alternate who may act for the Authorized Representative.
17 Within thirty (30) calendar days after execution of this Agreement, each Party shall
18 notify the other Party in writing of the identity of its Authorized Representative, and
19 alternate if designated, and shall promptly notify the other Party of any subsequent
20 changes in such designation. The Authorized Representatives shall have no authority
21 to alter, modify, or delete any of the provisions of this Agreement. Prior to the
22 Commercial Operation Date, the Authorized Representative of each Party will meet
23 periodically to discuss issues related to the sharing of information on the operation
24 and maintenance of the Facility and interconnection facilities, provided, however, that
25 Buyer shall have no right to approve Seller's schedules or budgets. Each Party by
26 notice to the other Party may also designate a Person as its designee as provided in
27 this Agreement.

28 **Section 14.2 Notices.** With the exception of billing invoices pursuant to
29 Section 8.1 hereof, all written notices under this Agreement shall be deemed properly
30 sent if delivered in person or sent by facsimile transmission, reliable overnight
31 courier, or sent by registered or certified mail, postage prepaid to the persons
32 specified in Appendix C.

33 **Section 14.3 Dispute Resolution.** Subject to Section 11.2(b), regarding suits
34 for injunctive relief, disputes under this Agreement between Seller and Buyer may be
35 resolved in accordance with the provisions of this Section 14.3.

36 (a) In the event of any claim, controversy or dispute between the Parties arising out
37 of or relating to or in connection with this Agreement (including any dispute concerning the
38 validity of this Agreement or the scope and interpretation of this Section 14.3) (a "Dispute"),
39 either Party (the "Notifying Party") may deliver to the other Party (the "Recipient Party") notice
40 of the Dispute with a detailed description of the underlying circumstances of such Dispute (a
41 "Dispute Notice"). The Dispute Notice shall include a schedule of the availability of the

1 Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or
2 higher) duly authorized to settle the Dispute during the thirty (30) day period following the
3 delivery of the Dispute Notice.

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

11 (c) In the event a Dispute is not resolved pursuant to the procedures set forth in
12 Subsections 14.3 (a) and 14.3 (b) by the expiration of the thirty (30) day period set forth in
13 Subsection 14.3(a) then either Party may pursue any legal remedy available to it in accordance
14 with the provisions of Section 14.13 of this Agreement.

15 **Section 14.4 Regulatory Compliance.** Each Party hereto shall at all times
16 comply with all applicable Requirements of Law. As applicable, each Party hereto
17 shall give all required notices, shall procure and maintain all necessary governmental
18 permits, licenses, and inspections necessary for performance of this Agreement, and
19 shall pay its respective charges and fees in connection therewith.

20 **Section 14.5 No Dedication of Facilities.** Any undertaking by one Party
21 hereto to the other Party under any provisions of this Agreement shall not constitute
22 the dedication of the system or any portion thereof of either Party to the public or to
23 the other Party or any other Person, and it is understood and agreed that any such
24 undertaking by either Party shall cease upon the termination of such Party's
25 obligations under this Agreement.

26 **Section 14.6 Force Majeure.**

27 (a) Neither Party hereto shall be considered to be in default in the performance of any
28 of its obligations under this Agreement (other than the obligations of a Party to make payment of
29 amounts due under this Agreement, which are not subject to Force Majeure) when the failure of
30 performance shall be due to a Force Majeure despite all reasonable efforts of such Party to
31 prevent or mitigate its effects. A Party which is not able to perform its obligations under this
32 Agreement as a result of a Force Majeure shall give prompt, written notice including a detailed
33 description of the Force Majeure to the other Party, which notice shall include information with
34 respect to the nature, cause and date of commencement of such event, and the anticipated scope
35 and duration of the delay. The Party providing such notice shall be excused from fulfilling its
36 obligations under this Agreement to the extent and until such time that the Force Majeure has
37 ceased to prevent performance or other remedial action is taken, at which time the Party shall
38 promptly notify the other Party of the resumption of its obligations under this Agreement. If
39 Seller is unable to provide Excess Energy due to a Force Majeure, Buyer shall have no obligation
40 to pay for Excess Energy under this Agreement from the start of the Force Majeure until Seller
41 resumes delivery thereof under this Agreement. This Section 14.6 does not excuse Buyer from

1 Monthly Payments up to the time that Seller ceased deliveries of Energy due to a Force Majeure.
2 Any Party whose performance under this Agreement is hindered by a Force Majeure shall make
3 all reasonable efforts to remove and cure the Force Majeure and perform its obligations under
4 this Agreement and to mitigate the effects of the Force Majeure. It is understood by the Parties
5 that the foregoing provisions do not excuse any obligations of the Seller with respect to Shortfall
6 Energy and Replacement Energy, as provided under Article XII, caused by a Force Majeure.

7 (b) The term "Force Majeure" means any cause beyond the reasonable control of,
8 and not the result of negligence of, the Party affected or due to removable or remediable causes
9 which the affected Party fails to remove or remedy within a reasonable period of time, which the
10 affected Party, notwithstanding its exercise of due diligence, is unable to avoid and, when
11 occurred, overcome, including, but not restricted to, flood, drought, earthquake, storm, fire,
12 lightning, epidemic, war, riot, civil disturbance or disobedience, excessive wind speeds which
13 prevent the construction or safe operation of the Facility, equipment failures which require
14 lengthy repair or replacement of equipment, labor dispute, labor or material shortage, sabotage,
15 and action or inaction by, or failure to obtain the necessary authorizations or approvals from, any
16 governmental agency or authority. Nothing contained in this Section 14.6 shall be construed so
17 as to require either Party to settle a strike or labor dispute in which it may be involved. A Force
18 Majeure does not include (i) an act of negligence or wrongdoing; (ii) events arising from the
19 failure by Seller to operate and maintain the Facility in accordance with Prudent Utility Practices
20 and the standards set forth in this Agreement; (iii) an increase in the variable and fixed costs of
21 operation and maintenance of the Facility; (iv) failure of third parties to provide goods or
22 services essential to a Party's performance, unless such failure is caused by a Force Majeure;
23 (v) delays in or an inability of a Party hereto to obtain financing or (vi) economic hardship.

24 Section 14.7 Assignment of Agreement.

25 (a) Except as set forth in this Section 14.7, neither Party hereto shall assign or
26 transfer this Agreement, in whole or in part, or any of its interests hereunder to any other Person
27 without the prior written consent of the other Party hereto. Such consent shall not be
28 unreasonably withheld by either Party. Any attempt to transfer or assign this Agreement, or any
29 privilege hereunder, without such prior written consent, except as provided herein, shall be void
30 and confer no right on any Person that is not a party to this Agreement.

31 (b) Buyer's consent shall not be required for Seller to assign this Agreement to an
32 Affiliate of Seller, subject however to compliance with Section 10.3; provided that Seller
33 provides reasonable assurances and executes documents reasonably required by Buyer regarding
34 Seller's continued liability for all of Seller's obligations under this Agreement in the event of any
35 nonperformance on the part of such assignee.

36 (c) Buyer's consent shall not be required for Affiliates of Seller to assign or sell any
37 membership interest in Seller, subject to compliance with Section 10.3.

38 (d) Buyer's consent shall not be required for Seller to assign this Agreement for
39 collateral purposes to any Facility Lender; provided however that the terms of such financing and
40 the documentation relating thereto shall comply with the applicable terms and conditions of this

1 Agreement. Seller shall provide Buyer with written notice of any such assignment to any
2 Facility Lender no later than thirty (30) days after the assignment.

3 (e) To facilitate Seller's obtaining of financing to construct and operate the Facility,
4 Buyer shall provide such consents to assignment or other documents as may be reasonably
5 requested by Seller or any Facility Lender in connection with the financing of the Facility,
6 including the acquisition of equity for the development, construction and operation of the
7 Facility; provided however that the terms of such financing and the documentation relating
8 thereto shall comply with the applicable terms and conditions of this Agreement. Seller shall
9 reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct
10 expenses (including the reasonable fees and expenses of outside counsel) incurred by Buyer in
11 the preparation, negotiation, execution and/or delivery of any documents requested by Seller or
12 the Facility Lender, and provided by Buyer, pursuant to this Section 14.7(e).

13 (f) Seller may subcontract its duties or obligations under this Agreement without the
14 prior written consent of Buyer, provided, that no such subcontract shall relieve Seller of any of
15 its duties or obligations hereunder.

16 (g) Seller's consent shall not be required for Buyer to assign this Agreement to the
17 City of Los Angeles, acting by and through the Department of Water and Power, a municipal
18 corporation created under the laws of the State of California ("LADWP") or LADWP in
19 conjunction with the cities of Burbank and Pasadena, provided that at the time of assignment
20 each of the assignees shall have at least an investment grade credit rating from a national credit
21 rating agency.

22 **Section 14.8 Ambiguity.** The Parties acknowledge that this Agreement was
23 jointly prepared by them, by and through their respective legal counsel, and any
24 uncertainty or ambiguity existing herein shall not be interpreted against either Party
25 on the basis that the Party drafted the language, but otherwise shall be interpreted
26 according to the application of the rules on interpretation of contracts.

27 **Section 14.9 Attorney Fees & Costs.** Both Parties hereto agree that in any
28 action to enforce the terms of this Agreement that each Party shall be responsible for
29 its own attorney fees and costs.

30 **Section 14.10 Voluntary Execution.** Both Parties hereto acknowledge that
31 they have read and fully understand the content and effect of this Agreement that the
32 provisions of this Agreement have been reviewed and approved by their respective
33 counsel. The Parties to this Agreement further acknowledge that they have executed
34 this Agreement voluntarily, subject only to the advice of their own counsel, and do
35 not rely on any promise, inducement, representation or warranty that is not expressly
36 stated herein.

37 **Section 14.11 Entire Agreement.** This Agreement (including all
38 Appendices and Exhibits) contains the entire understanding concerning the subject
39 matter herein and supersedes and replaces any prior negotiations, discussions or
40 agreements between the Parties, or any of them, concerning that subject matter,

1 whether written or oral, except as expressly provided for herein. This is a fully
2 integrated document. Each Party acknowledges that no other party, representative or
3 agent, has made any promise, representation or warranty, express or implied, that is
4 not expressly contained in this Agreement that induced the other Party to sign this
5 document.

6 **Section 14.12 Contract Approvals.** This Agreement is contingent upon
7 Buyer obtaining the Buyer Approvals.

8 **Section 14.13 Governing Law.** This Agreement shall be interpreted,
9 governed by, and construed under the laws of the State of California without
10 consideration of conflicts of law principles.

11 **Section 14.14 Execution in Counterparts.** This Agreement may be
12 executed in counterparts and upon execution by each signatory, each executed
13 counterpart shall have the same force and effect as an original instrument and as if all
14 signatories had signed the same instrument. Any signature page of this Agreement
15 may be detached from any counterpart of this Agreement without impairing the legal
16 effect of any signature thereon, and may be attached to another counterpart of this
17 Agreement identical in form hereto by having attached to it one or more signature
18 pages.

19 **Section 14.15 Effect of Section Headings.** Section headings appearing in
20 this Agreement are inserted for convenience only and shall not be construed as
21 interpretations of text.

22 **Section 14.16 Waiver.** The failure of either Party to this Agreement to
23 enforce or insist upon compliance with or strict performance of any of the terms or
24 conditions hereof, or to take advantage of any of its rights hereunder, shall not
25 constitute a waiver or relinquishment of any such terms, conditions or rights, but the
26 same shall be and remain at all times in full force and effect.

27 **Section 14.17 Relationship of the Parties.** This Agreement shall not be
28 interpreted to create an association, joint venture or partnership between the Parties
29 hereto or to impose any partnership obligation or liability upon either such Party.
30 Neither Party shall have any right, power or authority to enter into any agreement or
31 undertaking for, or act on behalf of, or to act as an agent or representative of, the
32 other Party.

33 **Section 14.18 Third Party Beneficiaries.** This Agreement shall not be
34 construed to create rights in, or to grant remedies to, any third party as a beneficiary
35 of this Agreement or any duty, obligation or undertaking established herein.

36 **Section 14.19 Indemnification; Damage or Destruction; Insurance; Limit**
37 **of Liability.**

38 (a) Indemnification.

1 (1) Seller shall indemnify and defend the Buyer, its officers, directors and
2 employees against, and hold the Buyer, its officers, directors and
3 employees harmless from, at all times after the date hereof, any and all
4 claims incurred, suffered, sustained or required to be paid, directly or
5 indirectly, by, or sought to be imposed upon, the Buyer, its officers,
6 directors and employees for personal injury or death to persons or
7 damages to property arising out of any negligent act or omission or any
8 intentional misconduct by Seller in connection with this Agreement.
9 "Claims" in this Section means all third party claims or actions, threatened
10 or filed and, whether groundless, false, fraudulent or otherwise, that relate
11 to the subject matter of an indemnity, and the resulting losses, damages,
12 expenses, attorneys' fees and court costs, whether incurred by settlement
13 or otherwise, and whether such claims or actions are threatened or filed
14 prior to or after the termination of this Agreement.

15 (2) The Buyer shall indemnify and defend Seller, its officers, directors and
16 employees against, and hold Seller, its officers, directors and employees
17 harmless from, at all times after the date hereof, any and all Claims,
18 incurred, suffered, sustained or required to be paid, directly or indirectly,
19 by, or sought to be imposed upon, Seller, its officers, directors and
20 employees for personal injury or death to persons or damage to property
21 arising out of any negligent act or omission or any intentional misconduct
22 by the Buyer in connection with this Agreement.

23 (3) In the event injury or damage results from the joint or concurrent negligent
24 or intentional acts or omissions of both the Buyer and Seller, the Parties
25 shall be deemed to be equally liable for such injury or damages unless it is
26 established that the Parties' relative degree of fault is other than 50/50, in
27 which event each Party shall be liable in proportion to its relative degree
28 of fault.

29 (b) Damage or Destruction. In the event of any damage or destruction of the
30 Facility or any part thereof, the Facility or such part thereof shall be diligently repaired, replaced
31 or reconstructed by the Seller so that the Facility or such part thereof shall be restored to
32 substantially the same general condition and use as existed prior to such damage or destruction,
33 unless a different condition or use is approved by the Buyer. Proceeds of Insurance with respect
34 to such damage or destruction maintained as provided in this Agreement shall be applied to the
35 payment for such repair, replacement or reconstruction of the damage or destruction as provided
36 in Section 14.19(c).

37 (c) Insurance.

38 (1) Seller shall obtain and maintain the Insurance coverages listed in
39 Appendix F on the terms set forth in Appendix F. Insurance coverages for
40 jointly owned facilities shall be apportioned to the Seller in an equitable
41 manner. In the event that the cost of obtaining and maintaining coverage

1 required by this Agreement materially increases from the cost that applies
2 to such Insurance coverage as of the Effective Date, or if any risk required
3 to be insured in connection with this Agreement becomes uninsurable after
4 the Effective Date, then at Seller's request the Parties shall, using
5 reasonably prudent risk management practices and insurance industry
6 standards, revise such insurance coverages then in effect as the parties
7 mutually determine to be necessary so as to enable the Seller to provide
8 Insurance to the extent available on commercially reasonable terms.

9 (2) If at any time there shall have occurred a casualty event with respect to all
10 or a substantial portion of the Facility, all Insurance proceeds relating to
11 such event shall be paid by the insurer to an escrow agent named in the
12 insurance policy as the loss payee and deposited in an escrow account held
13 by such escrow agent. Such escrow agent shall be mutually agreed upon
14 by Buyer and Seller. Seller may request a withdrawal or transfer from the
15 escrow account by delivering to the escrow agent, with a copy to Buyer, a
16 requisition of funds no fewer than five (5) days in advance of any
17 proposed transfers or withdrawals from the escrow account. Each
18 requisition of funds shall be accompanied by a certification by a financial
19 officer of Seller to the effect that (i) the directed withdrawals, transfers or
20 payments will be used exclusively for repair, replacement or restoration of
21 the Facility and (ii) such repair, replacement, or restoration are being
22 conducted either (x) pursuant to plans and specifications that have been
23 previously approved in writing by Buyer, or (y) pursuant to such other
24 arrangements approved in writing by Buyer. Upon receipt of a requisition
25 of funds, the escrow agent shall make the withdrawals, transfers or
26 payments directed therein.

27 (d) Limitation of Liability. Neither Party will be liable to the other Party for indirect,
28 consequential or special damages, other than indemnification obligations related to third party
29 claims.

30 **Section 14.20 Severability.** In the event any of the terms, covenants or
31 conditions of this Agreement, or the application of any such terms, covenants or
32 conditions, shall be held invalid, illegal or unenforceable by any court having
33 jurisdiction, all other terms, covenants and conditions of this Agreement and their
34 application not adversely affected thereby shall remain in force and effect, provided
35 that the remaining valid and enforceable provisions materially retain the essence of
36 the Parties' original bargain.

37 **Section 14.21 Status of Review by Buyer.** Any review by Buyer of the
38 design, construction, operation or maintenance of the Facility is solely for the
39 information of Buyer. By making such review, Buyer makes no representation as to
40 the economic and technical feasibility, operational capability or reliability of the
41 Facility. Seller shall in no way represent to any third party that any such review by
42 Buyer of the Facility, including, but not limited to, any review of the design,

1 construction, operation or maintenance of the Facility by Buyer, is a representation by
2 Buyer as to the economic and technical feasibility, operational capability or reliability
3 of the Facility. Seller is solely responsible for the economic and technical feasibility,
4 operational capability and reliability thereof.

5 **Section 14.22 Confidentiality.**

6 (a) Each Party agrees, and shall cause its parent, subsidiary and affiliated
7 corporations, and its and their respective directors, officers, employees and representatives, as a
8 condition to receiving confidential information hereunder, to keep confidential all documents,
9 data, drawings, studies, projections, plans and other information, whether oral or written, that
10 relate to economic benefits to or amounts payable by either Party under this Agreement, and,
11 with respect to documents, that are clearly marked "Confidential" at the time a Party shares such
12 information with the other Party ("Confidential Information"). The provisions of this
13 Section 14.22 shall survive and shall continue to be binding upon the Parties for period of one
14 (1) year following the date of termination of this Agreement. Notwithstanding the foregoing,
15 information shall not be considered confidential which (i) was in the public domain prior to
16 disclosure, (ii) was lawfully in a Party's possession or acquired by a Party outside of this
17 Agreement, which acquisition was not known by the receiving Party to be in breach of any
18 confidentiality obligation, or (iii) developed independently by a Party based solely on
19 information that is not considered confidential under this Agreement.

20 (b) Either Party may, without violating this Subsection 14.22, disclose matters that
21 are made confidential by this Agreement:

- 22 (1) To actual or prospective, co-owners, lenders, underwriters, contractors,
23 suppliers, and others involved in construction, operation, and financing
24 transactions and arrangements for a Party or its subsidiaries, affiliates, or
25 parent, if the Party making the disclosure obtains, as a condition precedent
26 to the disclosure, a confidentiality agreement with the person, corporation,
27 or other entity to whom the disclosure is being made with terms
28 substantially the same as this Section 14.22; and
- 29 (2) To governmental officials and parties involved in any proceeding in which
30 either Party is seeking a permit, certificate, or other regulatory approval or
31 order necessary or appropriate to carry out this Agreement, but the Party
32 making the disclosure shall make reasonable efforts to restrict public
33 access to the information disclosed, by protective order or otherwise; to
34 governmental officials or the public as required by any law, regulation, or
35 order, including without limitation laws or regulations requiring disclosure
36 of financial information, information material to financial matters, and
37 filing of financial reports, but the Party making the disclosure shall make
38 reasonable efforts to restrict public access to the information disclosed, by
39 protective order or otherwise.

40 (c) Notwithstanding the foregoing or any other provision of this Agreement, Seller
41 acknowledges that Buyer, as a California municipal corporation, is subject to disclosure as

1 required by the California Public Records Act, Cal. Govt. Code §§ 6250 et. seq. ("CPRA") and
2 the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et. seq. ("Brown Act"). Confidential
3 Information of Seller provided to the Buyer pursuant to this Agreement will become the property
4 of the Buyer and Seller acknowledges that Buyer shall not be in breach of this Agreement or
5 have any liability whatsoever under this Agreement or otherwise for any claims or causes of
6 action whatsoever resulting from or arising out of Buyer's copying or releasing to a third party
7 any of the Confidential Information of Seller pursuant to the CPRA or Brown Act.

8 If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines
9 that such Confidential Information, is subject to disclosure under the CPRA, then Buyer will
10 notify the Seller of the request and its intent to disclose the documents. The Buyer, as required
11 by the CPRA, will release such documents unless the Seller timely obtains a court order
12 prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting
13 the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and
14 agrees to defend, indemnify and hold harmless Buyer from and against all suits, claims, and
15 causes of action brought against Buyer for Buyer's refusal to disclose Confidential Information
16 of Seller to any person making a request pursuant to CPRA. Seller's expenses and obligations
17 herein include, but are not limited to, all attorney's fees (both in house and outside counsel),
18 costs of litigation incurred by Buyer or its attorneys (including all actual, costs incurred by
19 Buyer, not merely those costs recoverable by a prevailing party, and specifically including costs
20 of experts and consultants) as well as all damages or liability of any nature whatsoever arising
21 out of any such suits, claims, and causes of action brought against Buyer, through and including
22 any appellate proceedings. Seller's obligations to Buyer under this indemnification provision
23 shall be due and payable on a monthly, on-going basis within thirty (30) days after each
24 submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer, as well as all
25 damages or liability of any nature.

26 (d) Notwithstanding the foregoing or any other provisions of this Agreement, Seller
27 acknowledges that Buyer shall not be in breach of this Agreement or have any liability
28 whatsoever under this Agreement or otherwise for any claims or causes or action whatsoever
29 resulting from or arising out of the disclosure by Buyer of any Confidential Information of Seller
30 that Buyer, as advised by counsel, deems to be material disclosure and discloses in connection
31 with the public offering by Buyer of its bonds or other obligations to finance payment of the
32 Prepayment Amount.

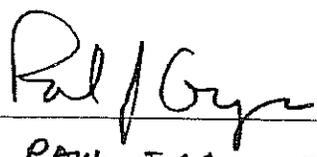
33 (e) The provisions of this Section 14.22 shall survive the expiration or termination of
34 this Agreement.

35 **Section 14.23 No Immunity Claim.** Buyer warrants and covenants that with
36 respect to its contractual obligations hereunder and performance thereof, if and to the
37 extent permitted by law to waive such immunity, it will not claim immunity on the
38 grounds of sovereignty or similar grounds with respect to itself or its revenues or
39 assets from (a) suit, (b) jurisdiction of court (including a court located outside its
40 jurisdiction), (c) relief by way of injunction, order for specific performance or
41 recovery of property, (d) attachment of assets, or (e) execution or enforcement of any
42 judgment.

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Milford Wind Corridor Phase I, LLC

Date: 16-MAR-07

By: 

Name: PAUL J CAYNOR

Its: PRESIDENT