**FORM OF BUILD-OWN-TRANSFER AGREEMENT**  
  
**by and between  
  
  
San Diego Gas & Electric Company**  
  
  
**as Purchaser  
  
  
and  
  
  
[\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]**  
  
**as Seller[[1]](#footnote-1)  
  
  
Dated as of [\_\_\_\_\_\_ \_\_\_], 2015**

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**SCHEDULES TITLE**

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10.1.2 Certain Permits and Consents to be Obtained by Seller

FORM OF BUILD-OWN-TRANSFER AGREEMENT

PREAMBLE:

THIS BUILD-OWN-TRANSFER AGREEMENT (“**Agreement**”) is made and entered into as of [\_\_\_\_\_\_\_\_\_ \_\_], 2015 (the “**Effective Date**”) by and between [\_\_\_\_\_\_\_\_\_\_\_], a [\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_] (hereinafter “**Seller**”), and San Diego Gas & Electric Company, a California corporation (hereinafter “**Purchaser**”). Purchaser and Seller are sometimes hereinafter referred to individually as a “**Party**” and together as the “**Parties**.”

RECITALS:

WHEREAS, Seller is an experienced developer of photovoltaic solar-powered electric generating facilities; and

WHEREAS, Seller has responded to Purchaser’s Request for Proposal issued April 3, 2015 and was selected by Purchaser pursuant thereto; and

WHEREAS, Seller desires to develop, construct and sell to Purchaser, and Purchaser desires to acquire and purchase from Seller, a photovoltaic solar-powered electric generating facility in San Diego County, California (as more specifically defined herein, the “**Project**”) , all in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. **DEFINITIONS AND INTERPRETATION**
   1. **Definitions** . Initially-capitalized terms used in this Agreement (including the preamble and Recitals hereto) and not otherwise defined herein shall have the meanings specified below.

“**Additional Real Property**” has the meaning set forth in Section 2.2.2.1.

“**Affiliate**” means, as to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person in question.

“**Agreement**” means this Build-Own-Transfer Agreement between Purchaser and Seller, including all Exhibits attached hereto and any amendments agreed to by the Parties.

“**Applicable Laws**” means all (a) constitutions, treaties, statutes, laws, ordinances, rules, regulations, judgments, decrees, decisions, injunctions, writs and orders of any Governmental Authority; (b) decisions of and determinations by, and interpretations of, any of the foregoing set forth in clause (a) by any Governmental Authority or arbitrator; and (c) requirements of Permits, in the case of each of the items described in clauses (a)-(c), that apply to either or both of the Parties or their Affiliates, the Project, the terms of this Agreement or otherwise to the Person or matter in question. For the avoidance of doubt, “Applicable Laws” includes rules and regulations of any independent system operator, regional transmission operator or other interconnection or transmission operator or authority (including System Operator) and of any reliability authority and any electrical specifications, grid codes and other similar requirements applicable to the Project imposed by any Governmental Authority (including any independent system operator, regional transmission operator or other interconnection or transmission operator or authority (including System Operator) or any reliability authority).

“**Approved Test Procedures**” means those tests and testing protocols set forth in Exhibit G.

“**Asset Transfer”** means the conveyance and transfer of ownership in the Project, including, without limitation, the Project Equipment, Project Warranties and real property rights in the Project Site, from Seller to Purchaser pursuant to this Agreement.

**“Asset Transfer Date”** means the date on which the Asset Transfer is effective.

“**Assigned Agreements**” has the meaning set forth in Section 3.1.10.

“**Assignment and Assumption Agreement**” means the Assignment and Assumption Agreement described in Section 4.2.1.2, to be executed by the Parties at Closing.

“**Audited Financial Statements**” has the meaning set forth in Section 5.8.

“**Bill of Sale**” means the Bill of Sale described in Section 4.2.1.1, to be executed by Seller at Closing.

“**Business Day**” means every day other than a Saturday, Sunday or a day on which banks are required or authorized by Applicable Law to close in the city of San Diego, California (U.S.).

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§9601 et seq.).

“**Closing**” has the meaning set forth in Section 4.1.

“**Code**” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated or issued from time to time thereunder.

“**Commercially Reasonable Efforts**” means efforts which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder.

“**Completion**” has the meaning set forth in Section 10.4.1.1.

“**Confidential Information**” means information or data that the disclosing Party considers to be a trade secret or competitively sensitive and may include written, verbal or visual information. In order to be considered Confidential Information, written information has to be identified at the time of the disclosure with an appropriate legend, marking, stamp or positive written identification on the face thereof as Confidential Information. In order to be considered Confidential Information, verbal or visual information hasto be so identified at the time of the verbal or visual disclosure and the disclosing Party will notify the receiving Party in writing within thirty (30) days of the disclosure and specifically identify the Confidential Information previously disclosed. Magnetic tape, computer software or any other similar type of machine readable format will be considered as a verbal disclosure and will only be considered Confidential Information to the extent the disclosing Party complies with the requirements for verbal disclosures set forth above, including the thirty (30) day notification requirement. Confidential Information does not include information or data that:

(a) was in the public domain at the time of the disclosure or is subsequently made available to the general public without restriction and without breach of this Agreement by the receiving Party;

(b) was known by the receiving Party at the time of disclosure without restrictions on its use or independently developed by the receiving Party, as shown by adequate documentation; or

(c) is disclosed to the receiving Party by a third Person without restriction and without breach of any agreement or other duty to keep the information confidential.

“**Consent**” means any consent, approval or authorization of, notice to, or designation, registration, declaration or filing with, any Person other than a Governmental Authority.

“**Construction Contract**” has the meaning set forth in Section 2.2.3.

“**Construction Contractor**” has the meaning set forth in Section 2.2.3.

“**Construction Documents**” means, collectively, (1) this Agreement; and (2) any other agreement entered into by and between Seller and any Subcontractor (of whatever tier), which agreement contains one or more warranties with respect to either the Project or any Project Equipment.

“**Control**” when used with respect to any specified Person, means the possession of the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise.

“**Corrective Action Plan**” has the meaning set forth in Section 2.2.3.2.

“**CPUC**” means the California Public Utilities Commission.

“**CPUC Approval**” means a final and non-appealable order or orders of the CPUC, without conditions or modifications unacceptable to Purchaser, that does the following:

1. Approves this Agreement in its entirety, including payments to be made by Purchaser and timely cost recovery at the commencement of the Project’s dedication to utility service, subject only to CPUC review with respect to the reasonableness of Purchaser’s administration of the Agreement, and finds Purchaser’s entry into and performance under the Agreement to be reasonable; and

2. Authorizes Purchaser to recover payments under the Agreement in utility revenue subject only to CPUC review with respect to the reasonableness of Purchaser’s administration of the Agreement.

“**CPUC Approval Advice Letter**” has the meaning set forth in Section 10.1.1.

“**Date Certain**” has the meaning set forth in Section 2.3.4.

“**Deed**” means the Deed described in Section 4.2.1.4, to be executed by Seller at Closing.

“**Deferred Component**” has the meaning set forth in Section 3.4.

“**Design Warranty**” has the meaning set forth in Section 8.3.

“**Design Warranty Period**” means the period beginning on the date of Substantial Completion and ending on the tenth (10th) anniversary thereof.

“**Direct Claim**” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

“**Disclosing Party**” has the meaning set forth in Section 10.2.

“**Disclosure Order**” has the meaning set forth in Section 10.2.

“**Dispute Representative**” has the meaning set forth in Section 14.9.1.

“**Dollar**” or “**$**”means the lawful currency of the United States of America.

“**Effective Date**” has the meaning set forth in the Preamble to this Agreement.

“**Electrical Product**” means all electrical energy and other electrical products generated by the Project.

“**Energy Model**” of the Project means the performance model developed for the Project by Seller as finally approved by Purchaser pursuant to Section 8.1 of Exhibit A.

“**Environmental Law**” means applicable federal, state, regional, county or local law, regulation, decision of the courts, ordinance, rule, code, order, directive, guideline, permit, or permit conditions which, now or in the future, relate in any way to worker or workplace safety, environmental conditions, environmental quality or policy, or health and safety issues or concerns (including product safety), as they exist now or as they may be amended in the future. “Environmental Law” includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 USC, §§9601 et seq.), the Resource Conservation and Recovery Act (42 USC, §§6901 et seq.), the Federal Water Pollution Control Act (33 USC §§1251 et seq.), the Safe Drinking Water Act (42 USC §§300 et seq.), the Hazardous Materials Transportation Act (49 USC §§1801 et seq.), the Toxic Substance Control Act (15 USC §§2601 et seq.), the Occupational Safety and Health Act (29 USC §§651 et seq.), and the Occupational Safety and Health Act of the State of California.

“**Equipment Warranties**” means warranties satisfying the warranty requirements described in Attachments 4 and 5 to the Technical Specifications.

“**Excluded Assets**” has the meaning set forth in Section 3.2.

“**Excluded Liabilities**” has the meaning set forth in Section 3.3.

“**Expected Energy Production**” has the meaning and shall be calculated using the methodology described in Exhibit G.

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

“**Final As-Built Drawings and Documentation**” means all drawings, specifications and other documentation prepared by Seller that accurately and completely represent in detail the physical placement of all Project components and systems as installed and/or constructed as at the time of Project Completion, including “as-built” surveys illustrating the established building setback lines, if any, and the location of the Project Assets on the Project Site and the Additional Real Property and within any established boundaries and setback lines.

“**Fundamental Representations**” means, with respect to Seller, those representations and warranties made in Sections 5.1.1, 5.1.2 and 5.10.5, and with respect to Purchaser, those representations and warranties made in Sections 6.1.1 and 6.1.2.

“**GAAP**” means generally accepted accounting principles of the Accounting Principles Board of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board that are applicable from time to time.

“**General Warranty**” means the warranties of Seller provided in Section 8.1.

“**General Warranty Period**” means the period commencing on the date of Substantial Completion and ending on the later to occur of (i) the tenth (10th) anniversary thereof, and (ii) with respect to any component of the Project that is altered, repaired or replaced pursuant to Seller’s warranties set forth in Section 8.1, the later of the (x) the tenth (10th) anniversary of the date of Substantial Completion or (y) the first anniversary of the date of such alteration, repair, or replacement, as the case may be, regardless of number, it being understood that the General Warranty Period shall continue with respect to any such component until one year has passed without any warranty claim being made, but not extending later than eleven (11) years after the date of Substantial Completion.

“**Governing Documents**” means the documents under which the applicable Person is organized and existing, including, in the case of a Person that is a corporation, its articles of incorporation and bylaws, in the case of a Person that is a limited liability company, the certificate filed with the jurisdiction in which it was organized and any applicable limited liability company agreement, or in the case of a Person that is a partnership, the certificate filed with the jurisdiction in which it was organized and any applicable partnership agreement.

“**Governmental Authority**” means any national, state, local or other governmental, quasi-governmental, regulatory, judicial, administrative, public or statutory instrumentality, tribunal, agency, commission, authority, body or entity (including any independent system operator, regional transmission operator or other interconnection or transmission operator or authority, including System Operator, and any reliability authority), or any political subdivision thereof, lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, policy, regulatory or taxing authority or power over the matter or Person in question.

“**Guaranteed Dates**” means each of the Guaranteed Permitting Completion Date and the Guaranteed Mechanical Completion Date.

“**Guaranteed Expected Energy Production**” has the meaning set forth in Section 2.6.1.2.

“**Guaranteed Mechanical Completion Date**” has the meaning set forth in Section 2.3.2.

“**Guaranteed Permitting Completion Date**” has the meaning set forth in Section 2.3.1.

“**Guaranteed Project Completion Date**” has the meaning set forth in Section 2.3.3.

“**Guaranteed Power Output**” has the meaning set forth in Section 2.6.1.1.

“**Hazardous Materials**” means any chemical, substance, material, controlled substance, object, product, by-product, residual, condition, solid or hazardous waste or combination thereof which is hazardous to human health or safety or the environment due to its ignitability, corrosivity, reactivity, toxicity, or other harmful or potentially harmful properties or affects. “Hazardous Materials” include, without limitation, any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, and substances defined as “hazardous substances,” “hazardous material,” “hazardous wastes,” or “toxic substances” in, under or pursuant to any Environmental Law. “Hazardous Materials” shall also include oil or petroleum and petroleum products, asbestos, and any asbestos containing materials, radon, polychlorinated biphenyls (PCBs), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which now are, or become in the future, listed, defined or regulated in any manner by any Environmental Law. For purposes of this Agreement, the terms “encumbrance” and “encroachment” shall not be deemed to include the presence of any Hazardous Material contamination on, in or under the property or its underlying groundwater.

“**Indemnifiable Loss**” means any damages, losses, liabilities, obligations, costs, fines, penalties, fees and expenses, and any claims, demands or suits (by any Person, including any Governmental Authority), including the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises relating thereto and including reasonable attorneys’ fees and expenses in connection therewith.

“**Indemnitee**” has the meaning set forth in Section 11.4.

“**Indemnitor**” has the meaning set forth in Section 11.4.

“**Initial Component**” has the meaning set forth in Section 3.4.

“**Initial Spare Parts**” has the meaning set forth in Section 2.4.

“**Insolvent**” means, with respect to a Person, that such Person (a) files a petition or otherwise commences, or authorizes the commencement of, a proceeding or cause under any bankruptcy, insolvency, receivership or similar law for the protection of creditors, or (b) has such a petition filed or proceeding commenced against it, which petition or proceeding remains undismissed for sixty (60) days, or (c) files an answer or pleading admitting or failing to contest the material allegations of any such petition, or (d) takes any action for its winding up, liquidation or dissolution, or (e) is otherwise adjudged bankrupt or insolvent under any bankruptcy, insolvency, receivership or similar law for the protection of creditors, or (f) consents to any of the actions described in clauses (a) through (e) of this definition being taken against it.

“**Insurance Requirements**” means the applicable requirements of any insurance policy carried (or required to be carried) by Seller or any Subcontractor as set forth in Article 7.

“**Intellectual Property**” means all (a) recognized protectable intellectual property existing from time to time under any laws or regulations, including patents, copyrights, copyrightable works, corporate names, logos, slogans, trade names, trademarks, trade dress, service marks, applications for any of the foregoing, software, firmware, trade secrets, mask works, industrial design rights, rights of priority, know how, design flows, methodologies and any and all intangible protectable proprietary information that is legally recognized and (b) algorithms, designs, drawings, formulae, know-how, ideas, concepts, inventions, plans, processes, software, techniques, tools, trade secrets, hardware, works of authorship, and other technology, whether or not protectable by any form of intellectual property rights.

“**Interconnection Agreement**” means [*refer to IA entered into between Seller and SDG&E as utility distribution provider*].

“**Interconnection Facilities**” has the meaning set forth in Section 2.2.2.3.

“**Interconnection Point**” has the meaning given to such term in the Interconnection Agreement.

“**ITC**” means the investment tax credit available to Purchaser with respect to the Project pursuant to 26 USC §48.

“**Latent Defects**” means a defect in the Project or any of the Project Assets which has not been disclosed in writing to Purchaser and is not readily observable by a Person who: (a) is generally knowledgeable in the operation, maintenance and management of photovoltaic solar—powered electric generation facilities similar to the Project that are operated in accordance with Prudent Solar Industry Practices and (b) has not operated or maintained the Project or the specific Project Asset.

“**Lien**” means, with respect to any property or asset, any mortgage, deed of trust, lien, stop notice, pledge, claim, charge, security interest, or encumbrance of any kind in respect of such property or asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“**Losses**” means any and all claims, causes of action, judgments, demands, damages, fines, losses, liabilities, offsets, interest, awards, penalties and costs and expenses, including reasonable attorneys’ fees (including fees and disbursements of in-house and outside counsel), court costs and other reasonable costs of suit, administrative proceedings, administrative investigations, litigation, arbitration, dispute resolution or other similar proceedings, including for injury, illness or death and including those owed to third parties.

“**Manuals**” means the manuals and other documents prepared by Seller (or any of its subcontractors) pursuant to Section 1.2.10 of the Technical Specifications.

“**Mechanical Completion**” means when, except for minor punch list items acceptable to Purchaser that do not affect the performance or reliability of the Project and for which arrangements satisfactory to Purchaser are in place that will correct such items, (a) all materials, systems and equipment comprising the Project have been installed and calibrated in accordance with the Contract Documents; and (b) the Project is ready to commence testing and operations.

“**Monthly Reports**” has the meaning set forth in Section 2.2.7.

“**Notice of Claim**” has the meaning set forth in Section 11.4.

“**O&M Agreement**” means that certain Operation and Maintenance Agreement in the form attached as Exhibit L to be executed by Seller and Purchaser at the Closing.

“**Party**” and “**Parties**” have the meanings given in the Preamble to this Agreement.

“**Performance Guarantees**” has the meaning set forth in Section 2.6.1.

“**Permit**” means each and every national, state, local or other license, consent, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, permit or other approval with, from or of any Governmental Authority, including each and every environmental, construction, operating or occupancy permit, other than the CPUC Approval.

“**Permitted Encumbrances**” means (a) Liens for Taxes and other governmental charges and assessments which are not yet delinquent, (b) statutory Liens (including mechanics’ and materialmen’s liens and other like Liens) arising in the ordinary course of business securing payments not yet delinquent, (c) all exceptions set forth in the Preliminary Title Report that Purchaser deems, in its reasonable discretion, are not material in amount, individually or in the aggregate, or could not detract other than in an immaterial respect from the value of, or impair other than in an immaterial respect the existing or proposed use of the Project or the Project Assets affected by such exception, and (d) Liens, encumbrances or title imperfections with respect to the Project or the Project Assets created by or resulting from the acts or omissions of Purchaser.

“**Person**” or “**Persons**” means any natural person, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, Governmental Authority or any other entity.

“**Power Output**” has the meaning set forth in Exhibit G.

“**Power Output Test**” means the five (5) day capacity test to test the Power Output of the Project as more fully set forth in Exhibit G.

“**Pre-Closing Environmental Conditions**” means those Hazardous Materials present in the soil or groundwater or both, or in above-ground or underground structures, equipment, fixtures or personal property, at the Project Site or the Additional Real Property that were present in the soil or groundwater or both, or in above-ground or underground structures, equipment, fixtures or personal property, at the Project Site or the Additional Real Property on or prior to the Asset Transfer Date, and any migration or release of those Hazardous Materials.

“**Preliminary Title Report**” has the meaning set forth in Section 10.5.

“**Project**” means the photovoltaic solar generating facility to be developed, built and transferred to Purchaser by Seller pursuant to this Agreement, as generally described in Exhibit A.

“**Project Assets**” has the meaning set forth in Section 2.2.2.

“**Project Completion**” means the date on which each of the following has occurred, as set forth in a certificate of Seller, countersigned by Purchaser: (a) the conditions to Substantial Completion have been and remain satisfied or, if the Performance Guarantees have not been fully satisfied despite Seller’s best efforts to repair or replace Project Equipment, the Purchase Price shall have been reduced as provided in Section 3.5; (b) all punchlist items and other minor items of work associated with the Project that were not completed as of Substantial Completion shall have been completed to Purchaser’s satisfaction; (c) Seller shall have delivered to Purchaser (i) all Final As-Built Drawings and Documentation, and (ii) copies of final lien waivers executed by the Construction Contractor, if any, and each other Subcontractor that has furnished more than $100,000 of goods and services for the Project individually or in the aggregate; (d) there shall be no Liens on the Project or any Project Assets other than Permitted Encumbrances; and (e) there shall be no material outstanding warranty claims under Article 8.

“**Project Equipment**” means all materials, equipment (including photovoltaic panels, inverter, mounting system, meteorological and performance monitoring instruments, and control panels) and other items incorporated into the Project by Seller or any of its Subcontractors and all services and other work performed by Seller and any of its Subcontractors in connection with such materials, equipment and other items.

“**Project Milestones**” has the meaning set forth in Section 2.3.6.

“**Project Site**”means the site of the Project as described on Exhibit F.

“**Project** **Warranties**” means the warranties to be provided to Purchaser with respect to the Project and the component pieces thereof pursuant to the Construction Documents, including those set forth in Sections 8.1 and 8.3.

“**Prudent Solar Industry Practices**” means, those practices, methods, equipment, specifications and standards of manufacture, safety, performance, dependability, efficiency and economy, as the same may change from time to time, as are commonly used, and generally recognized, by reputable, international, professional solar photovoltaic equipment manufacturers, suppliers, construction firms and service and maintenance firms performing services for, or supplying components or equipment to, solar generation projects of similar type and size, and having geographical attributes similar to, the Project, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, are considered good, safe and prudent practice in connection with the design, supply, installation, service and use of solar power generation equipment, facilities and improvements, and that would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition.

“**Purchase Price**” means [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] Dollars [($\_\_\_\_\_\_\_\_\_\_\_)], as such amount may be adjusted pursuant to Section 3.5.

“**Purchaser**” has the meaning set forth in the Preamble to this Agreement.

“**Purchaser Claims**” has the meaning set forth in Section 11.2.1.

“**Purchaser Group**” means the following Persons, individually and collectively: Purchaser and Purchaser’s Affiliates, and its and their respective officers, directors, managers, shareholders, members, employees, agents and representatives.

“**Purchaser’s Written Approval**” means the right of Purchaser to review and approve of an aspect of the development of the Project or another matter as expressly specified in this Agreement. Seller shall seek in writing Purchaser’s Written Approval as specified in this Agreement by the dates specified in this Agreement (or if a date is not specified, when Seller reasonably requests), and Purchaser shall provide its approval, or its denial thereof, within ten (10) Business Days (unless another period is specified herein) of such submission. If Purchaser determines to deny its approval, it shall provide a brief written summary of the reasons for its determination. Purchaser’s Written Approval of any aspect of the development of the Project (whether deemed or actual) shall not affect Seller’s obligation to provide the complete fully operational Project in accordance with the requirements of this Agreement or any of Seller’s other obligations hereunder, or constitute a waiver of Purchaser’s rights with respect thereto. Each Purchaser’s Written Approval is given by Purchaser in reliance upon, and subject to, full and satisfactory performance by Seller of its obligations hereunder.

“**Regulatory Disclosures**” has the meaning set forth in Section 10.2.

“**Related Agreements**” means the Assignment and Assumption Agreement, the O&M Agreement and the Bill of Sale.

“**Remediation**” means any or all of the following activities to the extent they relate to or arise from the presence of Hazardous Materials in the soil or groundwater or both, or in above-ground or underground structures, equipment, fixtures or personal property, at the Project: (i) performing any activities that are remedial or removal actions under CERCLA, or result in response costs as defined under CERCLA, including monitoring, investigation, cleanup, containment, remediation, removal, mitigation, response or restoration work; (ii) obtaining any Permits or Consents necessary to conduct any such work; (iii) preparing and implementing any plans or studies for such work; (iv) obtaining a written notice from all Governmental Authorities with jurisdiction over the Project Site or the Additional Real Property under Environmental Laws that no material additional work is required by such Governmental Authority; and (v) any other activities reasonably determined by Seller to be necessary or appropriate or required under Environmental Law to address the presence of Hazardous Materials.

“**Section 203 Approval**” means an order issued by FERC approving the transfer of any Project Asset to Purchaser to the extent any Party determines that such approval is required by Section 203 of the Federal Power Act and the regulations issued thereunder.

“**Seller**” has the meaning set forth in the Preamble to this Agreement.

“**Seller Claims**” has the meaning set forth in Section 11.3.1.

“**Seller Group**” means (a) Seller, (b) its owners (direct and indirect) and Affiliates, (c) the Subcontractors, (d) any other Person (including any entity) employed by any of them or for which any of them is responsible or liable, and (e) without limiting the generality of clauses (a)-(d) of this definition, the respective directors, officers, employees and agents of the Persons described in clauses (a)-(d) of this definition.

“**Seller Permits**” has the meaning set forth in Section 2.5.1.

“**Serial Failure**” has the meaning set forth in Section 8.5.

“**Subcontract**” means any contract, agreement, purchase order, arrangement or understanding with a Subcontractor in respect of any of the obligations of Seller hereunder.

“**Subcontractor**” means (a) any subcontractor (of any tier) that performs services or work for Seller in connection with the Project and (b) any supplier (of any tier) of equipment to Seller or its Affiliates or Subcontractors in connection with the Project.

“**Substantial Completion**” means the achievement of each of the following, as set forth in a certificate of Seller, countersigned by Purchaser: (a) Mechanical Completion has occurred and is continuing; and (b) the Power Output Test has been completed and the Project has achieved the Performance Guarantees.

“**System Operator**” means the California Independent System Operator or any future successor agency.

“**Tax Claim**” has the meaning set forth in Section 10.3.5.

“**Taxes**” means all taxes, assessments, customs, charges, tariffs, imposts, duties, fees, levies and other governmental charges effective or enacted as of the Effective Date or thereafter, including income, corporate, capital gains, franchise, capital stock, ad valorem (including real property and personal property taxes levied or imposed on the value of real or personal property), utility, tangible, withholding, employment, payroll, social security, social contribution, unemployment compensation, disability, national insurance, transfer, sales, use, fuel, excise, gross receipts, net worth, value-added, stamp, import, customs, and all other taxes, assessments, customs, charges, tariffs, imposts, duties, fees, levies and other governmental charges of any kind, and any charges, interest, additions to tax, penalties, or any other amounts imposed by any Governmental Authority, whether such amounts are normally included in the purchase price of an item or service or are normally stated separately.

“**Technical Specifications**” means the Technical Specifications for the Project set forth in Exhibit H.

“**Third Party Claim**” means a claim by a Person that is not a member of the Seller Group or the Purchaser Group, including any claim for the costs of conducting Remediation or seeking an order or demanding that a Person undertake Remediation.

“**Title Company**” means a recognized title insurance company selected by Purchaser.

“**Turnover Package**” means the Turnover Packages described in Section 9.1 of the Technical Specifications.

“**Unit Price**” means the quotient, expressed in dollars, of (x) the Purchase Price, divided by (y) [*insert Project’s Nameplate Rated Capacity in kWdc*].

* 1. **Recitals, Articles, Sections and Exhibits** . References to Recitals, Articles, Sections and Exhibits are, unless otherwise indicated, to Recitals of, Articles of, Sections of and Exhibits to, this Agreement. All Exhibits attached to this Agreement are incorporated herein by this reference and made a part hereof for all purposes. References in this Agreement to an Exhibit shall mean the referenced Exhibit and any sub-exhibits, sub-parts, components or attachments included therewith.
  2. **Technical Meanings** . Words, abbreviations, numerical symbols and measurement symbols not defined in this Agreement but that have well-known technical or design, engineering or solar power industry meanings, are used in this Agreement in accordance with such meanings.
  3. **Headings** . The headings of Articles, Sections and subsections are for convenience only and shall be ignored in construing this Agreement.
  4. **Precedence** . In the event of any conflict between the provisions in the body of this Agreement and any Exhibit or between the provisions of any Exhibit and any other Exhibit, the order of precedence shall be as follows:

1. The body of this Agreement; and
2. The Exhibits in the following order of priority: [to come].

Notwithstanding the above, the provisions of this Agreement, including all Exhibits, shall be, wherever possible, construed as complementary rather than conflicting.

* 1. **Gender** .As used in this Agreement, the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa.
  2. **Successors and Assigns** .Unless expressly stated otherwise, references to a Person include its successors and permitted assigns and, in the case of a Governmental Authority, any Person succeeding to its functions and capacities.
  3. **Day** .As used in this Agreement, references to “days” shall mean calendar days, unless the term “Business Days” is used. If the time for performing a payment or notice obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day. All periods of time shall be based on, and computed according to, the Gregorian calendar.
  4. **Grammatical Forms** .As used in this Agreement, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; the terms “hereof,” “herein,” “hereunder” and similar words refer to this entire Agreement (and as this Agreement may be varied, amended, substituted, novated, assigned or otherwise transferred from time to time as permitted by this Agreement) and not to any particular Article, Section, Exhibit or any other subdivision of this Agreement; “including” means “including, for example and without limitation,” and other forms of the verb “to include” are to be interpreted similarly.
  5. **References to Documents** .As used in this Agreement, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as amended, supplemented, restated or otherwise modified from time to time. Any term defined or provision incorporated in this Agreement by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.
  6. **References to Laws** .Any reference to Applicable Laws and Environmental Law and to terms defined in, and other provisions of, Applicable Laws and Environmental Law (including those set forth electronically on an internet web site) shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.
  7. **Writing Required** .Provisions of this Agreement that include the word “agree,” “agreed” or “agreement” require the agreement to be recorded in writing and signed by Purchaser and Seller.
  8. **Computation of Time Periods** .In the computation of periods of time specified in any notice, such periods shall be exclusive of the day on which the notice was given or was deemed to be given and inclusive of the last day on which the event or action specified in such notice is due to occur or be taken.

1. **DEVELOPMENT AND CONSTRUCTION OF THE PROJECT**
   1. **Development of Project for Sale to Purchaser** . Subject to all the terms and conditions of this Agreement, Seller shall develop the Project (including obtaining the Project Site and all other necessary real property interests, Permits and Consents required to develop, construct, test and operate the Project), finance the Project, and cause the Project to be constructed and commissioned, to have achieved Mechanical Completion, all on a turnkey basis at its own risk and at no cost or expense to Purchaser other than indirectly through its payment of the Purchase Price, all as further described in this Article 2. Subject to the satisfaction of the conditions precedent to Closing set forth in Articles 12 and 13, including achievement of Mechanical Completion, at Closing Seller will sell, transfer, assign and deliver the Project to Purchaser (the “**Asset Transfer**”), and Purchaser will purchase and accept the Project and pay to Seller the Initial Component of the Purchase Price, all as further described in Article 3. In addition, after Closing, Seller shall cause the Project to achieve Substantial Completion, successfully pass the Power Output Test, satisfy the Performance Guarantees, and achieve Project Completion, all by not later than forty-five (45) days after Closing, whereupon Purchaser will pay Seller the Deferred Component of the Purchase Price, as further described in Article 3.
   2. **Seller’s Development Obligations** . As between the Parties, Seller shall be solely responsible for, and Purchaser shall have no obligation or liability with respect to, the development, financing, construction, completion, testing and readying for commercial operation and transfer to Purchaser of the completed, integrated, fully operational Project, it being understood that Purchaser had engaged Seller to perform all such activities, as well as all other activities and services that may be necessary or appropriate for Seller to provide the completed Project to Purchaser. Seller’s development obligations shall include the following:
      1. Project Planning and Administration . Preparing all Project development plans and studies, entering into all arrangements for professional and development services, negotiating and entering into all contracts, agreements and leases (including the Assigned Agreements, each of which shall be subject to Purchaser’s Written Approval), maintaining the books, documents and records pertaining to the Project, and performing or causing to be performed all administrative services, in each case necessary or appropriate for Seller to provide the completed Project to Purchaser;
      2. Asset Acquisition . Acquiring all assets (whether tangible or intangible), rights, agreements, Permits, Consents and other interests required for the construction, commissioning, completion, testing and operation of the Project by Seller and for the ownership, maintenance and commercial operation of the Project by Purchaser (the “**Project Assets**”), all as contemplated by this Agreement, including, but not limited to:
         1. All real property rights and interests, including fee simple title (or a leasehold interest under a ground lease having a term of not less than seventy-five (75) years and other terms and conditions acceptable to Purchaser in its sole discretion) with respect to the Project Site, and all other easements, rights-of-way and interests in real property on which the other physical components of the Project are located, including interests on which any Interconnection Facilities are located, on terms acceptable to Purchaser in its reasonable discretion (collectively, the “**Additional Real Property**”);
         2. All improvements, buildings, structures and equipment constituting part of the Project located on the Project Site or the Additional Real Property;
         3. all interconnection and transmission facilities required to deliver Electrical Product from the Project to the Interconnection Point, including those described in Exhibit I (the “**Interconnection Facilities**”);
         4. All books, records, documents, drawings, reports, operating data, computer programs, Initial Spare Parts and other tangible and intangible personal property necessary for the Project and its components to operate as contemplated by this Agreement including subcontracts, correspondence, commissioning turnover packages, startup logs, test results and as-builts; and
         5. All Permits and Consents (other than the CPUC Approval), each of which shall be subject to Purchaser’s Written Approval.
      3. Project Construction . Causing the Project to be constructed and (a) prior to Closing, achieving Mechanical Completion, and (b) after Closing, tested, completed and be ready for placement into commercial operation. If Seller enters into a construction with another Person for construction of the entire or a substantial portion of the Project (the “**Construction Contract**”), the contractor thereunder (the “**Construction Contractor**”) shall be an entity acceptable to Purchaser in its reasonable discretion based on Purchaser’s assessment of the Construction Contractor’s past performance and general suitability to construct the Project. The Construction Contract must at a minimum include warranties regarding materials, workmanship and design of the Project consistent with those set forth in Sections 8.1 and 8.3. The Construction Contract shall also include a detailed scope of work/technical specification for the Project that is consistent in form and substance with the Technical Specifications. Seller and Purchaser also agree with respect to the Construction Contract as follows:
         1. Seller shall afford Purchaser reasonable opportunity to review and comment on any materials submitted by the Construction Contractor to Seller for review or approval.
         2. Seller shall cause the Construction Contractor to provide Purchaser (including any engineering or other consultant engaged by Purchaser) with rights coextensive with those afforded Seller under the Construction Contract (and otherwise acceptable to Purchaser) to inspect the work performed under the Construction Contract, including the manufacture of major equipment components of the Project. In connection with such rights, Seller grants to Purchaser a specific right of access to the Project and the Project Site and the Additional Real Property to monitor and inspect the development and operation of the Project, as further described in Section 7.1. Seller will additionally cause the Construction Contractor (if any) to grant Purchaser a specific right of access to the Project and the Project Site and Additional Real Property during any time period in which Construction Contractor has control of the Project consistent with Purchaser’s right of access set forth in Section 7.1. Purchaser’s inspection rights described hereunder shall include, but not be limited to, receipt of regular (at least monthly) construction reports, attendance at regular (at least monthly) progress meetings, and the right to inspect the work (on-site and at equipment manufacturing facilities). In the event Purchaser reasonably concludes based on its review of construction reports, attendance at progress meetings and inspection of work that Seller is not making substantial progress towards completion of a particular Project Milestone or completion of the Project in accordance with the Project Milestones, Seller shall implement a corrective action plan acceptable to Purchaser to meet the Project Milestone(s) and other requirements of the Agreement (each, a “**Corrective Action Plan**”). Seller thereafter shall diligently comply with such Corrective Action Plan. Purchaser’s agreement with such Corrective Action Plan shall not affect any of Purchaser’s rights or Seller’s obligations under this Agreement.
         3. No observations or inspections by Purchaser (including any engineering or other consultant engaged by Purchaser), nor any approval, acceptance or comment by Purchaser, shall be construed to impose on Purchaser any control of any portion of Seller’s activities under this Agreement, or relieve Seller or the Construction Contractor (if any) of any of its duties, liabilities or obligations under this Agreement or the Construction Contract, as applicable. Purchaser shall not be liable to Seller, the Construction Contractor or any other Person in connection with the rendering of any statement, comment, approval or other service contemplated under this Agreement or the Construction Contract.
         4. Seller shall cause the terms of the Construction Contract (if any) to provide that the Construction Contract may be assigned to Purchaser at the request of Purchaser following a default hereunder by Seller entitling Purchaser to terminate this Agreement pursuant to Section 14.13. Upon any such assignment, Purchaser will perform and be responsible for any obligation of the owner thereunder arising from and after the date of the assignment, and Seller shall remain responsible for the payment and performance of any liabilities and obligations arising prior to the date of the assignment.
      4. Interconnection Facilities . Constructing or causing to be constructed the Interconnection Facilities, and arranging, entering into and fulfilling its obligations under the Interconnection Agreement and related agreements (including special facilities agreements) required to interconnect the Project and deliver electricity to Purchaser’s transmission system at the Interconnection Point. Seller shall be responsible for paying all costs due under such agreements incurred or payable through and including the Asset Transfer Date, including costs of any required interconnection facilities and system upgrades payable under each interconnecting utility’s and the System Operator’s tariffs.
      5. Operating and Maintenance Manual . Not later ninety (90) days after system turnover, Seller shall submit for Purchaser’s Written Approval a draft of the complete equipment and system instructions and procedures for the operation and maintenance of the Project (or specified subset of equipment, as the context requires) described in Section 7.4 of the Technical Specifications at the capacity, efficiency, safety and reliability levels contemplated by this Agreement, including the Technical Specifications, each Subcontractor’s, manufacturer’s, vendor’s, and supplier’s recommended spare parts lists, all safety information and any precautionary measures for the Project. If Purchaser does not approve the draft, it shall provide comments thereon to Seller within thirty (30) days after receipt, and Seller promptly shall incorporate or otherwise respond to Purchaser’s comments and submit a revised draft for Purchaser’s Written Approval. Such procedure shall be repeated until receipt of Purchaser’s Written Approval therefor. Not later than one (1) month before such scheduled commencement, Seller shall prepare in individually numbered bound volumes and deliver to Purchaser three (3) hard copy sets of such approved operating manual for the Project, as well as a complete electronic copy.
      6. Training . Seller shall provide comprehensive training prior to the commissioning of the Project as set forth in Exhibit J.
      7. Development Schedules and Monthly Reporting . Seller shall develop an integrated level 3 schedule covering the development, engineering, design, procurement, manufacturing, construction, start-up and testing, and commissioning activities for the Project to be provided to Purchaser. Such schedule shall also show the Project’s critical path(s) and include all Project Milestones and Purchaser interfaces. Seller shall develop and maintain additional schedules related to engineering, design, permitting, procurement, manufacturing of major components, and start-up and testing as required to monitor, manage and control the development of the Project, covering work to be performed by Seller and the Construction Contractor (if any). These additional schedules shall be provided to Purchaser for informational purposes. Seller shall also provide reasonably detailed and updated written progress reports to Purchaser not less than once per month (“**Monthly Reports**”) regarding the status of development activities and describing the work performed and all milestones achieved during the month, including (1) procurement, permitting and engineering status, (2) change order status, (3) quality issues including non-conformances and dispositions, (4) safety and industrial relations, (5) descriptions of the development/construction work and related milestones anticipated to be performed or achieved by the next month and (6) identifying significant achievements and describing development problems or other matters that could result in any delays (and proposed mitigation efforts to overcome such development problems or delays). The Monthly Reports shall also include a schedule showing progress to date, any failures to meet the current schedule of activities and a forecast of activities remaining to be performed according to the schedules described in this Section 2.2.7, the monthly progress reports of the Construction Contractor (if any), and any other information reasonably requested by Purchaser. Seller shall meet with Purchaser on a monthly basis to discuss the contents of the Monthly Reports and other aspects of the work on the Project and shall also timely meet with Purchaser at such other times as Purchaser reasonably requests to discuss the Project and its development.
      8. Submittals Generally . Seller shall comply with Section 7 of the Technical Specifications with respect to all submittals to be provided to Purchaser pursuant to the Contract Documents.
   3. **Guaranteed Dates** .
      1. Guaranteed Permitting Completion Date . Seller shall have acquired all Permits necessary for the performance of its obligations under this Agreement (other than the Section 203 Approval), and all such Permits shall be final and non-appealable, by not later than December 31, 2015 (the “**Guaranteed Permitting Completion Date**”).
      2. Guaranteed Mechanical Completion Date . Seller shall cause Mechanical Completion to occur by not later than [\_\_\_\_\_\_\_\_] (the “**Guaranteed Mechanical Completion Date**”).
      3. Guaranteed Project Completion Date . Seller shall cause Project Completion to occur by not later than [\_\_\_] days after achieving Mechanical Completion (the “**Guaranteed Project Completion Date**”).
      4. Delays in Achieving Guaranteed Dates . If the milestone required by the Guaranteed Permitting Completion Date or the Guaranteed Mechanical Completion Date is not achieved within thirty (30) days after such date (each, a “**Date Certain**”), Purchaser may, upon five (5) days’ prior written notice to Seller, elect to terminate this Agreement without liability or further obligation of any kind on the part of Purchaser.
      5. Force Majeure Extension of Guaranteed Dates . The Guaranteed Dates and each Project Milestone shall be extended on a day-for-day basis, but not to exceed sixty (60) days, to the extent that such Project Milestone(s) or the milestone required by a Guaranteed Date is delayed as a result of a Force Majeure Event pursuant to Section 10.6.
      6. Project Milestones . Seller shall cause the development and construction of the Project to meet the schedule of project milestones set forth on Schedule 2.3.6 (“**Project Milestones**”), as such Project Milestones may be extended pursuant to Section 2.3.5. In the event that Seller fails to meet the scheduled deadline for any Project Milestone described in Schedule 2.3.6, or it becomes apparent to Seller or Purchaser that Seller will fail to meet such a deadline, Seller shall develop a Corrective Action Plan reasonably acceptable to Purchaser demonstrating that each Guaranteed Date will occur by not later than the applicable Date Certain and Seller will implement the Corrective Action Plan as described in Section 2.2.3.2.
   4. **Spare Parts** . Seller shall procure the start-up and operating spare parts needed for construction, start-up, testing and initial operation of the Project through the Asset Transfer Date. In addition, Seller shall at Asset Transfer convey to Purchaser the operating spare parts that would customarily be maintained for facilities similar to the Project in accordance with Prudent Solar Industry Practices (including those set forth on Schedule 2.4) (collectively, the “**Initial Spare Parts**”). Seller shall submit to Purchaser for Purchaser’s Written Approval a recommended list of Initial Spare Parts at least two (2) months prior to the scheduled Asset Transfer Date. Purchaser may require Seller to purchase additional Initial Spare Parts, provided that the Purchase Price shall be increased by the supplier-invoiced cost thereof. Seller shall use all reasonable efforts to secure the lowest pricing obtainable for such additional Initial Spare Parts. All Initial Spare Parts supplied hereunder shall be new and properly packaged for storage and shall be subject to the warranty provisions in Article 8.
   5. **Permits** .
      1. Seller Permits . Seller shall obtain, pay for and maintain all Permits required to allow Seller to lawfully fulfill its obligations under this Agreement and otherwise carry out its business affairs as contemplated hereby (the “**Seller Permits**”) and shall secure each Seller Permit no later than the time such Seller Permit is required. Purchaser shall, at no cost or expense to it, cooperate with Seller’s reasonable requests to assist Seller in obtaining Seller Permits. Seller shall deliver copies to Purchaser of each Seller Permit promptly after receipt thereof. Seller shall perform all its obligations in compliance with all Seller Permits and all Purchaser Permits.
      2. Cooperation for CPUC Approval . To the extent reasonably requested by Purchaser, Seller shall provide administrative support to Purchaser with respect to obtaining the CPUC Approval.
   6. **Performance Guarantees** .
      1. Performance Guarantees . Seller guarantees that the Project will satisfy the following performance specifications (collectively, the “**Performance Guarantees**”), including any adjustments to reflect deviations from Standard Test Conditions (as defined in the Technical Specifications) to be calculated as set forth in the Approved Test Procedures. Seller agrees to exhaust all reasonable repair and replacement alternatives in order that the Project (or the designated components thereof, as applicable) fully attains the Performance Guarantees. If Seller exhausts all reasonable repair and replacement alternatives but only the Minimum Performance Guarantees are satisfied, then the Purchase Price shall be reduced as set forth in Section 3.5.
         1. Guaranteed Power Output . The Project’s Power Output shall average not less than ninety-three percent (93%) of the modeled Guaranteed Power Output over the course of a single Power Output Test (“**Guaranteed Power Output**”).
         2. Guaranteed Expected Energy Production . The Project’s Expected Energy Production for the first twelve (12)-month period commencing on the date of Substantial Completion shall be not less than ninety percent (90%) of the modeled Expected Energy Production (“**Guaranteed Expected Energy Production**”).
2. PURCHASE AND SALE OF PROJECT
   1. **Purchase and Sale of Project** . At the Closing, subject to the terms and conditions of this Agreement, including satisfaction (or waiver by the Party entitled thereto) of the conditions precedent to Closing set forth in Articles 12 and 13, Seller will sell, convey, assign, transfer and deliver, and Purchaser will purchase and acquire from Seller, free and clear of any Liens or encumbrances other than Permitted Encumbrances, all of Seller’s right, title and interest in and to the Project and the Project Assets, including the following:
      1. the assembled photovoltaic panels, inverters, mounting system, combiners, meteorological and performance monitoring instruments, control panels and other Project Equipment;
      2. the Interconnection Facilities, including those items described on Schedule 3.1.2;
      3. all equipment, facilities, inventory, machinery, engines, goods, supplies, furniture, fixtures, keys, furnishings, tools, spare parts, computer hardware, software and other tangible personal property relating to the operation of the Project, and all warranties and guarantees, express or implied, existing for the benefit of Seller in connection with the foregoing, including those items listed on Schedule 3.1.3;
      4. the Initial Spare Parts, including those listed on Schedule 3.1.4;
      5. all real property interests and real property leasehold interests required for or associated with the ownership or operation of the Project, including the Project Site, the Additional Real Property and the other items listed on Schedule 3.1.5, together with all improvements, structures and fixtures thereon, and all easements, privileges, rights-of-way, lands underlying any adjacent streets or roads, appurtenances, licenses and other rights pertaining to or accruing to the benefit of such property, subject only to Permitted Encumbrances;
      6. all Permits associated with or necessary for the development, construction, ownership or operation of the Project and all pending applications therefor or renewals thereof, including those Permits listed on Schedule 3.1.6 ( subject to Section 10.1.3);
      7. all Consents associated with or necessary for the development, ownership or operation of the Project and all pending applications therefor or renewals thereof, including those Consents listed on Schedule 3.1.7;
      8. all intellectual property rights associated with the Project or required for the ownership or operation of the Project, including licenses, patents, trademarks, copyrighted materials, know-how, trade secrets, confidential or proprietary information, technical information, blueprints, software and process technology, including the Intellectual Property set forth on Schedule 3.1.8;
      9. all rights and entitlements under any written or oral contract, agreement, plans or specifications, instrument, registration, license, franchise, certificate of occupancy, or other document, commitment, arrangement, undertaking, practice, or authorization and any intangible property rights (including goodwill and going concern value) primarily associated with or constituting a part of the Project;
      10. all of Seller’s right, title and interest in, to and under each of the contracts, agreements, purchase commitments for materials and other services and personal property leases, whether or not entered into in the ordinary course of business, relating principally to the Project (including all equipment supply agreements, services agreements, license agreements, and computer system and services agreements and all rights and entitlements under or with respect thereto), and any contracts, agreements, purchase orders or commitments for materials and other services and personal property leases entered into by Seller or any of its Affiliates relating principally to the Project after the Effective Date, including the Assigned Agreements set forth on Schedule 3.1.10 (the “**Assigned Agreements**”); and
      11. all information, files, books, records, as-builts, correspondence (including with Governmental Authorities) other than that subject to attorney-client privilege, data, plans, specifications, procedures, contracts, emails, addresses and recorded knowledge relating to the Project (in each case whether in electronic or paper form), including, but not limited to, construction and development, operation, generation and hydrological records, service and repair records, equipment logs, operating documents, specifications, operating guides, service and warranty records, insurance claims and reports, safety, compliance and maintenance manuals, studies, reports, diagrams and other similar documents relating to the development, construction, operation, and maintenance of the Project, including those items listed on Schedule 3.1.11.
   2. **Excluded Assets** . Nothing in this Agreement will constitute or be construed as conferring on Purchaser, and Purchaser is not acquiring, any right, title or interest in or to the assets listed or described on Schedule 3.2, which are associated with the development of the Project but are specifically excluded from the sale (the “**Excluded Assets**”).
   3. **Excluded Liabilities** . Except as otherwise expressly set forth in this Agreement, Purchaser does not assume or agree to pay, satisfy, discharge or perform, and shall not be deemed by virtue of the execution and delivery of this Agreement or any document delivered in connection with this Agreement, or as a result of the consummation of the transactions contemplated by this Agreement, to have assumed, or to have agreed to pay, satisfy, discharge or perform, any liability, obligation or indebtedness of Seller or any of its Affiliates, whether primary or secondary, direct or indirect, known or unknown, contingent or absolute, determined or indeterminable (all such liabilities and obligations not assumed by Purchaser being referred to herein as the “**Excluded Liabilities**”).
   4. **Purchase Price and Payment** . The sole consideration for the purchase of the Project and the Project Assets is the Purchase Price. The Purchase Price shall be payable by Purchaser by wire transfer in U.S. dollars in immediately available funds to the account or accounts Seller designates to Purchaser in accordance with the notice provisions of Section 14.11. The Purchase Price shall be paid by Purchaser to Seller in two increments. An amount equal to twenty-five percent (25%) of the Purchase Price (the “**Initial Component**”) shall be payable to Seller at the Closing. The balance of the Purchase Price (the “**Deferred Component**”) (as adjusted by any reductions in the Purchase Price made in accordance with Section 3.5) shall be payable to Seller within ten (10) Business Days after Project Completion.
   5. **Purchase Price Reductions for Performance Shortfalls** .
      1. Guaranteed Power Output . For each kilowatt by which Power Output during the Power Output Test is less than the Guaranteed Power Output, the Purchase Price will be reduced by the Unit Price.
      2. Guaranteed Expected Energy Production . For each kilowatt-hour by which Expected Energy Production is less than the Guaranteed Expected Energy Production, the Purchase Price will be reduced by an amount equal to the Unit Price times the equivalent capacity (expressed in kWdc) necessary to make up the shortfall in production.
   6. **Allocation of Purchase Price** . The Purchase Price will be allocated among the components of the Project as set forth on Schedule 3.6. The Parties will file all tax returns consistent with the allocation of the Purchase Price set forth on Schedule 3.6.
3. **CLOSING**
   1. **Closing** . Subject to the satisfaction or waiver of the conditions set forth in this Agreement, the consummation of the Asset Transfer and other transactions contemplated hereby (the “**Closing**”) shall take place at Purchaser’s offices located at [\_\_\_\_\_\_\_\_\_\_], as soon as practicable following the satisfaction or waiver of all conditions precedent to the Closing.
   2. **Deliveries at Closing** .
      1. Deliveries by Seller . At the Closing, Seller shall deliver to Purchaser the items described below:
         1. a bill of sale and assignment, in the form of Exhibit B (the “**Bill of Sale**”), with respect to the Project and Project Assets to be conveyed by Seller, duly executed by Seller;
         2. an assignment and assumption agreement, in the form of Exhibit C (the “**Assignment and Assumption Agreement**”), with respect to the Assigned Agreements, duly executed by Seller;
         3. the information and documents comprising Project Assets described in Section 3.1;
         4. [if Seller owns in fee simple] a Deed in the form of Exhibit D (the “**Deed**”) with respect to the Project Site and the Additional Real Property [or if Seller leases] an estoppel certificate from each lessor of the Project Site and the Additional Real Property in the form of Exhibit E;
         5. evidence in form and substance reasonably acceptable to Purchaser that, at or prior to the Closing hereunder, all Liens on the personal and real property included in the Project, other than Permitted Encumbrances, have been discharged by Seller or by the Person in whose favor such Liens exist, which evidence shall in any case be satisfied by UCC termination statements or the equivalent instruments or documents previously delivered to and approved by Purchaser, and at no expense to Purchaser;
         6. copies (certified by an authorized officer or representative of Seller) of the Governing Documents of Seller, and a certificate of good standing of Seller issued by the state in which Seller is organized and, if applicable, a certificate of good standing as a foreign entity doing business in the State of California issued by the Secretary of State of the State of California, in each case dated within three (3) Business Days of the Closing;
         7. such resolutions (or other authorizations) of the board of directors (or equivalent governing authority) of Seller as may be required to authorize the transactions contemplated by this Agreement and the Related Agreements and authorizing officers of Seller to execute and deliver this Agreement, the Related Agreements and any other documents or instruments which they deem necessary and appropriate in connection with this Agreement;
         8. a certificate of Seller’s secretary (or other authorized officer or representative) certifying in such detail as Purchaser may reasonably request that (i) the Governing Documents of Seller delivered to Purchaser pursuant to Section 4.2.1.6 are true and complete and in full force and effect, (ii) the resolutions (or other authorizations) of the board of directors (or equivalent governing authority) of Seller delivered to Purchaser pursuant to Section 4.2.1.7 are true and complete and in full force and effect, and (iii) the officer(s) or representative(s) of Seller executing and delivering this Agreement, the Related Agreements and the other documents delivered by Seller in connection with the Closing have been duly authorized to execute and deliver such documents on behalf of Seller;
         9. a certificate executed on behalf of Seller by an authorized officer or representative of Seller, dated as of the Asset Transfer Date, representing and certifying in such detail as Purchaser may reasonably request that (i) Seller has received the Permits and Consents referred to in Schedules 3.1.6 and 3.1.7 (ii) the conditions specified in Article 12 have been fulfilled, (iii) the representations and warranties made by Seller in Article 5 are true and correct as of the Asset Transfer Date with the same effect as though those representations and warranties had been made again at and as of that time, except to the extent any such representation or warranty is made as of a specified date, (iv) the information in the Schedules has been updated to the Asset Transfer Date and is accurate and true and correct as of the Asset Transfer Date, and (v) all of the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Asset Transfer Date have been complied with or performed in all material respects;
         10. an opinion of counsel to Seller (such counsel to be reasonably satisfactory to Purchaser) in substantially the form of Exhibit K-1;
         11. an opinion of environmental and regulatory counsel to Seller (such counsel to be reasonably satisfactory to Purchaser) in substantially the form of Exhibit K-2;
         12. such documents, affidavits, or other instruments required by the Title Insurance Company in order to issue the title policies required by Section 12.8;
         13. copies of final liens waivers executed by each contractor and subcontractor that has furnished more than $100,000 of goods or services for the Project individually or in the aggregate;
         14. documentation of investigations of Hazardous Materials and compliance with Environmental Laws in form and substance satisfactory to Purchaser in its reasonable discretion, including at a minimum a current environmental site assessment report with respect to the Project prepared by a reputable technical consultant acceptable to Purchaser;
         15. the complete Turnover Package;
         16. the O&M Agreement, duly executed by Seller; and
         17. such other documents as Purchaser may reasonably request for the purpose of evidencing the accuracy of Seller’s representations and warranties, Seller’s performance or compliance with covenants and obligations required hereunder, the satisfaction of any condition under Article 12 or otherwise facilitating the consummation or performance of any of the transactions contemplated by this Agreement.
      2. Deliveries by Purchaser . At the Closing, Purchaser shall deliver the items described below:
         1. the Initial Component of the Purchase Price in accordance with Section 3.4;
         2. a certificate executed on behalf of Purchaser by an authorized officer or representative of Purchaser, dated as of the Asset Transfer Date, representing and certifying in such detail as Seller may reasonably request that (i) the conditions specified in Article 13 have been fulfilled, (ii) the representations and warranties made by Purchaser in Article 6 are true and correct as of the Asset Transfer Date with the same effect as though those representations and warranties had been made again at and as of that time, except to the extent any such representation or warranty is made as of a specified date, and (iii) all of the terms, covenants and conditions to be complied with and performed by Purchaser on or prior to the Asset Transfer Date have been complied with or performed in all material respects;
         3. the O&M Agreement, duly executed by Purchaser; and
         4. the Assignment and Assumption Agreement, duly executed by Purchaser.
4. **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Purchaser as of the Asset Transfer Date and, with respect to the representations and warranties set forth in Sections 5.1, 5.2, 5.3.3, 5.3.4, 5.3.5, 5.4, 5.6, 5.7, 5.8, 5.9, 5.16 and 5.19 also as of the Effective Date, as follows, which representations and warranties will survive the Closing. Such representations and warranties with respect to Related Agreements to be executed and delivered after the date hereof shall be deemed to be made as of the Asset Transfer Date but not as of the Effective Date. The Seller shall update the Schedules at such times as Seller deems appropriate, but at a minimum as of the Asset Transfer Date, such updates to be reasonably acceptable to Purchaser and not evidencing any material change adverse to Purchaser or any material diminution in the value or utility of the Project to Purchaser. When Seller provides updated Schedules to Purchaser, it shall also provide such supporting evidence as is reasonably appropriate to allow Purchaser to make the determination that such updated Schedules do not evidence any material change adverse to Purchaser or any material diminution in the value or utility of the Project to Purchaser. Purchaser shall review the updated Schedules and such evidence as is provided by Seller, and within fifteen (15) days after its receipt of the same, shall advise Seller that such updated Schedules are acceptable, or shall specify to Purchaser why the updated Schedules are not acceptable.

* 1. **Transaction Representations** .
     1. Organization and Existence . Seller is a duly organized and validly existing [\_\_\_\_\_\_\_\_\_\_\_] in good standing under the laws of the State of [\_\_\_\_\_\_\_\_\_\_] and is qualified to transact business in the State of California and in all jurisdictions where the ownership of its properties or its operations require such qualification, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby.
     2. Execution, Delivery and Enforceability . Seller has full power and authority to carry on its business as now conducted, and to enter into, and carry out its obligations under this Agreement and the Related Agreements. The execution, delivery and performance by Seller of this Agreement and the Related Agreements, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate or company action required on the part of Seller. This Agreement and the Related Agreements have been duly and validly executed and delivered by Seller and constitute the valid and legally binding obligations of Seller, enforceable against Seller in accordance with its and their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors’ rights and by general equitable principles. At the Closing, Seller will convey to Purchaser good and marketable title to the Project and all of the Project Assets, free and clear of any and all Liens other than Permitted Encumbrances.
     3. No Violation . None of the execution and delivery of this Agreement or any of the Related Agreements executed by Seller, the performance of or compliance with any provision hereof or thereof, or the consummation of the transactions contemplated hereby or thereby will:
        1. violate, or conflict with, or result in a breach of any provisions of the Governing Documents of Seller;
        2. violate any Permit or Consent applicable to Seller or the Project, or result in the termination of, or require the material modification of, any Permit or Consent; or
        3. result in the creation or imposition of any Lien upon the Project or any of the Project Assets, or a breach of, or constitute a default under, or give to any other Persons any rights of termination, amendment, acceleration or cancellation of any agreement to which Seller is a party or by which any of its respective properties (including any of the Project Assets) is bound or affected.
     4. No Consents . No Consent or approval of, filing with or notice to any Person is required to be obtained or made in connection with Seller’s execution, delivery and performance of this Agreement or the Related Agreements or the consummation of the transactions contemplated hereby or thereby, which, if not obtained or made, will prevent Seller from performing its obligations hereunder or thereunder.
  2. **Compliance with Laws** . Except as set forth on Schedule 5.2, Seller has at all times complied in all material respects with all Applicable Laws and with all Permits applicable to the conduct of its respective business and activities relating to or in any way affecting the construction, ownership, operation, maintenance and use of the Project and the Project Assets.
  3. **Permits and Consents** .
     1. Schedules 3.1.1 and 3.1.7 list all Permits and Consents, respectively, which are required for the development, construction, use, operation and maintenance of the Project by Seller and Purchaser’s ownership and operation of the Project as contemplated by this Agreement, true and correct copies of which have been provided to Purchaser.
     2. Except as set forth on Schedule 5.3.2, Seller has obtained and holds all Permits which are necessary under Applicable Laws for such its construction, ownership, use, occupation, and operation of the Project and the Project Assets, and the conduct of its business and activities in accordance with this Agreement. Except as set forth on Schedule 5.3.2, each of such Permits has been issued in the name of Seller, is in full force and effect, and any fixed period for appeal or review of the issuance thereof has elapsed. No such Permit is subject to any pending suit, action, investigation, proceeding or appeal (whether judicial, administrative or otherwise) and, to the best knowledge of Seller, no such suit, action, investigation, proceeding or appeal is threatened.
     3. Except as set forth on Schedule 5.3.3, Seller has not (i) received any notice of violation or other notification from any Governmental Authority or from any other Person, alleging that it has committed any act, or failed to act, in any manner or under any circumstances which could result in the revocation, modification or suspension of any Permit or Consent related to the Project or in any other enforcement action, or (ii) failed to make any governmental filings required with respect the Permits described in Section 5.3.2.
     4. Except as set forth on Schedule 5.3.4, Seller has no reason to believe that (i) any Permit or Consent related to the Project that has not yet been obtained will not be obtained upon due application therefore; (ii) any Permit or Consent related to the Project will not be renewed upon its stated expiration in the ordinary course of business upon compliance with normal and customary renewal procedures applicable to the respective Permit or Consent; or (iii) any Permit or Consent will be modified to impose more restrictive conditions or requirements which may hinder the operation, production capacity, or revenue of the Project, or which would increase the costs of operating the Project, or which could otherwise, individually or collectively, adversely impact the Project.
     5. Seller is not an “investment company” or an “affiliated person” of an “investment company” within the meaning of the Investment Company Act of 1940.
  4. **Litigation** . Except as set forth on Schedule 5.4, there are no pending or, to Seller’s knowledge, threatened, actions, suits, proceedings, investigations or requests for information by any Governmental Authority or other Person which could result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the performance of this Agreement or any of the Related Agreements, the development, construction, financing, completion or readying for commercial operation of the Project or any portion thereof, or the consummation of the transactions contemplated hereby or thereby, or (b) a claim for damages as a result of this Agreement or any of the Related Agreements, the development, construction, financing, completion or readying for commercial operation of the Project or any portion thereof, or the consummation of the transactions contemplated hereby or thereby. Seller has no knowledge of the existence of any reasonable basis for such a litigation, claim, investigation or proceeding, which directly and specifically relates to the Project or any of the Project Assets.
  5. **Zoning and Condemnation** . To the knowledge of Seller, there are no pending or threatened proceedings or governmental actions to modify the zoning classification of, or to condemn or take by power of eminent domain or to classify as a landmark or otherwise impose any similar restraint or restriction on, all or any part of the Project or the Project Assets.
  6. **Brokers** . All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on by Seller without the intervention of any other Person and in such a manner as not to give rise to any valid claim against Purchaser (by reason of Seller’s actions) for a brokerage commission, finder’s fee or other like payment to any Person.
  7. **Bankruptcy** . Seller has not filed any voluntary petition in bankruptcy or been adjudicated bankrupt or insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any bankruptcy, insolvency or other debtor relief law, or sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its respective properties. No court of competent jurisdiction has entered an order, judgment or decree approving a petition filed against Seller seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any bankruptcy, insolvency, or other debtor relief law, and no other liquidator has been appointed for Seller or all or any substantial part of Seller’s properties. To the knowledge of Seller, no proceedings or actions of the types described in this Section 5.7 are being contemplated by Seller or are threatened against Seller.
  8. **Financial Statements** . Seller has delivered to Purchaser true and complete copies of the audited balance sheet of Seller as of the last day of its most recently completed fiscal year, and the related audited statements of operations, stockholders’ equity and cash flows for the year then ended (collectively, “**Audited Financial Statements**”), together with the related auditors’ report and Seller’s quarterly financial statements for each of the fiscal quarters ended after the date of its most recent Audited Financial Statements. Except as may otherwise be indicated in the auditor’s report accompanying the Audited Financial Statements, the Audited Financial Statements have been prepared in conformity with GAAP, and present fairly the financial position and results of Seller’s operations and its cash flows at the dates and for the periods stated.
  9. **Absence of Certain Changes** .Except as set forth on Schedule 5.9:
     1. since the date of its most recent Audited Financial Statement, Seller has not suffered any material adverse change in its business, operations finances, assets or liabilities;
     2. there has been no material damage to, destruction of or loss of or to the Project or any of the Project Assets; or
     3. none of Seller or any of its Affiliates has mortgaged or pledged or subjected to any Lien the Project or any of the Project Assets (except for Permitted Encumbrances).
  10. **Assets** .
      1. Real Property Rights; Title Insurance . Schedule 3.1.5 is a complete and accurate list, with respect to the Project and the Project Assets, of all real property owned or leased by Seller and of all easements, rights of way, rights of interconnection and other similar agreements in which Seller has any rights, and of all buildings, fixtures, structures and other improvements owned by Seller and located on the Project Site or the Additional Real Property. Schedule 5.10.1 is a complete and accurate list of all title insurance policies and similar insurance policies issued to Seller or any of its Affiliates relating to any of the property described in this Section 5.10.1 or relating to the fixtures and improvements listed on Schedules 3.1.2 through 3.1.5.
      2. Condemnation or Other Proceedings . Except as set forth on Schedule 5.10.2, there is no pending or threatened condemnation or other similar proceeding of any part of the Project Site or the Additional Real Property that would be reasonably likely to have a material adverse effect on the operations of the Project or any of the Project Assets, and no items set forth on Schedule 5.10.2 has had or will have, individually or in the aggregate, a material adverse effect on the Project or any of the Project Assets.
      3. Equipment and Other Personal Property . To the extent not included on Schedule 3.1.5, Schedules 3.1.2, 3.1.3 and 3.1.4 completely and accurately list all equipment, plant, machinery, installations, tools, spare parts, furniture, supplies, and vehicles owned by Seller and related to the Project or the Project Assets, excluding only those items which have a fair market value of less than $5,000 individually, and such schedules specifically indicate any such item of Project Assets which is not located on or at the Project Site and identifies the location thereof.
      4. Intellectual Property . Schedule 3.1.8 contains a complete and accurate list and summary description, including any royalties paid or payable by Seller, of Project Assets constituting Intellectual Property.
      5. Title to Assets . Seller has good, marketable and insurable title to the Project Site and the Additional Real Property, free and clear of all Liens (other than Permitted Encumbrances), and has good and marketable title in the remainder of the Project and all of the other Project Assets free and clear of all Liens (other than Permitted Encumbrances). The Project Assets constitute all of the assets necessary for the safe, lawful and proper operation and use of the Project (including all easements, rights of way, rights of interconnection and other similar rights and agreements required for the operation of the Project) in the manner contemplated by this Agreement, the Technical Specifications and Prudent Solar Industry Practices.
  11. **Assigned Agreements** .Schedule 3.1.10 lists all of the Assigned Agreements, including all amendments, supplements, exhibits, if any, thereto. A true, correct and complete copy of each of the written Assigned Agreements has been delivered to Purchaser.
      1. Except as set forth on Schedule 5.11.1, Seller is not a party to or subject to any material agreement, contract, instrument, license or franchise of any kind relating to or in any way affecting the Project, other than the Assigned Agreements, this Agreement and the Related Agreements.
      2. None of the Assigned Agreements has been modified, supplemented, amended or terminated, in any such case whether orally or in writing, except by means of another Assigned Agreement or as scheduled on Schedule 3.1.10.
      3. Each of the Assigned Agreements has been duly authorized, executed and delivered by Seller, and, to the knowledge of Seller, by each of the other parties thereto and, except to the extent fully performed in accordance with its terms, is in full force and effect and is valid and enforceable in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights and the enforcement of debtors’ obligations generally and by general principles of equity, regardless of whether enforcement is pursuant to a proceeding in equity or at law.
      4. Except as set forth on Schedule 5.11.4, no default or event of default on the part of Seller has occurred and is continuing under any Assigned Agreement which could reasonably be expected to have a material adverse effect on Purchaser, the Project or the Project Assets, and Seller has not received any notice, oral or written, or has knowledge, that a default or event of default on the part of any other party thereto has occurred and is continuing thereunder or that any other Person has alleged or asserted any such default or event of default by any other party thereto.
  12. **Environmental Permits** . Without limiting the application of Section 5.3 to any Permit or Consent: (a) Schedule 5.12 contains a true and complete list of all Permits related to Environmental Law that are necessary for, or are material to, the ownership or operation of the Project or any of the Project Assets; (b) Schedule 5.12 identifies which of those Permits related to Environmental Laws requires Consent, waiver, approval or authorization, license, order or Permit of, or declaration, filing or registration with, any Governmental Authority or any other Person, in connection with the execution, delivery and performance of this Agreement or the Related Agreements and the consummation of the transactions contemplated hereby or thereby; and (c) the Permits listed on Schedule 5.12 are valid, in good standing, final and non-appealable and in full force and effect and will not be terminated or impaired or become terminable, in whole or in part, as a result of the transactions contemplated hereby.
  13. **Environmental Legal Compliance** . Except as set forth on Schedule 5.13:
      1. Seller has complied with, and is in compliance with: (x) the terms and conditions of all Permits issued or required with respect to the Project pursuant to any Environmental Law, and (y) all other limitations, restrictions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any Environmental Law, as related to the development, construction, ownership, use, operation or maintenance of the Project or any of the Project Assets;
      2. Seller has not received any notice or claim from any Person alleging any liability for personal injury or property damage relating to the Facility or the Project Assets, or any notice of any violation under Environmental Law, any request for information pursuant to CERCLA, or any notice of any order, penalty, investigation, action, suit, claim, proceeding or other action from any Governmental Authority or any other Person with respect to the actual or alleged violation by Seller, the Project or any of the Project Assets, or liability of any Person with respect to the Project or any of the Project Assets under, any Environmental Law or Permit and Seller has no knowledge of any circumstances, events or conditions that could result in such a notice;
      3. None of the Project, the Project Site, the Additional Real Property nor any of the Project Assets is the subject of any administrative or judicial actions, complaints, suits, proceedings or investigations pursuant to any Environmental Law;
      4. None of the Project Site, the Additional Real Property or any other of the Project Assets (including any above-ground or underground storage tanks located on or a part thereof) contains any Hazardous Material (including polychlorinated biphenyls, asbestos, lead or urea formaldehyde) that, under any Environmental Law, (1) imposes or could reasonably be expected to impose on any Person a liability for fines or penalties for non-compliance with Environmental Law, or for the performance or reimbursement of the costs of removal, Remediation, or other cleanup, or liability for or obligation to reimburse damages to natural resources; (2) has had or could reasonably be expected to have a material adverse effect on the value of the Project or the Project Assets or its or their ownership, use or operation; or (3) could reasonably be expected to result in the imposition of a Lien on the Project Site, the Additional Real Property, the Project or any of the other Project Assets;
      5. Seller has not disposed of, discharged, or released any Hazardous Material at the Project Site or the Additional Real Property, or has arranged for the disposal of any Hazardous Material to, at or from the Project Site, the Additional Real Property or at any other location in connection with the Project;
      6. Seller has not made, and is not currently obligated to make, file or give, any report or notification to any Governmental Authority regarding the release or discharge of any Hazardous Materials in connection with the Project;
      7. Other than Permitted Encumbrances, no Lien in favor of any Person imposed under Environmental Law relating to or in connection with any claim under an Environmental Law has been filed or has been attached to the Project or any of the Project Assets and, to the knowledge of Seller, no response action or other Remediation by any Governmental Authority has taken place that could form the basis for such a Lien under an Environmental Law; and
      8. Seller has provided to Purchaser each environmental investigation, study, audit, test, review and other analysis conducted in relation to any property or facility that is part of the Project.
  14. **Utilities** . At the Asset Transfer Date, all utility services and interconnections currently necessary for the operation of the Project as contemplated herein, including water supply, sanitary and storm sewer facilities, and electric and telephone facilities have been installed and are functional consistent with Prudent Solar Industry Practices and all development or connection charges have been paid.
  15. **Project Construction and Condition** . At the Asset Transfer Date, except as set forth on Schedule 5.15, (i) the Project and all of the Project Assets are in good operating condition, maintenance and repair, (ii) the Project is capable of operating as designed in accordance with the Technical Specifications and this Agreement, and (iii) neither the Project nor any of the Project Assets has any Latent Defects.
  16. **No Third Party Options** . There are no existing agreements, options or commitments granting to any Person the right to acquire, directly or indirectly, Seller’s or any Affiliate’s right, title or interest in or to the Project or any of the Project Assets.
  17. **Taxes** .
      1. Except as disclosed on Schedule 5.17:
         1. There are no Liens for Taxes upon the Project or any of the Project Assets, except for Permitted Encumbrances;
         2. Neither the Project nor any of the Project Assets is (i) “tax-exempt use property” within the meaning of Section 168(h)(1) of the Code, (ii) “tax-exempt bond financed property” within the meaning of Section 168(g) of the Code, (iii) subject to Section 168(g)(1)(A) of the Code, (iv) in the case of property owned by Seller subject to a lease in which Seller is the lessor thereunder, “limited use property” within the meaning of Rev. Proc. 76-30, or (v) subject to any provision of state or local law comparable to any of the provisions listed;
         3. Seller is not a foreign person within the meaning of Section 1445 of the Code;
         4. All of the leases listed on Schedule 3.1.5 are true leases for U.S. federal income tax purposes; and
         5. None of the Project Assets is an interest (other than indebtedness within the meaning of Section 163 of the Code) in an entity taxable as a corporation, partnership, trust, or real estate mortgage investment conduit for federal income tax purposes.
  18. **Sufficiency of Project Assets** . The Project Assets (a) constitute all of the assets, tangible and intangible, necessary to fully operate the Project for its intended purpose without temporary equipment or personnel, other than normal labor, and (b) constitute all of the assets, tangible and intangible, of Seller and its Affiliates relating to the Project.
  19. **Accuracy of Information** . The information submitted by or on behalf of Seller in filings made in connection with obtaining Permits and Consents was true and correct at the time of submission, and to the knowledge of Seller it remains true and correct in all material respects. None of the information and documents which have been or will be furnished by Seller or any representative thereof to Purchaser in connection with the transactions contemplated by this Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary in order to make the statements therein not misleading in light of the circumstances in which they were made. Seller has disclosed to Purchaser all material information relating to the Project and the Project Assets.

1. **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to Seller as of the Effective Date and as of the Asset Transfer Date as follows, which representations and warranties will survive the Closing. Such representations and warranties with respect to Related Agreements to be executed and delivered after the date hereof shall be deemed to be made as of the Asset Transfer Date but not as of the Effective Date.

* 1. **Transaction Representations** .
     1. Organization and Existence . Purchaser is a duly organized and validly existing corporation in good standing under the laws of the State of California and is qualified to transact business in all jurisdictions where the ownership of its properties or its operations require such qualification, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby.
     2. Execution, Delivery and Enforceability . Purchaser has full corporate power and authority to carry on its business as now conducted, enter into, and to carry out its obligations under this Agreement and the Related Agreements which are executed by Purchaser. The execution, delivery and performance by Purchaser of this Agreement and the Related Agreements which are executed by Purchaser, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all necessary corporate action required on the part of Purchaser. This Agreement and the Related Agreements which are executed by Purchaser have been duly and validly executed and delivered by Purchaser and constitute the valid and legally binding obligations of Purchaser, enforceable against Purchaser in accordance with its and their terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application relating to or affecting the enforcement of creditors’ rights and by general equitable principles.
     3. No Violation . Neither the execution and delivery of this Agreement or any of the Related Agreements executed by Purchaser, nor the compliance with any provision hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby will:
        1. violate or conflict with, or result in a breach of any provisions of the Articles of Incorporation or Bylaws of Purchaser; or
        2. violate any Applicable Law, Permit or Consent, or result in the termination of, or require the material modification of any Permit or Consent, in each case applicable to Purchaser as of the Effective Date.
     4. No Consents . No consent or approval of, filing with or notice to any Person is required to be obtained or made by Purchaser in connection with Purchaser’s execution, delivery and performance of any of this Agreement or the Related Agreements, or the consummation of the transactions contemplated hereby or thereby, which, if not obtained or made, will prevent Purchaser from performing its obligations hereunder or thereunder.
  2. **Litigation** . Except as set forth on Schedule 6.2 (as it may be updated from time to time), Purchaser has no knowledge of any pending or threatened action, suit, proceeding investigation or request for information by any Governmental Authority or other Person which could result, or has resulted, in (a) the institution of legal proceedings to prohibit or restrain the performance of this Agreement or any of the Related Agreements, or the consummation of the transactions contemplated hereby or thereby, or (b) a claim for damages as a result of this Agreement or any of the Related Agreements, or the consummation of the transactions contemplated hereby or thereby. Purchaser has no knowledge of any pending or threatened litigation, claim, investigation or proceeding, private or governmental, or the existence of a reasonable basis for such a litigation, claim, investigation or proceeding, which directly and specifically relates to the Project or the Project Assets.
  3. **Brokers** . All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on by Purchaser without the intervention of any other Person and in such a manner as not to give rise to any valid claim against Seller (by reason of Purchaser’s actions) for a brokerage commission, finder’s fee or other like payment to any Person.

1. **SELLER COVENANTS**

Seller covenants and agrees for the benefit of Purchaser as follows:

* 1. **Access and Investigation** . Between the Effective Date and the Asset Transfer Date, upon reasonable advance notice received from Purchaser, Seller shall (a) afford Purchaser and its representatives full and free access, during regular business hours, to the Project and all of the Project Assets then-existing, including contracts, Permits and Consents, books and records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the activities of Seller or its contractors; (b) furnish Purchaser and its representatives with copies of all such contracts, Permits and Consents, books and records and other existing documents and data related to the Project or any of the Project Assets as Purchaser may reasonably request; (c) furnish Purchaser and its representatives with such additional financial, operating and other relevant data and information related to the Project or any of the Project Assets as Purchaser may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Purchaser, with Purchaser’s investigation of the Project. In addition, Purchaser shall have the right to have the Project Site and the Additional Real Property and any tangible personal property comprising any part of the Project or the Project Assets, inspected by Purchaser or its representatives (including subsurface testing), at Purchaser’s sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Project Site, Additional Real Property and any relevant tangible personal property.
  2. **Conduct, Preservation and Completion of the Project** . Except as provided in this Agreement, and unless otherwise consented to in writing by Purchaser, during the period from the Effective Date to the Closing, Seller shall use best efforts to (i) preserve, maintain, and protect the assets, rights, and properties of the Project; (ii) maintain the books and records of the Project in the ordinary course of business consistent with GAAP; (iii) comply with all contractual and other obligations applicable to the development, construction and operation of the Project; (iv) comply with all Applicable Laws, Permits and Consents insofar as they relate to the Project and the Project Assets; and (v) secure and maintain the Project and the Project Assets in accordance with Prudent Solar Industry Practices. Following the Closing, Seller shall use its best efforts to achieve Substantial Completion and Project Completion.
  3. **Restrictions on Certain Actions** . Without limiting the generality of Section 7.2, prior to the Closing, Seller shall not, without the prior written consent of Purchaser, (a) mortgage, pledge or subject to any Liens the Project or any of the Project Assets (except for Permitted Encumbrances); or (b) agree to do anything which would make any of the representations and warranties of Seller in this Agreement or the Related Agreements untrue or incorrect in any material respect as of any time through and including the Asset Transfer Date.
  4. **Required Permits and Consents** . As further described in Section 10.1 and as promptly as practicable after the Effective Date, Seller shall use its best efforts to obtain, and to cooperate with Purchaser in obtaining, all Permits and Consents required to consummate the transactions contemplated by this Agreement, including maintaining and renewing the same, and make all filings required by Applicable Laws to be made in order to consummate the transactions contemplated by this Agreement (including all filings required to obtain the Section 203 Approval). Seller shall cooperate with Purchaser and its representatives with respect to all filings that Purchaser elects to make or, pursuant to Applicable Laws, shall be required to make in connection with the transactions contemplated by this Agreement.
  5. **Permits, Consents and Agreements; Post Closing** . Seller shall assist Purchaser in obtaining any Permits, Consents and agreements necessary or desirable for Purchaser’s ownership, use, operation and maintenance of the Project, including such Permits, Consents, agreements and rights required to be conveyed or otherwise transferred by Seller to Purchaser at the Closing but which were not issued in the name of Purchaser at or before Closing. In the event that any such required Permits, Consents and agreements cannot be transferred or obtained prior to the Asset Transfer Date, Seller agrees to hold in trust and maintain in effect such Permits, Consents and agreements for the benefit of Purchaser until amendments or replacement Permits, Consents and agreements have been approved by the relevant Governmental Authority or Person and such amendments or replacements have been issued to or received by Purchaser as the Person authorized under such Permit, Consent or agreement, as applicable.
  6. **Payment of Liabilities** . Seller shall pay or otherwise satisfy in the ordinary course of business all of the liabilities and obligations related to the Project accruing prior to and including the Asset Transfer Date.
  7. **Notification** .
     1. Seller shall promptly notify Purchaser of any proceeding, actions, claims, suits or investigations pending or threatened against the Project or any part thereof, as well as any thereof against Seller that challenges or could affect the Project or transactions contemplated hereby.
     2. Seller shall provide prompt written notice to Purchaser of any change in any of the information contained in the representations and warranties made in Article 5 or any Exhibits or Schedules and shall promptly furnish any information which Purchaser may reasonably request in relation to such change; provided, however, that such notice shall not operate to cure any breach of the representations and warranties made in Article 5 or any Exhibits or Schedules referred to herein or attached hereto.
     3. Seller shall promptly, and in any event within three (3) Business Days after receipt thereof, provide to Purchaser (i) all notices, correspondence and other communications from any Governmental Authority with respect to the Project, and (ii) all material notices, correspondence and other communications from any Construction Contractor or counterparty to an Assigned Agreement with respect to the Project.
     4. Seller shall promptly notify Purchaser of the occurrence of any event which has had or could possibly have a material adverse effect on the Project, any of the Project Assets or the transactions contemplated hereby.
  8. **Payment of Prevailing Wages** . With respect to all construction work performed as part of the Project, Seller shall pay, and shall cause the Construction Contractor, if any (and its subcontractors performing construction work on the Project), and each other contractor performing construction work on the Project on behalf of Seller to pay, “prevailing wages” to the respective employees thereof in compliance with CPUC Decision 04-12-056, issued December 16, 2004, as the same may be amended or supplemented from time to time.
  9. **Union Labor** . Seller shall use, and shall cause the Construction Contractor, if any (and its Subcontractors performing construction work on the Project, and each other contractor performing construction work on the Project on behalf of Seller to use union labor for the performance of all construction work in connection with the Project. All construction work for the Project shall be undertaken in accordance with (i) any applicable provision in a collective bargaining agreement to which Purchaser is a party from time to time or as otherwise identified by Purchaser at any time, and (ii) any applicable collective bargaining or union labor agreement as may be entered into by Seller or its contractors performing construction work on the Project from time to time. All personnel used or hired by Seller or any of its contractors who are required under Purchaser’s collective bargaining agreement to be members of a union shall be qualified and appropriate for such work pursuant to the terms of such agreement.
  10. **Labor Disputes** . Seller shall adopt policies and practices designed to avoid labor disputes, and to minimize the risk of labor-related delays or disruption in providing the Project. Seller shall advise Purchaser promptly, in writing, of any actual or threatened labor dispute of which Seller has knowledge that might materially affect its obligation to develop, build and transfer the Project to Purchaser. Notwithstanding the foregoing, the settlement of labor disputes shall be at the discretion of the Party having the difficulty.
  11. **Insurance** . Commencing with the beginning of work on the Project Site, or on the Effective Date in the case of the insurance described in Section 7.11.2, Seller shall, at its sole cost and expense, procure and maintain the following insurance coverages and be responsible for the Construction Contractor (if any) and the other Subcontractors maintaining sufficient limits of the appropriate insurance coverage, in each case in a form of policy, and with insurance carrier(s) authorized to do business in the state in which the work is to be performed and which have an A.M. Best’s Insurance Rating of not less than A-,VII. The minimum insurance requirements specified herein do not in any way limit or relieve Seller of any obligation assumed elsewhere in this Agreement, including, but not limited to, Seller’s defense and indemnity obligations.
      1. Workers’ Compensation and Employers’ Liability .
         1. Workers’ Compensation insurance indicating compliance with Applicable Laws where Seller performs work.
         2. Employers’ Liability insurance shall not be less than $1,000,000 for injury or death occurring as a result of each accident.
      2. Commercial General Liability .
         1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage “occurrence” form, with no alterations to the coverage form.
         2. The limit shall not be less than $5,000,000 each occurrence and twice the annual aggregate for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OCP) policy. Limits shall be on a per project basis.
         3. Coverage shall:

(i) by “Additional Insured” endorsement add as additional insureds Purchaser, its directors, officers, agents and employees with respect to liability arising out of any work performed by or for Seller (Insurance Services Office (ISO) Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a “blanket endorsement by contract,” the following language added to the certificate of insurance will satisfy Purchaser’s requirement: “SDG&E, its directors, officers, agents and employees with respect to liability arising out of the work performed by or for Seller has been endorsed by blanket endorsement;”

(ii) be endorsed to specify that Seller’s insurance is primary and that any insurance or self-insurance maintained by Purchaser shall not contribute with it:

(iii) and include a severability of interest clause.

* + 1. Commercial Automobile Liability .
       1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 “any auto.”
       2. The limit shall not be less than $1,000,000 each accident for bodily injury and property damage.
       3. If the Project scope of work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.
    2. Excess/Umbrella Liability Insurance . Coverage shall be written on an “occurrence,” or a “claims-made” basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, Commercial Automobile Liability and Pollution Liability insurance, on terms at least as broad as the underlying coverage, with limits of not less than $10,000,000 per occurrence and in the annual aggregate.

If Seller elects to use a “claims made” form of Umbrella/Excess Liability Insurance, then the following additional requirements apply:

The retroactive date of the policy must be prior to the Effective Date; and

Either the coverage must be maintained for a period of not less than three (3) years after the Agreement terminates, or the policy must provide for an extended reporting period of not less than three (3) years after the Agreement terminates.

* + 1. Seller’s Pollution Liability .
       1. Coverage for bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, accidental and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.
       2. The limit shall not be less than $1,000,000 each occurrence for bodily injury and property damage.
       3. The policy shall endorse Purchaser as additional insured.
    2. Builders’ All Risk Property Insurance .
       1. A Builders’ All Risk Property insurance policy including earthquake and flood shall be maintained during the course of work being performed and include start-up and testing for installed equipment and delayed opening coverage. The policy shall include coverage for materials and equipment while under the care, custody and control of Seller during the course of work at the Project, offsite or while in transit to the Project.
       2. Coverage shall be written to cover the full replacement cost of the property. Limits and deductibles shall be approved by Purchaser.
    3. Professional Liability Insurance .
       1. Errors and Omissions Liability insurance appropriate to Seller’s profession. Coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement, including coverage for bodily injury, property damage, and consequential financial loss.
       2. The limit shall not be less than $10,000,000 per claim.
       3. Coverage shall: (i) be endorsed to specify that Seller’s insurance is primary and that any insurance or self-insurance maintained by Purchaser shall not contribute with it, and (ii) be endorsed to specify that the selection of counsel, paid for by the insurer, to defend Purchaser and its officers, directors, agents, and employees against covered or potentially covered claims shall be by mutual consent of Purchaser and insurer.
    4. Additional Insurance Provisions .
       1. Seller shall furnish Purchaser with certificates of insurance and endorsements of all required insurance for Seller except for Workers’ Compensation insurance.
       2. The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to Purchaser.
       3. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

San Diego Gas and Electric Company

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San Diego, CA \_\_\_\_\_\_

* + 1. Form and Content .
       1. All policies or binders with respect to insurance maintained by Seller pursuant to this Agreement shall:
       2. waive any right of subrogation of the insurers hereunder against Purchaser, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy; and
       3. With respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such insured and will insure each such insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured.
  1. **Publicity** . Prior to (i) the Closing or (ii) if this Agreement is terminated pursuant to Section 14.13, the close of business on the date that constitutes the six-month anniversary of the date of such termination, none of Seller or any of its Affiliates shall issue any press release or otherwise make any public statement with respect to this Agreement or the transactions contemplated hereby without prior Purchaser’s Written Approval, except as may be required by Applicable Law or stock exchange rule (in which case Seller shall consult with Purchaser regarding the content of any such press release or announcement prior to its release). The Parties recognize that given the contemplated purchase of the Project by Purchaser as provided in this Agreement, the development of the Project by Seller and Seller’s efforts to secure Permits for the Project will require a significant amount of communication regarding Purchaser and the Project with Governmental Authorities and other interested Persons. Accordingly, the Parties agree to cooperate in good faith to develop a mutually acceptable communications plan regarding the Project as promptly as practicable after the Effective Date, and to cooperate to implement such plan.
  2. **No Negotiation** . Unless and until such time as this Agreement shall be terminated pursuant to Section 14.13, Seller shall not directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than Purchaser) relating to the sale or transfer of the Project or any of the Project Assets. Seller shall promptly notify Purchaser of any such inquiry or proposal.
  3. **Best Efforts** . Upon the terms and subject to the conditions of this Agreement, Seller shall use its best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable consistent with Applicable Laws to consummate and make effective in the most expeditious manner practicable the transactions contemplated hereby, including satisfying the conditions precedent to the consummation of such transactions as set forth herein.
  4. **Further Assurances; Post-Closing Assignments** . From time to time following the Closing, Seller shall execute, acknowledge and deliver such additional documents, instruments of conveyance, transfer and assignment or assurances and take such other action as Purchaser may reasonably request to more effectively assign, convey and transfer to Purchaser, and fully vest title in Purchaser, with respect to the Project and the Project Assets. Without limiting the generality of the foregoing, after the Asset Transfer Date and upon the discovery by Seller of any items included within the definitions of the Project, Project Assets or the Assigned Agreements, but not transferred, conveyed or assigned to or assumed by Purchaser in the Bill of Sale, the Assignment and Assumption Agreement, the Deed or any other applicable instrument of conveyance, Seller shall (i) immediately deliver written notice to Purchaser of the existence and non-transfer or non-assumption of such item and provide Purchaser with all the information about and with access to such item as Purchaser may reasonably request and (ii) if notified in writing by Purchaser within sixty (60) days after the delivery of such notice by Seller, transfer, convey or assign to Purchaser such item in the manner and on the terms and conditions consistent with this Agreement as if it were a part of assets transferred under the Agreement as of the Asset Transfer Date.
  5. **ITC** . Seller shall cooperate with Purchaser such that Purchaser may claim the ITC with respect to the Project, and Seller shall take no action that could adversely affect Purchaser’s ability to claim the ITC with respect to the Project.

1. **PROJECT WARRANTIES**
   1. **General Warranty** . Seller hereby warrants and guarantees to Purchaser as follows, such warranties to apply during the General Warranty Period:
      1. Materials Warranty . All materials, equipment and systems incorporated into the Project and the Project Assets will be new, unused and undamaged when installed, shall be free of defects and deficiencies in materials, assembly and workmanship, suitable for use under the climatic and normal operating conditions extant at the Project Site and the Additional Real Property (as applicable), and shall be otherwise consistent with and in compliance with the Required Design, the Specifications and the requirements of this Agreement. In addition, Seller shall cause all PV modules, inverters, racking systems and monitoring to have Equipment Warranties.
      2. Workmanship Warranty . The construction, procurement and installation services included in the Project and the Project Assets shall be performed with Seller’s and, to the extent constructed pursuant to any Construction Contract, the Construction Contractor’s, best skill and judgment, in a good and workmanlike manner, in compliance with the requirements of this Agreement and the Construction Contracts, and shall otherwise be consistent with and in compliance with the Technical Specifications and the requirements of this Agreement.
      3. Project Performance . The completed Project shall perform its intended functions as a complete, integrated operating system as explicitly described and as can be reasonably inferred from this Agreement.
   2. **Breach of General Warranty** . If Purchaser notifies Seller in writing during the General Warranty Period, or no later than thirty (30) days after the expiration of the General Warranty Period, that a breach of any of the warranties set forth in Section 8.1 has occurred during the General Warranty Period, Seller shall correct (or cause to be corrected) the defects and deficiencies promptly at no cost to Purchaser. Seller’s obligation to correct defects and deficiencies shall include labor, parts, transportation, factory repair and testing, dismantling, re-erecting, re-testing and commissioning. The terms “defects” and deficiencies” shall not include damage arising from Purchaser’s misuse or negligence, a Force Majeure Event or normal wear and tear. Seller shall commence its remedy as provided promptly, but in any event within ten (10) days. If Seller does not commence and diligently pursue a remedy within the applicable time specified in this Section 8.2, Purchaser, after notice to Seller, may perform or have performed by third parties the necessary remedy and Seller shall be liable for all reasonable direct costs (including overhead), charges and expenses (including transportation and expediting fees) incurred by Purchaser in connection with such remedy. The undisputed value of such costs shall be payable within twenty-five (25) Days of Seller’s receipt of Purchaser’s invoice for such costs, and Purchaser shall be entitled to offset the cost of such remedial work from any amounts which are or become payable to Seller.
   3. **Design Warranty** . The design and engineering of the Project shall be performed in accordance with the standards of care, skill and diligence as would be provided by an engineering firm experienced in supplying similar services nationally in the United States of America to entities owning projects of technology, complexity and size similar to that of the Project, and otherwise in compliance with the Technical Specifications (the “**Design Warranty**”).
   4. **Breach of Design Warranty** . If Purchaser notifies Seller in writing during the Design Warranty Period, or no later than thirty (30) days after expiration of the Design Warranty Period, that a breach of the design warranty described in Section 8.3 has occurred, Seller promptly shall investigate and determine the source of the deficiency or defect, promptly correct or cause to be corrected any defective design which resulted therefrom, promptly issue corrected final as-built drawings, if applicable, and promptly replace or cause to be replaced all equipment and materials associated with the defective design and re-perform all other work necessary to cure the breach of the Design Warranty, all at no cost to Purchaser.
   5. **Serial Failure** . If at any time during the General Warranty Period, there are malfunctions from a defect or deficiency of, or breach of the General Warranty or Design Warranty with respect to, ten percent (10%) or more of the total of the same component of the Project Equipment or of any work performed by or on behalf of Seller (a “**Serial Failure**”), Seller shall, as soon as practicable, investigate the cause of the malfunctions and the affected components and whether or not such malfunctions constitute a Serial Failure, it being understood that Seller must prove to Purchaser’s reasonable satisfaction that such malfunctions do not constitute a Serial Failure. In the event of a Serial Failure, Seller shall perform or cause to be performed a root cause analysis with respect to such Serial Failure and, as soon as practicable, but in any event no later than twenty-one (21) days after the occurrence of the Serial Failure, provide to Purchaser in writing, for Purchaser’s Written Approval the proposed solution including the planned method for redesign and/or repair and retrofit of the component for which the Serial Failure shall have occurred and the related work. Purchaser and Seller shall negotiate in good faith with a view to reaching an agreed solution for the Serial Failure. If Purchaser and Seller do not agree as to the occurrence of a Serial Failure or the appropriate proposed solution for a Serial Failure within forty-five (45) days after the occurrence of the event giving rise to the Serial Failure, each of Seller and Purchaser shall have the right to refer the matter for dispute resolution pursuant to Section 15.9. Promptly following the determination of the existence of, and a solution for, a Serial Failure, Seller shall redesign and retrofit the component or work in question for all of the Project Equipment that have substantially the same defect in design, material or workmanship, regardless of whether that particular component or work has yet to fail as a result of such defect. During the redesign and retrofit process required under this Section 8.5, Seller shall address the cause, and not just the effect, of such Serial Failure. Upon the completion of the redesign, but prior to the retrofitting required by this Section 8.5, Seller shall request the written approval of Purchaser, which shall not be unreasonably withheld, conditioned or delayed. For the avoidance of doubt, it is expressly agreed that the provisions of this Section 8.5 shall not change, affect or reduce Seller’s obligations under Sections 8.1 or 8.3.
   6. **Enforcement and Assignment of Equipment and Other Vendor Warranties** . Until the end of the General Warranty Period, at Purchaser’s request, Seller shall promptly enforce all Equipment Warranties and other warranties provided by any Construction Contractor and equipment vendors and third parties with respect to materials and equipment comprising part of the Project, and if Seller fails to do so, then in addition to enforcing the warranties provided by Seller under this Agreement, Purchaser shall have the right to enforce such warranties directly against the Construction Contractor and equipment vendors and third parties, all at Seller’s cost. At any time requested by Purchaser, and in any event upon the expiration of the General Warranty Period, Seller shall assign to Purchaser all Equipment Warranties and other warranties and guarantees provided by any Construction Contractor and other contractors, vendors and suppliers with respect to the Project and materials and equipment comprising part of the Project.
2. **CPUC APPROVAL**
   1. **CPUC Approval** .
      1. CPUC Approval and Continuing Obligations . The Parties acknowledge and agree that Purchaser’s obligations under this Agreement are expressly contingent upon and subject to Purchaser’s receipt of the CPUC Approval. If the CPUC has not issued any non-appealable decision on the merits in response to the CPUC Approval Advice Letter within five (5) months after the date on which Purchaser files the CPUC Approval Advice Letter pursuant to Section 10.1.1, then either Party may elect to terminate this Agreement by providing notice of termination to the other Party in accordance with Section 14.11, to be effective upon receipt of such notice, provided that the CPUC has not issued a decision on the merits in response to the CPUC Approval Advice Letter prior to the date on which the termination notice is delivered. In the event the Agreement is terminated pursuant to this Section 9.1.1, the Parties shall have no further rights or obligations to each other except as set forth in Section 10.3 and Article 11.
      2. Review of CPUC Order . If the CPUC, or an applicable appellate body reviewing the CPUC order issued in response to the CPUC Approval Advice Letter, issues an order that with the passage of time necessary for such order to be deemed final and non-appealable constitutes a CPUC Approval as determined by Purchaser in its sole discretion, without condition or modification, then neither Seller nor its Affiliates, directly or in cooperation with others, shall seek further review of the order. If the CPUC order issued in response to the Approval Advice Letter denies the relief requested by Purchaser, grants it with conditions or requires modification of the Agreement in a manner that has an adverse effect on Purchaser, then Purchaser may seek judicial review of the decision. In the event that judicial review is sought pursuant to the prior sentence or by a third party, then each of the Parties agrees that it will remain bound to this Agreement for the additional period of forty-five (45) from the date of the petition for judicial review. In the event that a final, non-appealable order (of the CPUC, on remand, or appellate body) denies the relief requested by Purchaser, conditions its approval or requires modification of the Agreement in a manner that has an adverse effect on Purchaser or fails to issue such final non-appealable order within the forty-five (45)-day period, then Purchaser may (in its sole discretion) elect to notify Seller in writing after thirty (30) days of the issuance of such order that it will accept the terms of this Agreement as so conditioned or modified; and, after giving notice thereof in accordance with Section 14.11, the order shall be deemed to be a CPUC Approval. Absent delivery of such notice by Purchaser within thirty (30) days of such order, or receipt of an order within the one year period that by its terms, and with the passage of time, is a CPUC Approval as determined by Purchaser in its sole discretion, this Agreement shall terminate automatically without further liability or obligation of the Parties to one another, except as set forth in Section 10.3 and Article 11.
3. **CERTAIN AGREEMENTS**
   1. **Regulatory Matters** .
      1. CPUC Approval . Purchaser will use Commercially Reasonable Efforts to obtain the CPUC Approval, including filing by not later than July 31, 2015 an application (“**CPUC Approval Advice Letter**”) with the CPUC seeking an order that with the passage of time after issuance would constitute CPUC Approval.
      2. Required Permits and Consents . Except as provided in Section 10.1.1, Seller shall be responsible for obtaining, and shall use Commercially Reasonable Efforts to obtain, the following on or before the Closing at no cost or expense to Purchaser:
         1. all Permits and Consents required for the development of the Project and Seller’s consummation of the transactions contemplated by this Agreement and the Related Agreements, including the Section 203 Approval;
         2. without limiting the generality of Section 10.1.2.1, the specific consents to the assignment from Seller to Purchaser of (or, as applicable, the reissuance in the name of Purchaser of) the Permits and Consents listed in Schedule 10.1.2; and
         3. without limiting the generality of Section 10.1.2.1, the assignment by Seller to Purchaser of the Assigned Agreements.

Promptly following any request by Purchaser, Seller will provide a detailed report as to the status of each Required Approval and Seller’s efforts to obtain the same. After the Closing, Seller will notify promptly all relevant Governmental Authorities and all third Persons from whom Consents have been obtained or to whom notice must otherwise be given of the change in ownership of the Project and the Project Assets resulting from the transactions contemplated herein, in each case to the extent required by Applicable Laws or the agreements to which the Consents relate.

* + 1. Transfer and Amendment . To the extent that Applicable Laws do not permit the transfer, amendment or issuance in the name of Purchaser of any Permit required to be transferred from Seller to Purchaser hereunder prior to or at Closing, then Seller shall prepare and submit prior to or at Closing all applications, documentation, amendments, certifications or other filings requested or required by Applicable Laws or Governmental Authorities to obtain such transfer, amendment or re-issuance of such Permit, and shall provide to Purchaser at Closing evidence satisfactory in form and substance to Purchaser in Purchaser’s sole discretion that such transfer, amendment or re-issuance (i) will occur not later than one hundred eighty (180) days after the Closing, and (ii) will not result in aggregate costs to Purchaser (for such Permit and all other Permits) in excess of $100,000 (to the extent not otherwise reimbursed by Seller) or any adverse changes in the terms of such Permit.
    2. Cooperation . Each Party will provide such cooperation as the other Party may reasonably request to assist such other Party’s efforts to obtain the Permits and Consents required pursuant to this Section 10.1 and will cooperate with the other Party in executing such applications and other documents as are required to effectuate any transfers (or reissuance, as applicable) thereof to Purchaser. Each Party will bear its own costs for these applications and proceedings.
  1. **Confidentiality** . Neither Party shall disclose any Confidential Information to a third party, other than (i) such Party’s employees, lenders, counsel, accountants, advisors, rating agencies, equity investors, potential lenders or potential equity investors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Purchaser’s Procurement Review Group, as defined in CPUC Decision 02-08-071, subject to a confidentiality agreement; (iii) to Purchaser’s “Independent Evaluator” as defined in CPUC Decision 04-12-048; (iv) to the CPUC under seal for purposes of review, (v) disclosure of terms specified in and pursuant to this Section 10.2; (vi) in order to comply with any Applicable Law or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party (“**Disclosing Party**”), other than to those entities set forth in subsection (vii); (vii) in order to comply with any applicable regulation, rule, or order of the CPUC, the California Energy Commission or FERC; or (viii) as Purchaser deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies including the CPUC or any division thereof. In connection with requests made pursuant to clause (v) of this Section 10.2 (“**Disclosure Order**”) and disclosures pursuant to clause (vii) or (viii) (“**Regulatory Disclosures**”) each Party shall, to the extent practicable, use reasonable efforts to: (x) notify the other Party prior to disclosing the Confidential Information and (y) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (a) prohibited from complying with a Disclosure Order or making the Regulatory Disclosures or (b) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section 10.2. If this Agreement is terminated pursuant to Section 14.13, each Party will promptly return or certify the destruction of, if so requested by the other Party, any Confidential Information provided to it and will use Commercially Reasonable Efforts to return any copies thereof that may have been provided to others in accordance with this Section 10.2. The obligations of the Parties in this Section 10.2 will survive the termination of this Agreement, the discharge of all other obligations owed by the Parties to each other, any transfer of title to the Project and the Project Assets and the Closing of the transactions contemplated in this Agreement.
  2. **Taxes** .
     1. Transfer and Sales Taxes . Seller shall be responsible for the payment of any sales, use, transfer, documentary and other Taxes arising in connection with the sale of the Project and the Project Assets to Purchaser and any Taxes on the Project or the development of the Project arising prior to and including the Asset Transfer Date. Purchaser agrees to provide such cooperation, at no expense to Purchaser, as Seller may reasonably request to lawfully minimize Seller’s incurrence of sales, use and documentary transfer taxes in connection with the sale or transfer of the Project and the Project Assets; for the avoidance of doubt, such cooperation shall not obligate Purchaser to take any action inconsistent with the other provisions of this Agreement.
     2. Property Taxes . State and local real and personal property Taxes relating to the Project and the Project Assets for the tax year in which the Closing occurs will be prorated between Purchaser and Seller on the following basis: Seller is to be responsible for all such Taxes for the period up to and including the Asset Transfer Date; and Purchaser is responsible for all such Taxes for the period after the Asset Transfer Date. All Taxes assessed on an annual (whether calendar or other twelve (12)-month) basis will be prorated on the assumption that an equal amount of Taxes applies to each day of the tax year, regardless of how many installment payments are billed or made.
     3. Tax Refunds . Seller will be entitled to any refunds or credits of Taxes relating to the Project and the Project Assets for the period prior to and including the Asset Transfer Date. Purchaser will promptly notify and forward to Seller the amounts of any such refunds or credits to Seller within sixty (60) days after receipt thereof.
     4. Pending or Threatened Actions . After the Asset Transfer Date, Purchaser will notify Seller in writing, within fifteen (15) days after its receipt of any correspondence, notice or other communication from a taxing authority or any representative thereof, of any pending or threatened tax audit, or any pending or threatened judicial or administrative proceeding that involves Taxes relating to the Project and the Project Assets for the period prior to and including the Asset Transfer Date, and furnish Seller with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Project and the Project Assets for the period prior to and including the Asset Transfer Date.
     5. Cooperation and Defense of Tax Claims . Notwithstanding any provision of this Agreement to the contrary, with respect to any claim for refund, audit, examination, notice of deficiency or assessment or any judicial or administrative proceeding that involves Taxes relating to the Project and the Project Assets for the period either entirely prior to and including the Asset Transfer Date or both prior to and after, the Asset Transfer Date (collectively, “**Tax Claim**”), Purchaser will reasonably cooperate in contesting any Tax Claim, including making available original books, records, documents and information for inspection, copying and, if necessary, introduction as evidence at any such Tax Claim contest and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder with respect to such Tax Claim or to testify at proceedings relating to such Tax Claim. Seller will control all proceedings taken in connection with any Tax Claim that pertains entirely to the period prior to the Asset Transfer Date, and Seller and Purchaser will jointly control all proceedings taken in connection with any Tax Claim pertaining to the period both prior to and after the Asset Transfer Date. Purchaser has no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period prior to the Asset Transfer Date; and neither Party has the right to settle or otherwise compromise any Tax Claim which pertains to the period both prior to and after the Asset Transfer Date without the other Party’s prior written consent.
  3. **Environmental Matters** .
     1. Seller’s Rights and Responsibilities .
        1. Seller agrees to undertake any Remediation relating to any Pre-Closing Environmental Condition that is required by any Governmental Authority with jurisdiction over the Project, the Project Site and/or the Additional Real Property under Environmental Laws, and to continue such Remediation until Completion. “**Completion**” means, with respect to any Pre-Closing Environmental Condition, that Seller has received written notice from each Governmental Authority exercising jurisdiction under Environmental Laws over the Remediation of such Pre-Closing Environmental Condition that no additional Remediation of such Pre-Closing Environmental Condition is required at that time; provided, however, if residual Hazardous Materials have been left in place with the written consent of such Governmental Authority, the residual Hazardous Materials will be deemed to be a separate Pre-Closing Environmental Condition thathas not achieved Completion.
        2. Seller a has the right to undertake: (i) the Remediation described in Section 10.4.1.1; and (ii) any additional Remediation relating to Pre-Closing Environmental Conditions as Seller reasonably deems necessary or appropriate with Purchaser’s consent.
     2. Remediation Procedures . With respect to any Remediation required or permitted to be undertaken by Seller under Section 10.4.1:
        1. Seller agrees that prior to proposing any work plan for Remediation to a Governmental Authority with jurisdiction over the Pre-Closing Environmental Condition under Environmental Law, Seller will provide Purchaser with a copy of the work plan for Purchaser’s review and obtain Purchaser’s Written Approval. The work plan will set forth the type and nature of the Remediation, the specific locations at the Project Site and/or the Additional Real Property where the Remediation will be conducted, and the type and nature of any equipment that will be used on or installed at the Project Site and/or the Additional Real Property for purposes of conducting the Remediation. Any work plan shall minimize to the greatest degree possible any disruption of Purchaser’s use or operation of the Project, and shall not interfere with any expansion or repowering of the Project disclosed in writing by Purchaser to Seller. All work will be done in a good and workmanlike manner, in compliance with Environmental Law, with a minimum of disruption to Purchaser’s ownership, use, maintenance and operation of the Facility.
        2. If Seller is undertaking the Remediation under the supervision of a Governmental Authority with jurisdiction over the Pre-Closing Environmental Condition under Environmental Law, Seller will use Commercially Reasonable Efforts to obtain written evidence of such Governmental Authority’s approval of such work plan and, if and when obtained, will provide Purchaser with such evidence.
        3. Seller will inform Purchaser in writing at least one (1) month in advance of all material actions to be taken on the Project Site or the Additional Real Property. Seller will observe Purchaser’s procedures for protection of health and safety, and will ensure compliance with all health, safety and other Applicable Laws applicable to the Remediation, including those applicable to emergencies.
        4. After the completion of any Remediation, Seller will restore the surface to a condition substantially similar to that existing at the time immediately prior to any such Remediation, except to the extent that Purchaser has taken actions at the Project Site so as to make such restoration impracticable using Commercially Reasonable Efforts.
        5. After the completion of all or part of any Remediation, Seller will provide to Purchaser evidence that Completion has been achieved in accordance with applicable Permits, and Environmental Laws.
     3. Purchaser’s Responsibilities .
        1. Purchaser agrees to use Commercially Reasonable Efforts to cooperate with any Remediation undertaken by Seller, provide access to the Project Site and the Additional Real Project as necessary at reasonable times and upon reasonable notice, and assist Seller in obtaining access to offsite property if necessary for the implementation of the Remediation work.
        2. Purchaser will promptly notify Seller of any information received by Purchaser from any Person other than Seller regarding the presence or suspected presence of Hazardous Materials that Purchaser believes to be a Pre-Closing Environmental Condition.
        3. Until such time as Seller provides to Purchaser evidence that Seller has achieved Completion with respect to a Pre-Closing Environmental Condition, Seller and Purchaser will, upon the written request of the other Party, provide to the requesting Party copies of all material reports, correspondence, notices and communications regarding any Pre-Closing Environmental Condition or the Remediation thereof sent to or received from any Governmental Authority with respect to such Remediation or Pre-Closing Environmental Condition.
  4. **Title Report** . Not later than sixty (60) days prior to the projected Asset Transfer Date, Seller shall provide to Purchaser a preliminary title report (“**Preliminary Title Report**”) issued by the Title Company with respect to all real property comprising part of the Project.
  5. **Force Majeure** .
     1. Effect of Force Majeure . A Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure Event, and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party’s failure or delay of performance. Notwithstanding the forgoing,a failure to make payments accrued prior to the Force MajeureEvent when due shall not be excused. The burden of proof for establishing the existence and consequences of a Force Majeure Event lies with the Party initiating the claim.
     2. Notice of Force Majeure . As soon as possible, but in any event within five (5)Business Daysof the occurrence of an event the affected Party believes is a Force Majeure Event the Party desiring to invoke a Force Majeure Event as a cause for delay in its performance of, or failure to perform, any obligation (other than the payment of money) hereunder, shall provide the other Party notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event including the expected duration and effect of such Force Majeure Event. Failure to provide timely notice constitutes a waiver of a claim of a Force Majeure Event. Promptly, but in any event within ten (10) days, after a notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such Force Majeure Event.
     3. Mitigation of Force Majeure . The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such Force Majeure Event. The Parties shall take all reasonable steps to ensure resumption of normal performance under this Agreement after the cessation of any Force Majeure Event.

1. **SURVIVAL AND INDEMNIFICATION**
   1. **Survival of the Parties’ Representations, Warranties and Covenants** . The representations and warranties of Seller and Purchaser contained in this Agreement or in any instrument delivered in connection herewith shall survive the Closing until the expiration of eighteen (18) months after the Asset Transfer Date; provided, however, Fundamental Representations shall survive indefinitely, Seller’s representations and warranties in Sections 5.12 and 5.13 shall survive until five (5) years after the Asset Transfer Date, and Seller’s representations and warranties in Section 5.17 and elsewhere concerning Taxes related to the Project and the consummation of the transactions contemplated hereby shall survive until the expiration of any applicable statute of limitations relating to such Taxes. Unless a specified survival period is otherwise set forth in this Agreement (in which event such specified period will control), the covenants in this Agreement or in any instrument delivered in connection herewith will survive the Closing and remain in effect until eighteen (18) months after the Asset Transfer Date. Any indemnification claim with respect to any of such matters which is not asserted by a Notice of Claim (given as herein provided) relating thereto within the survival period set forth below may not be pursued and is hereby irrevocably waived after such period. Any Third Party Claim for an Indemnifiable Loss asserted within such period of survival as herein provided will be timely made for purposes hereof.
   2. **Indemnification by Seller** .
      1. Purchaser Claims . Except as otherwise provided in Section 12.2.2, Seller will indemnify, defend and hold harmless Purchaser and each other member of the Purchaser Group, from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to the following (collectively, “**Purchaser Claims**”):
         1. any breach or violation by Seller of this Agreement, the Related Agreements or any agreement executed in connection with the transactions contemplated by this Agreement;
         2. any breach or inaccuracy of the representations or warranties of Seller set forth herein;
         3. any Third Party Claims resulting from or arising out of the development, financing, construction, testing and preparation of the Project for commercial operation or out of Seller’s ownership, use or operation of the Project or any Project Assets prior to and through the Asset Transfer Date, including without limitation actions or claims with respect to tax liabilities, claims by third parties in respect of contract, tort and other liabilities, and liabilities arising under the Financing Arrangements;
         4. any Third Party Claims resulting from Seller’s efforts to achieve Substantial Completion and Project Completion after the Closing;
         5. any Indemnifiable Loss resulting from or arising out of any Pre-Closing Environmental Conditions;
         6. any Indemnifiable Loss resulting from or arising out of the disposal, release or threatened release of Hazardous Materials by or on behalf of Seller or at Seller’s direction or by its or their arrangement;
         7. any loss or damages resulting from or arising out of Seller’s ownership or operation of the Excluded Assets after the Closing or that are related to the Excluded Liabilities;
         8. any Taxes for which Seller is responsible pursuant to Section 10.4; or
         9. except as otherwise provided in Section 10.1.3, any additional costs, liabilities or loss of revenues attributable to modifications to any Permit or Consent occurring in connection with the transfer of such Permit or Consent to Purchaser, if such transfer is not completed on or prior to Closing.
      2. Seller’s Exceptions .
         1. Purchaser Claims will not include any damages, claims, losses, liabilities and expenses to the extent Purchaser has agreed to provide indemnification therefor pursuant to Section 11.3 or which Purchaser has agreed to assume pursuant to this Agreement.
         2. The amounts payable in respect of Purchaser Claims shall be subject to caps as follows:
            1. The maximum liability for Purchaser Claims relating to (i) any breach or inaccuracy of the representations or warranties of Seller set forth Sections 5.1.1, 5.1.2, 5.10.5 and 5.17 or (ii) Sections 11.2.1.3, 11.2.1.4, 11.2.1.7 or 11.2.1.8 shall (in the aggregate together with all matters covered by Sections 11.2.2.2.2 and 11.2.2.2.3) be equal to one hundred percent (100%) of the Purchase Price.
            2. The maximum liability for Purchaser Claims relating to (i) any breach or inaccuracy of the representations or warranties of Seller set forth Section 5.13 or (ii) Sections 11.2.1.5 or 11.2.1.6 shall (in the aggregate together with all matters covered by Section 11.2.2.2.3) be equal to forty percent (40%) of the Purchase Price.
            3. The maximum liability for all other Purchaser Claims in the aggregate shall in the aggregate be equal to twenty-five percent (25%) of the Purchase Price.
      3. The amounts payable in respect of Purchaser Claims relating to a breach of any representation or warranty under this Agreement (other than Section 5.17) shall be subject to a payment obligation only to the extent that the total amount of all Purchaser Claims exceeds $100,000.
   3. **Indemnification by Purchaser** .
      1. Seller Claims . Except as otherwise specifically provided in, Purchaser will indemnify, defend and hold harmless Seller and each other member of the Seller Group from and against any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to the following (collectively, “**Seller Claims**”):
         1. any breach or violation by Purchaser of this Agreement, the Related Agreements or any agreement executed in connection with the transactions contemplated by this Agreement;
         2. any breach or inaccuracy of any of the representations or warranties of Purchaser set forth herein; or
         3. any Third Party Claims resulting from or arising out of Purchaser’s ownership, use or operation of the Project or any Project Assets after the Closing, including without limitation actions or claims with respect to tax liabilities and claims by third parties in respect of contract, tort and other liabilities, but excluding any claim arising from the presence or release of Hazardous Materials to the extent attributable to Pre-Closing Environmental Conditions and any claim subject to Section 11.2.1.4.
      2. Purchaser Exceptions .
         1. Seller Claims will not include any damages, claims, losses, liabilities and expenses to the extent Seller has agreed to provide indemnification therefor pursuant to Section 11.2 or which Seller has agreed to assume pursuant to this Agreement.
         2. The amounts payable in respect of Seller Claims shall be subject to caps as follows:
            1. (A) The maximum liability for Seller Claims relating to (i) any breach or inaccuracy of the representations or warranties of Purchaser set forth Sections 6.1.1 and 6.1.2, or (ii) Section 11.3.1.3 shall (in the aggregate together with all matters covered by Section 11.3.2.2.2) be equal to one hundred percent (100%) of the Purchase Price.
            2. (B) The maximum liability for all other Seller Claims in the aggregate shall be subject to a maximum liability in the aggregate equal to twenty-five percent (25%) of the Purchase Price.
         3. The amounts payable in respect of Seller Claims relating to a breach of any representation or warranty under this Agreement shall be subject to a payment obligation only to the extent that the total amount of all Seller Claims exceeds $100,000.
   4. **Notice of Claim** . Subject to the terms of this Agreement and upon obtaining knowledge of a claim for which it is entitled to indemnity under this Article 11, the Party seeking indemnification hereunder (the “**Indemnitee**”) will promptly notify the Party against whom indemnification is sought (the “**Indemnitor**”) in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to a claim under Section 11.2 or Section 11.3 (the written notice is referred to as a “**Notice of Claim**”). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the claim. Subject to the terms of this Agreement, the failure to provide (or timely provide) a Notice of Claim will not affect the Indemnitee’s rights to indemnification, except as otherwise provided by the specific time frames set forth in Section 11.2 and Section 11.3; provided, however, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any claim which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.
   5. **Defense of Third Party Claims** .
      1. Notice of Claim . If an Indemnitee receives notice of the assertion or commencement of a Third Party Claim against it with respect to which an Indemnitor is obligated to provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) calendar days after such Indemnitee’s receipt of notice of such Third Party Claim. Such Notice of Claim will describe the Third Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if reasonably practicable the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving written notice to the Indemnitee, to assume the defense of any Third Party Claim at such Indemnitor’s own expense and by such Indemnitor’s own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.
      2. Defense of Claim . If, within ten (10) calendar days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 11.5.1, an Indemnitee receives written notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 11.5.1, the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) calendar days after receiving written notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten calendar days after its receipt of such notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such notice.
      3. Failure to Provide Notice . A failure to give timely notice or to include any specified information in any notice as provided in Section 11.5.1 or 11.5.2 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure.
      4. Direct Claims . Any Direct Claim must be asserted by giving the Indemnitor written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) calendar days from receipt of such notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty-day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.
      5. Subrogation of Rights . Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (i) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such third party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee’s rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.
2. **CONDITIONS PRECEDENT TO OBLIGATIONS OF  
   PURCHASER AT THE CLOSING**

The obligations of Purchaser under this Agreement to pay the Initial Component of the Purchase Price, purchase the Project and the Project Assets and to take the other actions required to be taken by Purchaser at Closing are subject to the satisfaction (or waiver by Purchaser in its sole discretion), on or prior to the Closing, of each of the following conditions precedent:

* 1. **Compliance with Provisions** . Seller shall have performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement on its part required to be performed or complied with at or prior to the Closing and shall not otherwise be in breach in any material respect of any of its covenants and agreements contained herein.
  2. **No Conflict** . Neither the consummation nor the performance of any of the transactions contemplated by this Agreement will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause Purchaser or any Affiliate of Purchaser to suffer any adverse consequences under any applicable Governmental Rule.
  3. **Representations and Warranties** . All representations and warranties of Seller contained herein shall have been true and accurate as of the Effective Date and shall be true and correct at and as of the Asset Transfer Date, except as provided in the first paragraph of Article 5, with the same effect as though those representations and warranties had been made again at and as of that time, except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct in all respects as of such specified date.
  4. **Project Requirements** .
     1. Mechanical Completion . Mechanical Completion shall have occurred in accordance with the requirements of this Agreement.
     2. As Built Drawings . Seller shall have delivered to Purchaser (i) all Final As-Built Drawings and Documentation, (ii) all completed Manuals, and (iii) manufacturers’ recommended operating and maintenance procedures required for maintenance of manufacturers’ warranties, and in each case obtained Purchaser’s Written Approval of the same.
     3. Assignment of Warranties . Seller shall have assigned to Purchaser all guarantees and warranties provided by the Construction Contractor, if any, and its other Subcontractors providing warranties on products or services related to the Project and any of the Project Assets, subject to Seller’s retained right to enforce such warranties directly during the period Seller’s corresponding warranties under Article 8 remain in effect.
     4. Training . Seller shall have completed the training program required under Section 2.2.6.
     5. Interconnection Agreement . Seller shall have fulfilled its obligations under the Interconnection Agreement.
     6. Project Operation . No condition shall exist that would render the Project incapable of being operated commercially as an integrated whole to produce Electrical Product as contemplated in this Agreement.
  5. **Purchaser’s Receipt of Permits and Consents** . Purchaser shall have received the CPUC Approval, in form and substance satisfactory to Purchaser in its sole discretion, and, subject to Section 10.1.3, shall have received in form and substance satisfactory to Purchaser in its sole discretion all Permits and Consents that Seller is obligated to transfer (or cause to be reissued) to Purchaser, including the specific Permit and Consents listed in Schedules 3.1.6 and 3.1.7 and all other Permits and Consents (including those listed in Schedules 5.3.2 and 5.3.3) as are necessary or desirable for Seller’s sale and transfer to Purchaser of the Project or to allow Purchaser to own, operate, use and maintain the Project, all of which shall be in full force and effect when transferred.
  6. **No Adverse Proceedings or Events** . No suit, action or other proceeding against any Party or its Affiliates is pending before any court or Governmental Authority (including administrative proceedings) which seeks to restrain or prohibit one or more of the transactions contemplated by this Agreement or to obtain damages or other relief in connection with this Agreement or the transactions contemplated hereby or any contracts to be transferred to Purchaser under the Agreement, or that, if successful, could result in a material adverse effect on Purchaser, the Project or Purchaser’s ability to operate the Project as contemplated. No event shall have occurred that has had or could reasonably be expected to have a material adverse effect on Purchaser, the Project or Purchaser’s ability to operate the Project as contemplated.
  7. **Deliveries** . Seller shall have delivered, or caused to be delivered, to Purchaser at the Closing the documents, payments and other deliverables listed in Section 4.2.1, including the Deed, Bill of Sale and Assignment and Assumption Agreement.
  8. **Title Policy** . The Title Company shall have issued to Purchaser, at no cost to Purchaser, a California Land Title Association policy of title insurance naming Purchaser as insured, showing title to the real property interests listed on Schedule 3.1.5 conveyed to Purchaser at the Closing, subject only to the Permitted Encumbrances.
  9. **Liens on Project Assets** . All Liens on the Project or any of the Project Assets, other than Permitted Encumbrances, shall have been discharged by Seller or by the Person in whose favor such Liens exist, at no expense to Purchaser.
  10. **No Termination** . Neither Party shall have exercised any termination right such Party is entitled to exercise pursuant to Section 14.13.
  11. **Schedules and Exhibits** . Seller shall have updated all Schedules and Exhibits to reflect information current as of the Asset Transfer Date, and such information shall be satisfactory to Purchaser.

1. **CONDITIONS PRECEDENT TO OBLIGATIONS OF  
   SELLER AT THE CLOSING**

The obligations of Seller under this Agreement to complete the sale of the Project and transfer the Project to Purchaser and to take the other actions required to be taken by Seller at Closing are subject to the satisfaction (or waiver by Seller in its sole discretion) of each of the following conditions precedent:

* 1. **Compliance with Provisions** . Purchaser shall have performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement on its part required to be performed or complied with at or prior to the Closing.
  2. **No Adverse Proceedings or Events** . No suit, action or other proceeding against any Party or its Affiliates shall be pending before any court or Governmental Authority which seeks to restrain or prohibit one or more of the transactions contemplated by this Agreement or to obtain material damages or other material relief in connection with this Agreement or the transactions contemplated hereby.
  3. **No Termination** . Neither Party shall have exercised any termination right such Party is entitled to exercise pursuant to Section 14.13.

1. **MISCELLANEOUS AGREEMENTS AND ACKNOWLEDGEMENTS**
   1. **Expenses** . Except as otherwise provided herein, each Party is responsible for its own costs and expenses (including attorneys’ and consultants’ fees, costs and expenses) incurred in connection with this Agreement and the consummation of the transactions contemplated by this Agreement.
   2. **Entire Document** . This Agreement (including the Exhibits and Schedules to this Agreement) and the Related Agreements contain the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the execution date of this Agreement, written or oral. No waiver and no modification or amendment of any provision of this Agreement is effective unless made in writing and duly signed by the Parties referring specifically to this Agreement, and then only to the specific purpose, extent and interest so provided.
   3. **Schedules** . The Schedules delivered pursuant to the terms of this Agreement are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.
   4. **Counterparts** . This Agreement may be executed in one or more counterparts, each of which is an original, but all of which together constitute one and the same instrument.
   5. **Severability** . If any provision hereof is held invalid or unenforceable by any arbitrator or as a result of future legislative action, this holding or action will be strictly construed and will not affect the validity or effect of any other provision hereof. To the extent permitted by law, the Parties waive, to the maximum extent permissible, any provision of law that renders any provision hereof prohibited or unenforceable in any respect.
   6. **Assignability** . This Agreement is binding upon and inures to the benefit of the successors and assigns of the Parties, but is not assignable by any Party without the prior written consent of the other Party, which consent may be granted or withheld in such Party’s sole discretion. Any such assignment is conditioned on the assignee’s agreement in writing to assume the assigning Party’s duties and obligations under this Agreement and the Related Agreements. Any assignment effected in accordance with this Section 14.6 will not relieve the assigning Party of its obligations and liabilities under this Agreement and the Related Agreements.
   7. **Captions** . The captions of the various Articles, Sections, Appendices, Exhibits and Schedules of this Agreement have been inserted only for convenience of reference and do not modify, explain, enlarge or restrict any of the provisions of this Agreement.
   8. **Governing Law**.  The validity, interpretation and effect of this Agreement are governed by and will be construed in accordance with the laws of the State of California applicable to contracts made and performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law or are governed by the law of the jurisdiction of organization of the respective parties.
   9. **Dispute Resolution** . Except as otherwise provided in this Section 14.9, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth below. Either Party may seek a preliminary injunction or other provisional judicial remedy if such action is necessary to prevent irreparable harm or preserve the status quo, in which case both Parties nonetheless will continue to pursue resolution of the dispute by means of this procedure.
      1. If such a dispute arises, the Parties will attempt in good faith to resolve any controversy or claim by prompt negotiations between each Party’s authorized representative designated in writing as a representative of the Party with settlement authority to resolve the matter without seeking further approvals (“**Dispute Representative**”). Each Dispute Representative shall either discuss in person or by phone the dispute within fourteen (14) days of either Party receiving written Notice that there is a dispute under the Agreement. If the matter is not resolved within thirty (30) days after the discussions between the Dispute Representatives, either Party has the right to request either a meeting between the Parties to resolve the dispute, or informal mediation, or that Party may proceed to arbitration.
      2. Any dispute that cannot be resolved by management negotiations as set forth above shall be resolved through binding arbitration by a retired judge or justice conducted in San Diego, California administered by and in accordance with the JAMS Commercial Rules. To the extent those rules conflict with this Agreement, this Agreement shall prevail. The dispute, and the arbitration thereof, shall be governed by California law, and any conflict of law principles shall not be applicable.
      3. Within sixty (60) days after a notice for demand for arbitration has been delivered, each Party shall provide three names to the other Party as potential arbitrators. The Parties shall mutually agree on one arbitrator. If the parties cannot choose an arbitrator, the Parties shall contact JAMS to select an arbitrator pursuant to its rules. The arbitrator shall follow the JAMS rules and guidelines. Any arbitrator shall have no affiliation with, financial or other interest in either Party and shall be knowledgeable in the field of the dispute.
      4. At the request of a Party, the arbitrator shall permit written and oral discovery. Such discovery shall be governed by the California Rules of Civil Procedure. The arbitrator shall also have discretion to compel Parties to answer written or oral discovery where a Party has refused to do so, upon good cause shown.
      5. The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery.
      6. The arbitrator shall have no authority to award punitive or exemplary damages or other damages other than direct and actual damages. The arbitrator shall have no authority to grant injunctive relief, or any other equitable remedy. Any request for injunctive relief, or other equitable remedy, shall be pursued through a court of competent jurisdiction.
      7. The arbitrator’s award shall be made within 3 months after conclusion of any trial on the arbitration. The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based. The decision of the arbitrator may be enforced as a final judgment in any court of competent jurisdiction.
      8. Each Party shall bear its own costs, expenses and attorneys’ fees associated with the dispute resolution process and the arbitrator shall not have authority to allocate the costs or expenses of the arbitration, including the arbitrators’ fees, to either Party.
      9. The language of the arbitration shall be English.
      10. Survival. The provisions set forth in this Section 14.9 shall survive the termination or expiration of this Agreement.
   10. **Limitations on Liability** . UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, EXCEPT UNDER ARTICLE 11 IN RESPECT OF THIRD PARTY CLAIMS FOR DAMAGE TO OR DESTRUCTION OF PROPERTY (WHICH FOR PURPOSES HEREOF SHALL BE DEEMED TO INCLUDE AMOUNTS PAID TO THIRD-PARTIES AS A RESULT OF OR RELATING TO PRE-CLOSING ENVIRONMENTAL CONDITIONS AND OTHER ENVIRONMENTAL LIABILITIES) OF, OR DEATH OF OR BODILY INJURY TO, ANY PERSON. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF ARTICLE 12, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES, INCLUDING THE LIMITATIONS OF LIABILITY AND THE EXCLUSION OF CONSEQUENTIAL DAMAGES, BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE, AND SHALL APPLY IRRESPECTIVE OF WHETHER A PARTY OR ANY AFFILIATE THEREOF, OR ANY PARTNER, MEMBER, SHAREHOLDER, OFFICER, DIRECTOR OR EMPLOYEE OF A PARTY OR AN AFFILIATE THEREOF, ASSERTS A THEORY OF LIABILITY IN CONTRACT, TORT, NEGLIGENCE, MISREPRESENTATION (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, STATUTORY LIABILITY, OR ANY THEORY OF LIABILITY. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING TERMINATION FEES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.
   11. **Notices** . Any notice or invoice required or authorized to be given hereunder or any other communications between the Parties provided for under the terms of this Agreement shall be in writing (unless otherwise provided) and shall be served personally or by reputable next Business Day express courier service or by facsimile transmission addressed to the relevant Party at the address stated below or at any other address notified by that Party to the other as its address for service. Any notice so given personally or by express courier shall be deemed to have been served on delivery, and any notice so given by facsimile transmission shall be deemed to have been served on written, email or facsimile confirmation of receipt by the named recipient. As proof of such service it shall be sufficient to produce a receipt showing personal service, the receipt of a reputable courier company showing the correct address of the addressee or an activity report of the sender’s facsimile machine showing the confirmation of successful transmission.

The Parties’ addresses for notice and service are:

|  |  |
| --- | --- |
| To Purchaser: | San Diego Gas & Electric Company  8315 Century Park Court CP21C  San Diego, CA 92123  Facsimile No: 858-637-3770  Attention: Manager, Electric Project Development Attention: Director, Supply Management |
|  |  |
| To Seller: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Facsimile No:  Attention: |

* 1. **Time is of the Essence** . Time is of the essence for each term of this Agreement. Without limiting the generality of the foregoing, all times provided for in this Agreement for the performance of any act will be strictly construed.
  2. **Termination** .
     1. Rights To Terminate .This Agreement may, by written notice given on or prior to the Asset Transfer Date, in the manner provided in Section 14.11, be terminated at any time prior to the Asset Transfer Date as provided below:
        1. by Seller if there has been a material misrepresentation or a material default or breach by Purchaser with respect to any of Purchaser’s representations and warranties in this Agreement or in any Related Agreement or the due and timely performance of any of Purchaser’s covenants and agreements contained in this Agreement or in any Related Agreement, and such misrepresentation, default or breach is not cured (i) within ten (10) days of written notice from Seller specifying particularly such misrepresentation, default or breach in the case of any of Purchaser’s payment obligations, or (ii) within thirty (30) days of written notice from Seller specifying particularly such misrepresentation, default or breach in all other cases, provided, however, no right of termination shall arise under this subsection (ii) if such misrepresentation, default or breach is not able to be cured in such thirty-day period, and Purchaser is in the process of curing the misrepresentation, default or breach in such thirty-day period and shall have cured the misrepresentation, default or breach within ninety (90) days of written notice from Seller thereof;
        2. by Purchaser if there has been a material misrepresentation or a material default or breach by Seller with respect to Seller’s representations and warranties in this Agreement or in any Related Agreement or the due and timely performance of any of Seller’s covenants and agreements contained in this Agreement or in any Related Agreement, and such misrepresentation, default or breach is not cured (i) within ten (10) days of written notice from Purchaser specifying particularly such misrepresentation, default or breach in the case of any of Seller’s payment obligations, or (ii) within thirty (30) days of written notice from Purchaser specifying particularly such misrepresentation, default or breach in all other cases, provided, however, no right of termination shall arise under this subsection (ii) if such misrepresentation, default or breach is not able to be cured in such thirty-day period, and Seller is in the process of curing the misrepresentation, default or breach in such thirty-day period and shall have cured the misrepresentation, default or breach within ninety (90) days of written notice from Purchaser thereof;
        3. by Seller or Purchaser as provided in Section 9.1.1;
        4. by Purchaser as provided in Section 2.3.4;
        5. by Seller or Purchaser if any Guaranteed Date is extended for more than sixty (60) days due to Force Majeure as provided in Section 2.3.5; or
        6. by mutual agreement of Seller and Purchaser.
     2. Effect of Termination . If this Agreement is terminated pursuant to Section 14.13.1, all further obligations and liabilities of the Parties hereunder will terminate, except (i) as otherwise contemplated by this Agreement, and (ii) for the obligations set forth in Sections 7.12 and 10.2and Article 11. Upon termination, the originals of any items, documents or written materials provided by one Party to the other Party will be returned by the receiving Party to the providing Party, and any Confidential Information retained by the receiving Party will be kept confidential.
  3. **No Third Party Beneficiaries** . Except as may be specifically set forth in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third Persons to any Party, nor give any third Persons any right of subrogation or action against any Party.
  4. **No Joint Venture** . Nothing contained in this Agreement creates or is intended to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to any Party.
  5. **Construction of Agreement** . Ambiguities or uncertainties in the wording of this Agreement will not be construed for or against any Party, but will be construed in the manner that most accurately reflects the Parties’ intent as of the date they executed this Agreement.
  6. **Conflicts** . In the event of any conflicts or inconsistencies between the terms of this Agreement and the terms of any of the Related Agreements, the terms of this Agreement will govern and prevail.
  7. **CONSENT TO JURISDICTION** . EACH OF THE SELLER AND THE PURCHASER CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA FOR ADJUDICATION OF A PRELIMINARY INJUNCTION OR OTHER PROVISIONAL JUDICIAL REMEDY AS PROVIDED IN SECTION 14.9. EACH OF THE SELLER AND THE PURCHASER ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. IF NOT A RESIDENT OF THE STATE OF CALIFORNIA, THE SELLER MUST APPOINT AND MAINTAIN AN AGENT FOR SERVICE OF PROCESS IN THE STATE OF CALIFORNIA.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

[SELLER]

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

SAN DIEGO GAS & ELECTRIC COMPANY

By \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

1. Note that a parent guaranty will be required to secure Seller’s indemnity obligations under the Agreement if Seller is a special-purpose entity or is not otherwise sufficiently creditworthy. [↑](#footnote-ref-1)
2. *Exhibits and Schedules will be developed with counterparty following shortlisting.* [↑](#footnote-ref-2)