REGULAR MEETING of the Board of Directors of the Clean Power Alliance of Southern California
Thursday, October 1, 2020
2:00 p.m.

Listen to the Board of Directors meeting (Audio-Only):
Call: (877) 309-2074 Conference Code: 965-536-914
All Participants must press “#” to join the meeting.

SPECIAL NOTICE REGARDING PUBLIC COMMENT: Pursuant to Paragraph 11 of Executive Order N-29-20, executed by the Governor of California on March 17, 2020, and as a response to mitigating the spread of Coronavirus known as COVID-19, the Board of Directors will allow members of the public to participate and address Board Members during the meeting via teleconference only. Below are the ways to participate:

- Members of the public are encouraged to submit written comments on any agenda item to clerk@cleanpoweralliance.org up to four hours before the meeting.
- If you desire to provide public comment during the meeting, you must contact staff at (213) 713-5995 at the beginning of the meeting but no later than immediately before the agenda item is called.
  - You will be asked to provide a phone number to call you during the meeting. You will also be asked for your name (or other identifying information) similar to filling out a speaker card so that you can be called when it is your turn to speak.
  - You will be called during the comment section for the agenda item on which you wish to speak.
  - You may be put on hold until your name is called by CPA staff.
  - You will be able to speak to the Committee for the allotted amount of time. Please be advised that all public comments must comply with our Public Comment Policy.
  - Once you have spoken, or the allotted time has run out, the phone call will be discontinued.

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least two (2) working days before the meeting at clerk@cleanpoweralliance.org or (213) 713-5995. Notification in advance of the meeting will enable us to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.
PUBLIC COMMENT POLICY: The General Public Comment item is reserved for persons wishing to address the Board on any Clean Power Alliance-related matters not on today’s agenda. Public comments on matters on today’s Consent Agenda and Regular Agenda shall be heard at the time the matter is called. Comments on items on the Consent Agenda are consolidated into one public comment period. As with all public comment, members of the public who wish to address the Board are requested to complete a speaker’s slip and provide it to Clean Power Alliance staff at the beginning of the meeting but no later than immediately prior to the time an agenda item is called.

Each speaker is limited to two (2) minutes (in whole minute increments) per agenda item with a cumulative total of five 5 minutes to be allocated between the General Public Comment, the entire Consent Agenda, or individual items in the Regular Agenda. Please refer to Policy No. 8 – Public Comment for additional information.

CALL TO ORDER AND ROLL CALL

GENERAL PUBLIC COMMENT

CONSENT AGENDA

1. Approve Minutes from September 3, 2020 Board of Directors Meeting
2. Approve Re-Appointments and New Appointments to Fill Vacancies on the Community Advisory Committee for a 2020-2022 Term
3. Receive and File Community Advisory Committee September Monthly Report

REGULAR AGENDA

4. Approve Two Power Purchase Agreements and Authorize the Executive Director to Execute Each of the Following Agreements:
   A. 15-Year Renewable Power Purchase Agreement with Dagget Solar Power 3, LLC
   B. 15-Year Amended and Restated Renewable Power Purchase Agreement with Arlington Energy Center II, LLC
5. Authorize Continuation of CPA’s COVID-19 Bill Assistance Program of up to $2 million in Bill Credits

MANAGEMENT UPDATE
COMMITTEE CHAIR UPDATES
Director Lindsey Horvath, Chair, Legislative & Regulatory Committee
Director Julian Gold, Chair, Finance Committee
Director Kevin McKeown, Chair, Energy Planning & Resources Committee

BOARD MEMBER COMMENTS

REPORT FROM THE CHAIR

ADJOURN – NEXT REGULAR MEETING NOVEMBER 5, 2020

Public Records: Public records that relate to any item on the open session agenda for a regular Board Meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all, or a majority of, the members of the Board. Those documents are available for inspection online at www.cleanpoweralliance.org/agendas.
REGULAR MEETING of the Board of Directors of the Clean Power Alliance of Southern California Thursday, September 3, 2020, 2:00 p.m.

MINUTES

The Board of Directors conducted this meeting in accordance with California Governor Newsom’s Executive Order N-29-20 and COVID-19 pandemic protocols.

WELCOME AND ROLL CALL
Chair Diana Mahmud called the meeting to order at 2:04 p.m. and Clerk of the Board Gabriela Monzon conducted roll call.

<table>
<thead>
<tr>
<th>Roll Call</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
</tr>
<tr>
<td>2</td>
</tr>
<tr>
<td>3</td>
</tr>
<tr>
<td>4</td>
</tr>
<tr>
<td>5</td>
</tr>
<tr>
<td>6</td>
</tr>
<tr>
<td>7</td>
</tr>
<tr>
<td>8</td>
</tr>
<tr>
<td>9</td>
</tr>
<tr>
<td>10</td>
</tr>
<tr>
<td>11</td>
</tr>
<tr>
<td>12</td>
</tr>
<tr>
<td>13</td>
</tr>
<tr>
<td>14</td>
</tr>
<tr>
<td>15</td>
</tr>
<tr>
<td>16</td>
</tr>
<tr>
<td>17</td>
</tr>
<tr>
<td>18</td>
</tr>
<tr>
<td>19</td>
</tr>
<tr>
<td>20</td>
</tr>
</tbody>
</table>
Rolling Hills Estates | Steve Zuckerman | Director | Remote
---|---|---|---
Santa Monica | Kevin McKeown | Director | Remote
Sierra Madre | | Absent | 
Simi Valley | Ruth Luevanos | Director | Remote
South Pasadena | Diana Mahmud | Chair | Remote
Temple City | | Absent | 
Thousand Oaks | Bob Engler | Director | Remote
Ventura | Christy Weir | Director | Remote
Ventura County | Linda Parks | Vice Chair | Remote
West Hollywood | Lindsey Horvath | Director | Remote
Westlake Village | Kelly Honig | Director | Remote
Whittier | Vicki Smith | Alternate | Remote

All votes are unanimous unless otherwise stated.

GENERAL PUBLIC COMMENT
There was no public comment.

CONSENT AGENDA
1. Approve Minutes from July 9, 2020 Board of Directors Meeting
2. Approve Task Order No. 2 with Ascend Analytics for Long-Term RFO Support Services
3. Authorize the Executive Director to Execute Amendment No. 3 to the Professional Legal Services Agreement with (a) Keyes & Fox and (b) Clean Energy Counsel
4. Receive and File Quarter 2 Risk Management Team Report
5. Receive and File Community Advisory Committee Monthly Report

Motion: Director McKeown, Santa Monica
Second: Vice Chair Kuehl, Los Angeles County
Vote: The consent agenda was approved by a roll call vote.

REGULAR AGENDA
6. Approve Power Purchase Agreement(s) and Authorize the Executive Director to Execute a 15-Year Renewable Power Purchase Agreement with 20SD 8me, LLC and a 15-Year Renewable Power Purchase Agreement with Chalan CA Solar Storage, LLC

Natasha Keefer, Director of Power Planning & Procurement, discussed the 2019 Clean Energy RFO, noting that it secured 1.5 million MW hours that will help CPA meet customers’ renewable energy demands, capture better value than short-term
renewable energy contracts, and meet regulatory obligations. Ms. Keefer briefly reviewed projects currently under contract with CPA and described the organization’s compliance position relative to long-term contract requirements, adding that overall, CPA is closing its’ compliance gap. Ms. Keefer reviewed the RFO valuation results, project overviews, rationales, and evaluation summaries of both projects, noting that both were selected for their high qualitative evaluation and economic value. Lastly, Ms. Keefer discussed next steps, including the finalization of two additional projects in late-stage negotiations from the 2019 Clean Energy RFO, the launch of the 2020 Clean Energy RFO for long-term renewable and storage resources, and the 100% Green Discount Program RFO and Community Solar RFO/RFI that are pending approval from the California Public Utilities Commission (CPUC).

In response to Director Zuckerman’s questions, Ms. Keefer provided more detail on the 100% Green Discount Program RFO and Community Solar RFO/RFI, emphasizing that both programs target disadvantaged communities (DACs) and encourage the development of renewable energy resources within such communities, offering residents a 20% bill discount; and noted that the Green Discount program allowed the procurement of small resources located in DACs and the Community Solar program allowed CPA to contract with community solar projects within CPA service territory in a DAC, with both programs being eligible for reimbursement for above market costs from the CPUC. Ms. Keefer also clarified that pricing information in contracts are confidential and allow CPA to maintain leverage during negotiations, however, the LevelTen PPA Price Index provides a publicly accessible benchmark of market prices for reference.

Chair Mahmud asked if completion of the 2019 Clean Energy RFO would secure enough resources for the 2021-2024 compliance requirements, to which Ms. Keefer explained that the open position gap will likely be closed with the 2020 Clean Energy RFO and hoped to exceed the compliance target. Director McKeown, Chair of the Energy Committee, commended staff for their work and expressed support for the approval of the item.

**Motion:** Director Gold, Beverly Hills  
**Second:** Director McKeown, Santa Monica  
**Vote:** Item 6 was approved by a roll call vote.

7. Adopt Resolution No. 20-09-011 to Establish a Fiscal Stabilization Fund and Approve Policy No. 16 - Fiscal Stabilization Fund

David McNeil, Chief Financial Officer, provided a background of stabilization funds that are used to defer revenues in good years for use in years when results fall short of the organizations’ objectives and noted the Finance Committee unanimously supported the item as a tool for sound financial management. Mr. McNeil added that a future amendment may be needed to the reserve policy to include stabilization fund balances and explained that the stabilization fund followed the Government Accounting Standards Boards’ guidance; was viewed positively by banks and credit agencies, and CPA’s auditor reviewed and supported the proposed fund. Mr. McNeil clarified that this fund would ensure compliance with credit covenants and other fiscal objectives and emphasized that most bond covenants require the generation of some surpluses, which stabilization
funds allow for, even in negative years. Mr. McNeil reviewed key features of the fund, including the deferral of revenues into the fund, when CPA surpasses a 4% threshold in net position, and a withdrawal trigger when CPA is short 4% in annual revenues, however, the fund balance may not exceed 10% of annual revenues. Mr. McNeil reviewed various scenarios where CPA may exceed a 4% in net position, such as rate increases, settlements, lower opt-out rates, strong demands for electricity, and scenarios in which CPA may use the fund to mitigate adverse impacts of bad debt, volatile costs of energy, PCIA increases, and rate competitiveness, where the fund will allow to prudently manage those risks.

Director Gold, Chair of the Finance Committee, noted the flexibility the fund provided to maintain a balance sheet and competitiveness in the market and expressed support for approval of the item. In response to questions from Directors Zuckerman and Monteiro about lower thresholds and the impact on customer programs if any, Mr. McNeil clarified that a lower percentage trigger was indeed considered, but the 4% was a healthy threshold and stated that the previously presented revenues accounted for the COVID-19 pandemic and the Shelter-in-Place orders and that the stabilization fund was not part of the budgeting process, therefore, staff does not anticipate for it to affect programmatic objectives that are approved through the budgeting process.

Chair Mahmud commented that the creation of this fund reflected the growing maturity of the organization and helped to soften the volatility of the energy market.

**Motion:** Director Gold, Beverly Hills  
**Second:** Director Johnston, Ojai  
**Vote:** Item 7 was approved by a roll call vote.

**MANAGEMENT UPDATE**

Ted Bardacke, Executive Director, briefly discussed CPA’s role in the successful acquisition of state matching funds for the California Electric Vehicle Infrastructure Project (CALeVIP) in Ventura County and additional matching funds for electric vehicle chargers in Los Angeles County. Mr. Bardacke also reviewed recent and upcoming customer communications from CPA regarding rotating outages and conservation; and reported the anticipated debt repayment of $10 million to Los Angeles County.

Vice Chair Kuehl expressed gratitude for the work of the organization to pay back the debt and noted former Board Supervisor Don Knabe’s role in securing funding for the organization in its’ infancy; and hoped that Board Members could engage their respective constituents via social media to create a unified message about energy conservation; and lastly thanked beach cities for helping families cool down in a safe and appropriate way.

Director Zuckerman suggested a thank you letter be sent to Don Knabe and asked for a brief update on new CCA creations or CPA membership expansion, particularly that of Rancho Palos Verdes (RPV). Mr. Bardacke explained that the Cities of Baldwin Park and Pomona worked through the Lancaster Community Choice Aggregation program to launch their respective services in October, and noted that RPV had voted not to express interest in joining CPA at the moment.
and that discussions continued with several cities. However, no expansion activity was anticipated in 2021. Chair Mahmud added that the current circumstances provided a challenge for cities to consider making any moves towards joining a CCA.

COMMITTEE CHAIR UPDATES

Director McKeown, Chair of the Energy Committee, reported that the Committee approved the 2020 Integrated Resource Plan to be submitted to the CPUC.

BOARD MEMBER COMMENTS

Vice Chair Parks reported that the Ventura County Board of Supervisors had approved the nations’ first-ever 2500 ft. health and safety setbacks for oil and gas wells as part of its General Plan Update that also included clean energy features, and thanked Directors Ramirez and Johnston, from Oxnard and Ojai respectively, for speaking in favor of the item.

Director Ramirez discussed cooling plant closure extensions in Oxnard and Redondo Beach and highlighted Southern California Edison’s Strata Solar Ventura Clean project as an indicator of CPA’s ability to foment competition in clean energy, especially at a time when natural gas utilities question the efficiency of renewable energy due to the recent outages.

Director Sahli-Wells discussed the importance of commitments to racial justice and requested that CPA explore the incorporation of racial equality commitments into the organizational goals and offered to lead that effort if needed. Vice Chair Kuehl expressed support for the request and noted that the Board of Supervisors had similarly adopted an action plan. In response, Chair Mahmud asked if the Community Advisory Committee may be a good starting point and Mr. Bardacke agreed to explore the necessary next steps for the request.

REPORT FROM THE CHAIR

Board Chair Mahmud requested that a report be provided to the Board of Directors on the results of investigations by the CPUC and the California Energy Commission on the recent rotating outages.

ADJOURN

Chair Mahmud adjourned the meeting at 3:39 p.m.
RECOMMENDATION
Re-appoint twelve (12) current Community Advisory Committee (CAC) Members for a May 2020 – April 2022 term and appoint three (3) new members to the CAC for the open positions in the Gateway Cities Subregion and East Ventura/West Los Angeles County Subregion for a May 2020 – April 2022 term.

BACKGROUND
On June 7, 2018, the Board of Directors approved a structure for the CAC to provide input on various policy and planning issues as well as be a voice for CPA in the community. Staff worked with member jurisdictions and stakeholders to solicit interest in the CAC through an outreach campaign. On November 15, 2018 the Board appointed thirteen candidates to represent six of the seven CAC sub-regions, and the remaining two open positions were appointed in September and October 2019. Subsequent resignations by committee members reduced membership to 13, leaving two current vacancies.

Per the CPA Bylaws, the initial term of service for CAC members expired in April 2020. The subsequent term of service of each CAC member is two years. Staff contacted all current CAC members earlier in the year to determine their interest in being considered for re-appointment to the CAC following expiration of their initial terms. Concurrently, staff solicited interest from new candidates for all CAC subregions with particular focus, in conjunction with member agency staff, on recruiting candidates for the current vacancies.
in the Gateway and East Ventura/West Los Angeles County subregions. Staff received a total of twenty-three applications, including all current CAC members and ten new applicants.

**Recommended CAC Appointments**
Staff recommends that the Board re-appoint the current CAC members listed below and appoint three new members, two in the Gateway Cities subregion and one in the East Ventura/West LA County subregion. Applicant summaries for the three new recommended appointees are attached.

If the Board approves these appointments, all fifteen seats on the CAC will be filled.

<table>
<thead>
<tr>
<th>RECOMMENDED APPOINTMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>East Ventura/West LA County</strong> (Agoura Hills, Camarillo, Calabasas, Moorpark, Simi Valley, Thousand Oaks)</td>
</tr>
<tr>
<td>Proposed re-appointments:</td>
</tr>
<tr>
<td>• Angus Simmons</td>
</tr>
<tr>
<td>• Lilian Mendoza</td>
</tr>
<tr>
<td>Proposed new appointment:</td>
</tr>
<tr>
<td>• Jennifer A. Burke</td>
</tr>
<tr>
<td><strong>West/Unincorporated Ventura County</strong> (Ojai, Oxnard, Ventura, Unincorporated Ventura County)</td>
</tr>
<tr>
<td>Proposed re-appointments:</td>
</tr>
<tr>
<td>• Lucas Zucker</td>
</tr>
<tr>
<td>• Steven Nash</td>
</tr>
<tr>
<td>Proposed new appointments:</td>
</tr>
<tr>
<td>• Jaime Lopez</td>
</tr>
<tr>
<td>• Genaro Bugarin</td>
</tr>
<tr>
<td><strong>Gateway Cities</strong> (Downey, Hawaiian Gardens, Paramount, Whittier)</td>
</tr>
<tr>
<td>Proposed new appointments:</td>
</tr>
<tr>
<td>• Jaime Lopez</td>
</tr>
<tr>
<td>• Genaro Bugarin</td>
</tr>
<tr>
<td><strong>Unincorporated LA County</strong></td>
</tr>
<tr>
<td>Proposed re-appointments:</td>
</tr>
<tr>
<td>• Neil Fromer</td>
</tr>
<tr>
<td>• Kristie Hernandez</td>
</tr>
</tbody>
</table>

**ATTACHMENT**
1) CAC New Applicant Summaries
2020-2022 Community Advisory Committee New Applicant Summaries

| Candidate: Jennifer A. Burke | Subregion: East Ventura/West LA | Eligible Candidate: Yes |

Section 1: Personal Information
A. Home Address: Newbury Park, CA
B. Occupation: Communications Director

Section 2: Qualifications
A. Experience serving on advisory committees / public commission / similar bodies:
   • I am a member of Indivisible: Conejo, a progressive and diverse community organization, and attend monthly informal meet-ups of other sustainability professionals in Thousand Oaks.
B. Experience with outreach or community leadership:
   • Before moving to Ventura County, I volunteered as an English as a Second Language teacher, and served on the board of the USC Alumni Club of the Nation’s Capital, where -- for my role in directing outreach activities -- I earned a Widney Alumni House Volunteer Award for my outstanding contributions to the USC community.
C. Experience or expertise in energy field: N/A
   • An expert in strategic communications, for over a dozen years I have advocated for smart, market-based climate change policies at one of the world’s largest environmental organizations. As Communications Director for Climate at Environmental Defense Fund, I have led public affairs campaigns around key climate initiatives in California, Washington and the United Nations. These include in 2015, successfully advocating for key environmental integrity issues at the UN climate conference in Paris, which produced the world's first climate agreement; in 2016, successfully advocating for the California legislature to adopt a climate goal to cut emissions at least 40% below 1990 levels by 2030; and in 2017, successfully advocating for the legislature to extend California’s landmark cap-and-trade program and give it even stronger tools to improve local air quality in the communities most burdened by pollution.
D. Other skills / knowledge / experience to bring to Committee:
   • With 13 years of experience in environmental advocacy, a master's degree from Georgetown University in Public Relations & Corporate Communications, and a bachelor's degree from the University of Southern California in Journalism and Political Science, I'm an expert in engaging members of the public, influencing decision makers, and reaching strategic goals. I have expertise in developing and executing communications strategies, particularly to support policies to address climate change at the state, national and international levels. I can translate science, economic and policy jargon into layperson-friendly messages, and know how to disseminate those messages to target audiences through channels such as social media, digital platforms including websites and blogs, press releases, op-eds, speeches and fact sheets.

Section 3: Additional Information
A. Why you are interested / what you hope to achieve:
   • East Ventura and West L.A. County is an area rich with natural beauty of open spaces and the Santa Monica Mountains -- but also at risk of wildfires and drought conditions that are being intensified by a warming planet. Our region of Southern California has already seen some of the biggest increases in average temperatures from 1895-2018, according to NOAA data. That’s why our region especially stands to benefit from the benefits of the Clean Power Alliance’s renewable energy, and why I would be honored to support the CPA by serving on the Community Advisory Committee. On the CAC, I would advocate on behalf of East Ventura and West L.A. County customers and rely on my background as a communications professional and environmentalist to provide guidance to the CPA on its policies, programs, and planning. I’d be particularly interested in what the CPA, as an energy service provider, can do to address climate change, support the CPA community even more, and ensure all its customers can benefit from this energy revolution. CPA’s success in ensuring all customers benefit from clean energy will rely in part on how effectively CPA connects with its customers. I would be eager to provide insight and guidance on outreach strategies, to ensure those in the CPA’s customer profile have access to the information they need to benefit fully from the CPA.
B. List other languages / ability to support non-English speaking communities:
   • n/a

C. Anything else you would like CPA to know:
   • Climate change has hit very close to home since I moved to Thousand Oaks in 2017. I watched the Thomas Fire ravage Ventura and Santa Barbara Counties, and evacuated in 2018 when the Woolsey Fire swept into Thousand Oaks. So I was thrilled to hear my city was joining the Clean Power Alliance, and one of my first acts as a new resident was to urge every member of the City Council to adopt 100% Green power as its default rate, which it did. I'm also a new mom, which has brought a particular urgency to doing all I can to ensure my daughter can grow up in a healthy, habitable Southern California.

   In my environmental advocacy work, I have seen that citizens can have a real influence on environmental issues when they're engaged, and that market demand is important in creating the conditions that can address climate change. Serving on the CAC would allow me to help my community engage with and benefit from the CPA, support the CPA in working toward a renewable and resilient energy future, and protect the planet from the worst effects of climate change.

Section 4: Commitment

A. Ability to make commitment:
   • I look forward to serving the two-year term and attending meetings.

B. Signed to certify electric holder in CPA service territory and meet eligibility requirements? Yes.
Candidate: Jaime Lopez  Subregion: Gateway  Eligible Candidate: Yes

Section 1: Personal Information
A. Home Address: Paramount CA
B. Occupation: Ph.D Student University of Southern California

Section 2: Qualifications
A. Experience serving on advisory committees / public commission / similar bodies:
   • Served as a Planning Commissioner in Paramount from January of 2019 to April of 2020.
B. Experience with outreach or community leadership:
   • I've worked as an educational advisor for Johns Hopkins University with students in my caseload attending schools and living in the Gateway Cities. I'm currently exploring sustainability and environmental justice topics in my region as part of my graduate studies.
C. Experience or expertise in energy field:
   • Currently studying to obtain LEED certification. I also worked as a technical writer for an engineering firm in Santa Fe Springs working with clients in oil, solar energy, and many other public energy entities.
D. Other skills / knowledge / experience to bring to Committee:
   • I have a Master's Degree in City Planning and currently doing a PhD program where I am focusing on environmental planning and public participation in the planning process

Section 3: Additional Information
A. Why you are interested / what you hope to achieve:
   • I am interested in serving as a voice for equity in all matters related to energy provision and environmental concerns. I would like to contribute my voice as a knowledgeable student of the environment and as resident who grew up in the Gateway Cities and intends to help lead this region's sustainability vision into the future.
B. List other languages / ability to support non-English speaking communities:
   Spanish
C. Anything else you would like CPA to know:
   • I am very interested in expanding on my knowledge of energy. Being a recent planning commissioner in Paramount supplemented my formal education and my prior work experience in ways that empowered me to pursue more involvement with the communities in my region.

Section 4: Commitment
A. Ability to make commitment:
   I work remotely mostly for school and look forward to researching and studying all relevant materials that will enable me to make informed decisions as a member of this advisory committee for the next two years.
B. Signed to certify electric holder in CPA service territory and meet eligibility requirements? Yes.
Section 1: Personal Information
A. Home Address: Whittier, CA
B. Occupation: Clean Energy Consultant

Section 2: Qualifications
A. Experience serving on advisory committees / public commission / similar bodies:
   • I am currently an Advisory Board member at The STEM Academy of Boyle Heights, a small and innovative public high school in Boyle Heights in East Los Angeles. As a board member, I attend regular board meetings and provide feedback on the school’s strategic goals, from increasing enrollment, academic and extracurricular programming, to engaging both students and parents to foster a strong community. There are opportunities to provide mentorship to students and participate in school events. For the last two years, I have created an opportunity and provided internships to two students each year. As a public school from Boyle Heights myself, it gives me great pleasure to help the younger generation, especially by exposing them to the energy industry.

B. Experience with outreach or community leadership:
   • My community leadership began in college. While attending Dartmouth College, I found myself representing the Latino/a culture by simply being one of a handful of minority students from Los Angeles. I recognized then the importance of identity and the value in educating others about diversity. I became involved in student organizations and organized events and community activities. A few years after college, I decided to pursue a Master of Business Administration (MBA) and got involved in programs and organizations such as the National Society of Hispanic MBA (NSH MBA), the UCLA Riordan Fellows and the Management Leadership for Tomorrow (MLTA) organization. These groups offered an opportunity to support my peers and promote graduate education. In recent years and as an energy professional at The Energy Coalition, I work exclusively with Cities, Schools, and Counties and support their energy and sustainability strategies. My work is through rate-payer funded programs and I consider a lot of what we do is a public service. I enjoy representing and working for the public’s interests.

C. Experience or expertise in energy field:
   • I am a mechanical engineer by training and began my career in energy in 2005, working for a mechanical contractor and managing energy retrofit projects. I found my place at The Energy Coalition in 2012, a non-profit company that focuses on energy programs and services. These last 8-years have been a wealth of experience in the energy industry. My focus has been energy efficiency and demand response, working closely with utilities, engineers and contractors, and the public sector. As the market has changed to an increasing need for reliability, I am pivoting to lead the company’s programs on DERs, microgrids, and advance initiatives in controls, energy markets, and finance. My personal interests are equity and affordability of the energy transition, ensuring that everyone has a voice and no one is left out.

D. Other skills / knowledge / experience to bring to Committee:
   • I am very practical. Always looking to simplify and bring problems and concepts to their simple and most essential core. I believe this skill will be a great asset in communicating CPAs programs and services to the community and in communicating the needs and experiences of the community to CPA staff.

Section 3: Additional Information
A. Why you are interested / what you hope to achieve:
   • In the first quarter of 2020, I installed solar panels and purchased an electric vehicle. These personal actions, and my overall path to electrify my home, are an invaluable learning experience. Complementing my professional experience on the industry, I have seen myself as a customer and can bring this additional perspective to the Committee.

B. List other languages / ability to support non-English speaking communities: Spanish

C. Anything else you would like CPA to know:
• I am very excited to do more and help shape the community's energy transition, to support everyone, especially those more in need that lack education or are not English speaking. Thank you for your consideration.

Section 4: Commitment
A. Ability to make commitment:
• I am able to commit to the 2 year period.
B. Signed to certify electric holder in CPA service territory and meet eligibility requirements? Yes.
Staff Report – Agenda Item 3

To: Clean Power Alliance (CPA) Board of Directors
From: Christian Cruz, Community Outreach Manager
Approved By: Ted Bardacke, Executive Director
Subject: Community Advisory Committee (CAC) Report
Date: October 1, 2020

RECOMMENDATION
Receive and file.

SEPTEMBER MEETING REPORT
CAC Visioning Sessions and Workplan
In June 2020, at the request of CAC members, the CAC Chair, Vice Chairs, and staff
planned a series of three visioning sessions to be conducted between July and
September aimed at setting CAC priorities and expectations for 2020-2021. At the first
visioning session, held during the July CAC meeting, CAC members shared perspectives
on their communities’ key issues and identified a range of individual, regional and overall
CAC priorities and expectations for 2020-21.

Staff synthesized their input into a proposed workplan framework that organized CAC
activities into three categories:

- **CPA Commitments to the CAC** – Actions and deliverables CPA staff will provide,
such as training and educational materials, to support CAC members in
performance of their duties; as well as a list of priority topics, for feedback, that the
Board will be considering throughout the year.

- **CAC Member Commitments** – Actions each CAC member is expected to take,
at minimum, as part of the CAC (e.g., soliciting input from community stakeholders
and participating in organized outreach events); and
• **Opportunities for Expanded CAC Engagement** – Additional activities that CAC members may elect to undertake, individually or collectively, beyond their minimum commitments.

CAC members reviewed the proposed workplan framework at the August CAC meeting, expressed support for the CPA and CAC commitments identified in the workplan, and identified specific priorities for expanded CAC engagement in the coming year. The Committee directed staff to circulate a survey to all CAC members to gather additional feedback and to bring a final draft 2020-21 workplan to the CAC in September. At the September 17 CAC meeting the CAC reviewed and adopted the final draft work plan with minor amendments (Attachment 1).

**Next Steps**

Staff will work with the CAC Chair, Vice Chairs, and members on plan implementation over the next year. Additionally, it is anticipated that this document can be modified as needed based on evolving CPA needs, community priorities, and Board recommendations and requests.

**ATTACHMENTS**

1) **CAC 2020-2021 Workplan**
2) **CAC Meeting Attendance**
Clean Power Alliance of Southern California
Community Advisory Committee 2020-21 Workplan

Adopted September 17, 2020

Clean Power Alliance (CPA) believes in a clean energy future that is local, where communities are empowered, and customers are given a choice about the source of their energy. We are Southern California’s locally operated electricity provider across Los Angeles and Ventura counties, offering clean renewable energy at competitive rates.

In furtherance of its mission and goals, CPA’s Joint Powers Agreement establishes a Community Advisory Committee (CAC) to provide a venue for ongoing community support and engagement in the policy direction of the organization.

The CAC is comprised of a total of 15 members representing customers or key stakeholders residing or working in seven (7) geographical regions comprising CPA’s service territory, as follows:

A. Three (3) members from the East Ventura/West Los Angeles County Region.
B. Two (2) members from the West/Unincorporated Ventura County.
C. Two (2) members from the Westside region in Los Angeles County.
D. Two (2) members from the South Bay region in Los Angeles County.
E. Two (2) members from the Gateway Cities region in Los Angeles County.
F. Two (2) members from the San Gabriel Valley region in Los Angeles County.
G. Two (2) members from the Unincorporated Los Angeles County.

In 2020, the CAC undertook a visioning process to identify priority issues and activities for 2020-2021. This process resulted in development of the 2020-2021 CAC work plan. The work plan is intended to guide CAC member activities over the coming year and serve as a tool for CAC, CPA staff, and CPA Board communication, collaboration, and impact assessment. It will also inform the development of more detailed individual CAC member and region-specific objectives and work plans for this time period. The work plan organizes CAC-related activities into three categories: 1) CPA Commitments to Support the CAC; 2) CAC Member Commitments; and 3) Opportunities for Expanded CAC Engagement; and outlines planned activities and timelines for each.

1. CPA Commitments to Support the CAC
   - Present key CPA Board items to the CAC for review and input in advance of Board decision making, including:
     - Long-term clean energy/storage requests for offers (RFOs)
     - Rate setting
     - Legislative and regulatory platforms
     - Annual budget and budget amendments
     - Local program design and evaluation
     - Workforce development
   - Support CAC chair, co-chairs, and individual members in development of individual and region-specific objectives and work plans
   - Support the convening of CAC working groups as needed to define 2021 objectives and activities for priority topics/initiatives identified in the CAC work plan
• Develop and deliver targeted educational materials and trainings for CAC members including an orientation manual and video tutorials on CPA and energy topics
• Develop CAC master list of community/stakeholder groups and contacts with input from CAC members
• Facilitate communication and alignment between the CAC and the Board of Directors.

2. CAC Member Commitments
• Solicit stakeholder input as needed and provide input and feedback to the CPA Board on key policy and planning topics, including:
  ▪ Long-term clean energy/storage requests for offers (RFOs)
  ▪ Legislative and regulatory platforms
  ▪ Rate setting
  ▪ Annual budget and budget amendments
  ▪ Local program design and evaluation
  ▪ Workforce development
• Work with CAC co-chairs and CPA staff to develop individual member and region-specific objectives and work plans
• Participate in CPA-organized outreach activities in their respective region (e.g., Earth Day events)
• Build relationships with community leaders and organizations in impacted and hard to reach communities
• Follow CPA on social media and engage as needed/appropriate to raise awareness of CPA in community and region
• Respond to community questions/comments and alert CPA staff to community commentary that may warrant staff engagement
• Engage in CAC trainings and review of CAC materials
• Work with staff to identify community stakeholders in all regions and provide contact lists for development of master CAC list
• Convene a working group on community outreach/education to identify objectives and activities for 2021
• Participate in annual CAC retreat to establish 2021-2022 goals and priorities.

3. Opportunities for Expanded CAC Engagement
Beyond the minimum and ongoing commitments listed in the sections above, CAC members identified the following priorities for deeper engagement in 2020-2021:
• Education on CPA, energy, and climate issues in partnership with K-12 institutions and youth organizations
• Addressing community resilience needs and opportunities around demand response
• Developing a list of current green energy jobs and promoting them through various platforms.

CAC co-chairs and CPA staff will work with CAC members to convene working group(s) as needed starting in Q4 2020 to develop specific objectives and work plans for each of the priority areas identified above and bring recommendations back to the full CAC for review. Potential activities to be detailed in the workplans may include:

• Pursue deeper and/or more frequent engagement with Board on key topics:
  ▪ Provide regular (quarterly, semi-annual or annual) reports to Board members in their region
  ▪ Help organize meetings with community stakeholders and/or elected officials in their region to solicit input on specific topics or issues
- Research and develop recommendations to the Board on key items of interest (e.g., metrics on workforce development or program impact, legislation, CPUC hearings)
- Pursue deeper and/or broader community engagement
  - Recruit and partner with educational institutions, community organizations, interns or volunteers on specific projects or campaigns (e.g., an “opt up” social media campaign, a series of local program enrollment events)
  - Actively post about CPA on social media and write op-eds or letters to the editors
  - Work with CPA staff to develop and communicate key metrics on CPA programs and impacts

The CAC will review and modify this work plan as needed based on evolving CPA needs, community priorities, and Board recommendations and requests.
## Community Advisory Committee Attendance

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Jan</td>
</tr>
<tr>
<td><strong>East Ventura/West LA County</strong></td>
<td></td>
</tr>
<tr>
<td>Angus Simmons (Vice Chair)</td>
<td>✓</td>
</tr>
<tr>
<td>Vacant</td>
<td></td>
</tr>
<tr>
<td>Lilian Mendoza</td>
<td>✓</td>
</tr>
<tr>
<td><strong>San Gabriel Valley</strong></td>
<td></td>
</tr>
<tr>
<td>Richard Tom</td>
<td>✓</td>
</tr>
<tr>
<td>Robert Parkhurst (Vice Chair)</td>
<td>✓</td>
</tr>
<tr>
<td><strong>West/Unincorporated Ventura County</strong></td>
<td></td>
</tr>
<tr>
<td>Lucas Zucker</td>
<td>A</td>
</tr>
<tr>
<td>Steven Nash</td>
<td>✓</td>
</tr>
<tr>
<td><strong>South Bay</strong></td>
<td></td>
</tr>
<tr>
<td>David Lesser</td>
<td>✓</td>
</tr>
<tr>
<td>Emmitt Hayes</td>
<td>✓</td>
</tr>
<tr>
<td><strong>Gateway Cities</strong></td>
<td></td>
</tr>
<tr>
<td>Jaime Abrego</td>
<td>✓</td>
</tr>
<tr>
<td>Vacant</td>
<td></td>
</tr>
<tr>
<td><strong>Westside</strong></td>
<td></td>
</tr>
<tr>
<td>Cris Gutierrez</td>
<td>A</td>
</tr>
<tr>
<td>David Haake (Chair)</td>
<td>✓</td>
</tr>
<tr>
<td><strong>Unincorporated LA County</strong></td>
<td></td>
</tr>
<tr>
<td>Neil Fromer</td>
<td>✓</td>
</tr>
<tr>
<td>Kristie Hernandez</td>
<td>A</td>
</tr>
</tbody>
</table>

### Major Action Items and Presentations

#### January
- Executive Director Update
- GHG Free Procurement Goals and Resources

#### February
- Integrated Resources Plan Update
- CBO Grant Update

#### March
- CPA operations update
- Local Programs Strategic Plan Update

#### April
- CPA operations update
- New Rates

#### May
- COVID-19 Bill Assistance Program
- FY 2020/21 Financial Outlook

#### July
- IRP Update
- CAC Visioning Session #1

#### August
- CAC Visioning Session #2

#### September
- CAC Visioning Session #3 and approval of 2020-2021 Workplan
Staff Report – Agenda Item 4

RECOMMENDATION
Approve a 15-year Renewable Power Purchase Agreement (PPA) with Daggett Solar Power 3 LLC (Daggett) and a 15-year Amended and Restated Renewable PPA with Arlington Energy Center II, LLC (Arlington) for long-term renewable energy and storage resources and authorize the Executive Director to execute the agreements.

BACKGROUND
The Daggett and Arlington PPAs arise from CPA’s 2018 Clean Energy Request for Offers (RFO) and 2019 Reliability RFO, respectively. A summary of each RFO process and of the project’s path towards approval is presented below.

2018 Clean Energy Request for Offers (RFO)
In October 2018, CPA launched its 2018 Clean Energy RFO targeting procurement of 1-2 million MWh of annual renewable energy. CPA received a robust response to the RFO from over 230 facilities for renewable, renewable plus storage, and standalone storage offers. The Energy Planning & Resources Committee (Energy Committee) approved a shortlist of projects that were recommended by a team of reviewers, consisting of two Board members from the Energy Committee and senior CPA staff to proceed with PPA negotiations.
CPA entered into exclusive negotiations with five developers for seven projects, which included four solar facilities, two solar plus storage facilities, and one standalone battery facility for contracts 15 years in length or longer. To date, the CPA Board has approved two projects from this 2018 RFO, including the 40 MW Golden Fields and 233 MW Arlington solar projects. CPA was unsuccessful in reaching agreement with the four other projects from the 2018 RFO with whom it had entered into exclusive negotiations. The Daggett solar plus storage project shortlisted during the 2018 Clean Energy RFO is the last remaining project in exclusive negotiations from this RFO.

The Daggett project remains highly competitive, and its offer price would place this project in the first quartile of value relative to valuation of the 2019 Clean Energy RFO offers. In addition, this project is compelling from a land use perspective as it will be built on the site of shuttered natural gas power plant.

**2019 Reliability RFO**

In October 2019, CPA launched its 2019 Reliability RFO to comply with its incremental capacity procurement obligations in the California Public Utilities Commission (CPUC) Integrated Resource Planning Procurement Track. CPA received a robust response to the RFO from 41 conforming standalone storage projects. The Energy Committee approved a shortlist of projects that were recommended by a team of reviewers, consisting of three Board members from the Energy Committee and senior CPA staff, to proceed with energy storage agreement (ESA) negotiations.

CPA entered exclusive negotiations for six standalone storage projects for contracts 15 years in length or longer, including the Luna Storage project approved by the Board on April 2, 2020 and the Sanborn Storage project approved by the Board on May 7, 2020. One of the shortlisted standalone storage projects was the 132 MW Arlington Storage project, which is located adjacent to the 233 MW Arlington Solar project that is already under contract with CPA, as was approved by the Board on June 28, 2019.
Rather than executing a separate standalone ESA for the 132 MW Arlington Storage project, CPA gets more value by adding storage to the planned Arlington Solar project, due to a 29% decrease in the storage price compared to what it would cost if it were contracted as a standalone storage project. This decrease is due to Investment Tax Credit (ITC) eligibility for storage projects that are always charged by renewable energy, which will be the case by adding it directly to the Arlington solar project.

Thus, Board approval is being sought for an Amended and Restated Arlington Solar + Storage PPA that would replace the existing Arlington Solar PPA. The Amended and Restated PPA includes additional contract provisions applicable to storage and the same terms for the solar portion of the project that has already been approved and contracted.

Per CPA’s Energy Risk Management Policy, any power purchase transactions greater than 5 years and any material amendments to long-term PPAs require approval by the Board.

CPA retained Todd Larsen with Clean Energy Counsel and Kevin Fox with Keyes & Fox LLP to represent CPA and its interests in the negotiation of these agreements. Their work was overseen by CPA’s General Counsel.

**Rationale**

**Renewable Energy Contracts**

The projects selected in the 2018 Clean Energy RFO help CPA meet its customers’ large renewable energy demand, while maintaining rate competitiveness. To date, the Board of Directors has approved 10 long-term renewable contracts, which make up approximately 29% of CPA’s overall load once they come online, as shown in the table below:
Long-Term Renewable Contracts Contributing to CPA’s Load:

<table>
<thead>
<tr>
<th>Project</th>
<th>Renewable MWs</th>
<th>Status</th>
<th>Commercial Operation Date</th>
<th>Term (Years)</th>
<th>Approximate % of Load Served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voyager Wind</td>
<td>21.6</td>
<td>Online</td>
<td>12/28/2018</td>
<td>15</td>
<td>0.6%</td>
</tr>
<tr>
<td>Kaweah Hydro</td>
<td>20.1</td>
<td>Online</td>
<td>6/16/2020</td>
<td>10</td>
<td>1.0%</td>
</tr>
<tr>
<td>Isabella Hydro</td>
<td>12.0</td>
<td>Contracted</td>
<td>12/8/2020</td>
<td>10</td>
<td>0.4%</td>
</tr>
<tr>
<td>Mohave (White Hills) Wind</td>
<td>300.0</td>
<td>Contracted</td>
<td>12/31/2020</td>
<td>20</td>
<td>7.1%</td>
</tr>
<tr>
<td>Golden Fields Solar</td>
<td>40.0</td>
<td>Contracted</td>
<td>3/31/2021</td>
<td>15</td>
<td>1.0%</td>
</tr>
<tr>
<td>Arlington Solar</td>
<td>233.0</td>
<td>Contracted</td>
<td>12/31/2021</td>
<td>15</td>
<td>6.1%</td>
</tr>
<tr>
<td>High Desert Solar + Storage</td>
<td>100.0</td>
<td>Contracted</td>
<td>8/1/2021</td>
<td>15</td>
<td>2.6%</td>
</tr>
<tr>
<td>Azalea Solar + Storage</td>
<td>60.0</td>
<td>Contracted</td>
<td>12/31/2022</td>
<td>15</td>
<td>1.6%</td>
</tr>
<tr>
<td>Rexford Solar + Storage</td>
<td>300.0</td>
<td>Contracted</td>
<td>10/1/2023</td>
<td>15</td>
<td>7.0%</td>
</tr>
<tr>
<td>Chalan Solar + Storage</td>
<td>64.9</td>
<td>Contracted</td>
<td>12/31/2023</td>
<td>15</td>
<td>1.5%</td>
</tr>
<tr>
<td><strong>Total Contracted</strong></td>
<td><strong>1,151.5</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>29.0%</strong></td>
</tr>
<tr>
<td>Daggett Solar + Storage</td>
<td>123.0</td>
<td>In negotiation</td>
<td>3/31/2023</td>
<td>15</td>
<td>3.3%</td>
</tr>
<tr>
<td><strong>Total with Pending</strong></td>
<td><strong>1,274.5</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>32.3%</strong></td>
</tr>
</tbody>
</table>

The Daggett project will add another 123 MW of renewable generating resources, covering approximately 3.3% of CPA’s overall demand.

In addition, this contract will enable CPA to move closer to meeting its regulatory obligations under SB 100 and SB 350, which requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced from long-term contracts beginning in the 2021-2024 compliance period. As shown in the table below, even with the proposed Daggett project, CPA must secure additional long-term energy contracts to meet its state mandate. CPA expects to secure these additional contracts via remaining projects in negotiation from the 2019 Clean Energy RFO and from new projects that bid into the upcoming 2020 Clean Energy RFO.

---

1 CPA’s executed Luna Storage Sanborn Storage projects are not included in this list because these are standalone storage resources with no generating component.
RPS Under SB 100 and SB 350 Long-term (LT) Contracting Requirement per Compliance Period:2

<table>
<thead>
<tr>
<th></th>
<th>2021-2024</th>
<th>2025-2027</th>
<th>2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>State Mandated RPS per Compliance Period - % of Retail Sales</td>
<td>40%</td>
<td>49%</td>
</tr>
<tr>
<td>2</td>
<td>State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS LT Contracts</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>3</td>
<td>CPA’s LT RPS Mandate = Row #2 * Row #1</td>
<td>25.9%</td>
<td>32.1%</td>
</tr>
<tr>
<td>4</td>
<td>RPS Achieved by CPA with Existing LT Contracts</td>
<td>19.6%</td>
<td>28.2%</td>
</tr>
<tr>
<td>5</td>
<td>Open Position relative to State Mandate (Row 3,4) +Above/ (-) Short</td>
<td>-6.3%</td>
<td>-3.9%</td>
</tr>
<tr>
<td>6</td>
<td>RPS Achieved by CPA with Existing LT Contracts and Daggett</td>
<td>21.0%</td>
<td>31.4%</td>
</tr>
<tr>
<td>7</td>
<td>Open Position relative to State Mandate (Row 3,6) +Above/ (-) Short</td>
<td>-4.9%</td>
<td>-0.6%</td>
</tr>
</tbody>
</table>

Storage
The Amended and Restated Arlington PPA, as well as the storage component of the Daggett Solar + Storage PPA, will allow CPA to secure cost-effective storage for its clean energy portfolio. Storage is a critical resource for CPA to integrate its intermittent renewable energy portfolio and meet its Resource Adequacy needs, as well as contribute new reliable capacity to the grid.

CPA’s Long-Term Clean Energy Contracts with Storage:

<table>
<thead>
<tr>
<th>Project</th>
<th>Technology</th>
<th>Status</th>
<th>RPS MW</th>
<th>Storage MW</th>
<th>Commercial Operation Date</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voyager</td>
<td>Wind</td>
<td>Online</td>
<td>21.6</td>
<td></td>
<td>12/28/2018</td>
<td>15</td>
</tr>
<tr>
<td>Kaweah</td>
<td>Hydro</td>
<td>Online</td>
<td>20.1</td>
<td></td>
<td>6/16/2020</td>
<td>10</td>
</tr>
<tr>
<td>Isabella</td>
<td>Hydro</td>
<td>Online</td>
<td>11.95</td>
<td></td>
<td>12/8/2020</td>
<td>10</td>
</tr>
<tr>
<td>Mohave (White Hills)</td>
<td>Wind</td>
<td>Contracted</td>
<td>300</td>
<td></td>
<td>12/31/2020</td>
<td>20</td>
</tr>
<tr>
<td>Golden Fields</td>
<td>Solar</td>
<td>Contracted</td>
<td>40</td>
<td></td>
<td>3/31/2021</td>
<td>15</td>
</tr>
<tr>
<td>Arlington Solar*</td>
<td>Solar</td>
<td>Contracted</td>
<td>233</td>
<td></td>
<td>12/31/2021</td>
<td>15</td>
</tr>
<tr>
<td>Luna Storage</td>
<td>Battery</td>
<td>Contracted</td>
<td>100</td>
<td></td>
<td>7/31/2021</td>
<td>15</td>
</tr>
<tr>
<td>Sanborn Storage</td>
<td>Battery</td>
<td>Contracted</td>
<td>100</td>
<td></td>
<td>8/1/2021</td>
<td>15</td>
</tr>
<tr>
<td>High Desert</td>
<td>Solar + Battery</td>
<td>Contracted</td>
<td>100</td>
<td>50</td>
<td>8/1/2021</td>
<td>15</td>
</tr>
<tr>
<td>Azalea</td>
<td>Solar + Battery</td>
<td>Contracted</td>
<td>60</td>
<td>38</td>
<td>12/31/2022</td>
<td>15</td>
</tr>
<tr>
<td>Rexford</td>
<td>Solar + Battery</td>
<td>Contracted</td>
<td>300</td>
<td>180</td>
<td>10/1/2023</td>
<td>15</td>
</tr>
<tr>
<td>Chalan</td>
<td>Solar + Battery</td>
<td>Contracted</td>
<td>64.9</td>
<td>25</td>
<td>12/31/2023</td>
<td>15</td>
</tr>
<tr>
<td>Daggett</td>
<td>Solar + Battery</td>
<td>In negotiation</td>
<td>123</td>
<td>61.5</td>
<td>3/31/2023</td>
<td>15</td>
</tr>
<tr>
<td>Arlington Storage*</td>
<td>Battery</td>
<td>In negotiation</td>
<td>132</td>
<td></td>
<td>8/1/2022</td>
<td>15</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>1,274.6</strong></td>
<td><strong>686.5</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Once executed, the Arlington Solar + Storage project will be one hybrid project, but shown here separately to distinguish between the previously executed PPA and the incremental storage to be added in the amendment.

2 RPS percentages by compliance period differ from the previous “Long-Term Renewable Contracts Contributing to CPA’s Load” table due to timing on when projects come online and changes to load from year to year.
While CPA has already procured sufficient resources to meet its CPUC Integrated Resource Plan Procurement Track mandated procurement, this storage procurement requirement represents a floor, rather than a ceiling for storage needed to reliably integrate its clean energy portfolio into the electricity system. In its 2020 Integrated Resource Plan (IRP), CPA plans to procure a total of 1,050 MW of storage capacity by 2030. While this overall storage target will be reassessed in future IRP modeling, CPA should continue to make progress in procuring cost-effective, reliable clean energy resources.

ENVIRONMENTAL REVIEW
These PPAs for the purchase of energy do not fall under the definition of “project” under Section 21065 of the Public Resources Code and under California Environmental Quality Act (CEQA) Guidelines Section 15378(a). In addition, the PPAs are exempt under CEQA Guidelines Section 15061(b)(3). The project developers of Daggett and Arlington, Clearway and NextEra respectively, are each responsible for acquiring necessary CEQA review and permits with the San Bernardino County Planning Commission and Riverside County, their respective lead agencies. CPA has no role, jurisdiction, or authority whatsoever with respect to that CEQA review or project approval.

ATTACHMENTS
1) Daggett and Arlington Project Descriptions
2) Renewable Power Purchase Agreement Presentation
3) Renewable Power Purchase Agreement with Daggett Solar Power 3, LLC
4) Amended and Restated Renewable Power Purchase Agreement with Arlington Energy Center II, LLC

---

3 Consistent with industry practice, portions of the agreement have been redacted to protect market sensitive information.
PROJECT DESCRIPTION A: DAGGETT SOLAR + STORAGE PROJECT OVERVIEW

Project Description
Dagget is a 123 MW solar and 61.5 MW / 246 MWh lithium-ion battery storage facility located in San Bernardino County, with a commercial operation date of March 31, 2023. The project has executed its interconnection agreement and the project will have Full Capacity Deliverability Status (FCDS), meaning it will provide resource adequacy attributes to CPA in addition to energy benefits.

The Daggett project converts the former Coolwater fossil fuel fired power plant site into a renewable energy facility. The Daggett project interconnects with the CAISO system at SCE’s Kramer substation. Site control has been fully secured, and the project received its Conditional Use Permit (CUP) in September 2019 from the San Bernardino County Planning Commission.

CPA pays for the output of the solar generating portion of the project at a fixed-price rate per MWh and pays for the use of the storage portion of the project at a fixed-price rate per kW-month, both with no escalation, for the full term of the contract (15 years). CPA is entitled to all product attributes from the facility, including energy, renewable energy credits (RECs), ancillary services, and resource adequacy.

Developer
Clearway Energy Group, LLC, (formerly the renewable energy development division of NRG) is headquartered in San Francisco, CA, and is owned by Global Infrastructure Partners (GIP). Clearway operates a portfolio of 4.1 GW of renewable energy assets across 28 states and owns a pipeline of over 8.9 GW of wind and solar projects under development. Clearway owns and/or operates 1,038 MW of solar and 947 MW of wind facilities within California. Clearway has expertise in delivering renewable power under long term offtake contracts to utilities, corporations, municipalities, and CCAs, including East Bay Community Energy. Clearway is also the developer of CPA’s Board approved Golden Fields solar project, which is expected to come online in December 2020.
EVALUATION CRITERIA

CPA ranks projects for economic value based on the net present value (NPV) to CPA and on a High, Medium, Neutral, and Low scale in five other evaluation criteria categories (Development Risk Score, Workforce Development, Environmental Stewardship, Benefits to Disadvantaged Communities, and Project Location). Below is the ranking assigned to this project in each of those categories.

**Value**

This project was selected as a first quartile offer ranked on value from submissions in the 2018 Clean Energy RFO. In addition, Clearway’s proposal ranks within the first quartile when compared to offers in the 2019 Clean Energy RFO. The project is expected to be NPV positive to CPA (i.e., CPA will earn more revenue from this project than it will cost CPA over the life of the project).

The solar portion of contract is priced competitively compared to current market prices as reflected in LevelTen’s PPA Q2 2020 Price Index, which provides average “P25” solar PPA pricing in $/MWh terms recently offered for SP15 solar projects in California. A similar benchmark for the storage portion of the project does not currently exist.

---

1 [https://leveltenenergy.com/blog/ppa-price-index/q2-2020/](https://leveltenenergy.com/blog/ppa-price-index/q2-2020/); “P25” represents the most competitive 25th percentile offer price.
Development Risk Score
The project ranks High (low risk) as it is in late-stage development and substantially de-risked. All land for the project is under contract, and the project has an executed interconnection agreement. The project received its CUP in September 2019 from the San Bernardino County Planning Commission.

Workforce Development
The project ranks High as Clearway has already executed a 5-trade Project Labor Agreement (PLA) with local union chapters and will pay prevailing wages. The unions included in the PLA are IBEW Local 477, Operating Engineers Local 12, Laborers Local 743, Ironworkers Local 433 and Ironworkers Local 416. The developer anticipates that the project will create approximately 500 jobs during the peak construction phase and 12 permanent jobs during the operations phase.

Environmental Stewardship
The project ranks High as it is a repurposed energy site. The project converts a former fossil fuel fired power plant site into a renewable energy facility. The project also repurposes some low value agricultural land that requires the use of significant water resources into a renewable energy facility that does not require any water for energy production in an area that has a severely restricted water supply. The project received its CUP in September 2019 from the San Bernardino County Planning Commission.

Benefits to Disadvantaged Communities
The project ranks High as it is located within a Disadvantaged Community (DAC) and will provide workforce opportunities and community benefits to this region. Specifically, the project has committed to outreach and targeted hires of local workers.

Project Location
The project ranks Medium as it is located within California, but not within Los Angeles County or Ventura County.
OVERVIEW

Project Description
On June 28, 2019, the Board of Directors approved a 15-year PPA with the Arlington Solar project. Arlington Solar is a 233 MW solar facility located in Blythe, California, in Riverside County, with a full commercial online date (COD) of October 1, 2022. The project’s interconnection agreement is executed, and the project will have Full Capacity Deliverability Status (FCDS) meaning it will provide resource adequacy attributes to CPA in addition to renewable energy. The project will be commissioned in blocks, with the first 100 MW of solar delivered on December 31, 2021 and the remaining 133 MW of solar delivered on October 1, 2022. This proposed Amended and Restated PPA adds 132 MW of storage to the existing Arlington Solar agreement currently under contract with CPA with an online date of August 1, 2022 for the storage portion.

Known for its high solar irradiance, Blythe is a hub for utility-scale solar development. The project is located in a Bureau of Land Management (BLM) Desert Renewable Energy Conservation Plan "Development Focus Area," a designation that is intended to promote solar development due to low conflict with environmental resources. The project received its Environmental Impact Statement (EIS) under the National Environmental Protection Act (NEPA) and Right of Way grant from the Bureau of Land Management.

CPA pays for the output of the solar generating portion of the project at a fixed-price rate per MWh and pays for the use of the storage portion of the project at a fixed-price rate per kW-month, both with no escalation, for the full term of the contract. CPA is entitled to all product attributes from the facility, including energy, RECs, ancillary services, and resource adequacy.

Developer
The project developer is NextEra Energy, one of the largest electric power and energy infrastructure companies in North America. NextEra Energy has two principal businesses, Florida Power & Light Company, the largest electric utility in the state of Florida, and
NextEra Energy Resources, the world’s largest generator of renewable energy. NextEra operates 10 wind, 15 solar, and 26 energy storage facilities in California. NextEra has a tangible net worth of over $28 billion and a Standard & Poor’s credit rating of A-. NextEra is also the developer of CPA’s Mohave (White Hills) Wind project that is currently under construction and expected to come online by December 31, 2020.

**EVALUATION CRITERIA**

CPA ranks projects for economic value based on the net present value (NPV) to CPA and on a High, Medium, Neutral, and Low scale in five other evaluation criteria categories (Development Risk Score, Workforce Development, Environmental Stewardship, Benefits to Disadvantaged Communities, and Project Location). Below is the ranking assigned to this project in each of those categories.

**Value**

The value for the initial standalone storage offer in the 2019 Reliability RFO falls within the first quartile of offer submissions ranked on value in the 2019 Reliability RFO. By adding this storage to the existing Solar PV PPA under contract, CPA was able to secure a 29% lower capacity cost for that storage compared to NextEra’s initial standalone storage offer. Additionally, the addition of storage allows the PV energy to be delivered during higher value times of day. When compared to all offers in the 2019 Clean Energy RFO, the value for the solar plus storage configuration as proposed in the Amended and Restated PPA falls within the first quartile of offers. The project is expected to be NPV positive to CPA (i.e., CPA will earn more revenue from this project than it will cost CPA over the life of the project).

The price for the solar portion of Amended and Restated contract remains the same as the existing Board-approved Arlington Solar contract.
Development Risk Score
The project ranks High (low risk) as it is in late-stage development and highly de-risked. All land for the project is under contract, the project’s interconnection agreement is executed, and major permits have been approved.

Workforce Development
The project ranks High as construction for the project will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement. The developer estimates this storage addition will create up to 20 new construction jobs and 2 new permanent jobs, in addition to the 200 construction jobs that will be created by the solar portion of the project.

Environmental Stewardship
The project ranks Medium as it is in a designated renewable energy development area. The project is in a BLM Desert Renewable Energy Conservation Plan (DRECP) "Development Focus Area" -- a designation that is intended to promote solar development due to low conflict with environmental resources. The Project worked closely with the BLM, U.S. Fish and Wildlife Service and CA Dept. of Fish and Wildlife to define a western project boundary that would minimize impacts to desert tortoise habitat. The full range of wildlife, vegetation and water surveys are complete, and the project has received its NEPA Environmental Impact Statement (EIS) and Right of Way grant from the Bureau of Land Management.

Benefits to Disadvantaged Communities
The project ranks Neutral as it is not located within a Disadvantaged Community (DAC), but creates no adverse impacts to DACs.

Project Location
The project ranks Medium as it is located within California, but not within Los Angeles County or Ventura County.
Item 4
Approval of Renewable Energy Power Purchase Agreements

October 1, 2020
Summary

• Action Requested
• Portfolio Considerations
• Project Overviews
• Upcoming Procurement Activities
Action Requested

- CPA is seeking Board approval for the Daggett Renewable Power Purchase Agreement (PPA) and Amended and Restated Arlington Renewable PPA:

<table>
<thead>
<tr>
<th>Project</th>
<th>Technology</th>
<th>Capacity (MW)</th>
<th>Online Date</th>
<th>Term</th>
<th>Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daggett</td>
<td>Solar + Storage</td>
<td>123 MW solar + 61.5 MW storage</td>
<td>3/31/2023</td>
<td>15</td>
<td>2018 Clean Energy RFO</td>
</tr>
<tr>
<td>Arlington</td>
<td>Solar + Storage</td>
<td>233 MW solar + 132 MW storage</td>
<td>10/1/2022(^1)</td>
<td>15</td>
<td>2019 Reliability RFO</td>
</tr>
</tbody>
</table>

The approval requested today related to Arlington is for the addition of storage; the solar portion of the Arlington project has already been approved by the Board and is under contract with CPA.

\(^1\) The Arlington project will come online in stages, with 100 MW of solar coming online by 12/31/2021, 132 MW of storage coming online by 8/1/2022, and the remaining 133 MW of solar coming online by 10/1/2022.
Portfolio Considerations
Renewable Energy Position

- CPA's Board has approved 10 long-term renewable energy contracts to date

<table>
<thead>
<tr>
<th>Project</th>
<th>Renewable MWs</th>
<th>Status</th>
<th>Commercial Operation Date</th>
<th>Term (Years)</th>
<th>Approximate % of Load Served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voyager Wind</td>
<td>21.6</td>
<td>Online</td>
<td>12/28/2018</td>
<td>15</td>
<td>0.6%</td>
</tr>
<tr>
<td>Kaweah Hydro</td>
<td>20.1</td>
<td>Online</td>
<td>6/16/2020</td>
<td>10</td>
<td>1.0%</td>
</tr>
<tr>
<td>Isabella Hydro</td>
<td>12.0</td>
<td>Contracted</td>
<td>12/8/2020</td>
<td>10</td>
<td>0.4%</td>
</tr>
<tr>
<td>Mohave (White Hills) Wind</td>
<td>300.0</td>
<td>Contracted</td>
<td>12/31/2020</td>
<td>20</td>
<td>7.1%</td>
</tr>
<tr>
<td>Golden Fields Solar</td>
<td>40.0</td>
<td>Contracted</td>
<td>3/31/2021</td>
<td>15</td>
<td>1.0%</td>
</tr>
<tr>
<td>Arlington Solar</td>
<td>233.0</td>
<td>Contracted</td>
<td>12/31/2021</td>
<td>15</td>
<td>6.1%</td>
</tr>
<tr>
<td>High Desert Solar + Storage</td>
<td>100.0</td>
<td>Contracted</td>
<td>8/1/2021</td>
<td>15</td>
<td>2.6%</td>
</tr>
<tr>
<td>Azalea Solar + Storage</td>
<td>60.0</td>
<td>Contracted</td>
<td>12/31/2022</td>
<td>15</td>
<td>1.6%</td>
</tr>
<tr>
<td>Rexford Solar + Storage</td>
<td>300.0</td>
<td>Contracted</td>
<td>10/1/2023</td>
<td>15</td>
<td>7.0%</td>
</tr>
<tr>
<td>Chalan Solar + Storage</td>
<td>64.9</td>
<td>Contracted</td>
<td>12/31/2023</td>
<td>15</td>
<td>1.5%</td>
</tr>
<tr>
<td><strong>Total Contracted</strong></td>
<td><strong>1,151.5</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>29.0%</strong></td>
</tr>
<tr>
<td>Daggett Solar + Storage</td>
<td>123.0</td>
<td>In negotiation</td>
<td>3/31/2023</td>
<td>15</td>
<td>3.3%</td>
</tr>
<tr>
<td><strong>Total with Pending</strong></td>
<td><strong>1,274.5</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>32.3%</strong></td>
</tr>
</tbody>
</table>
### Compliance Position

- SB 100 and SB 350 Long-Term Renewable Energy Contracting Requirement per Compliance Period is shown in the table below.
- Substantial progress is being made but still more contracts are needed.

<table>
<thead>
<tr>
<th></th>
<th>2021-2024</th>
<th>2025-2027</th>
<th>2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 State Mandated RPS per Compliance Period - % of Retail Sales</td>
<td>40%</td>
<td>49%</td>
<td>57%</td>
</tr>
<tr>
<td>2 State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS LT Contracts</td>
<td>65%</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>3 CPA’s LT RPS Mandate = Row #2 * Row #1</td>
<td>25.9%</td>
<td>32.1%</td>
<td>36.8%</td>
</tr>
<tr>
<td>4 RPS Achieved by CPA with Existing LT Contracts</td>
<td>19.6%</td>
<td>28.2%</td>
<td>27.6%</td>
</tr>
<tr>
<td>5 Open Position relative to State Mandate (Row 3,4) +Above/ (-) Short</td>
<td>-6.3%</td>
<td>-3.9%</td>
<td>-9.2%</td>
</tr>
<tr>
<td>6 RPS Achieved by CPA with Existing LT Contracts and Daggett</td>
<td>21.0%</td>
<td>31.4%</td>
<td>30.8%</td>
</tr>
<tr>
<td>7 Open Position relative to State Mandate (Row 3,6) +Above/ (-) Short</td>
<td>-4.9%</td>
<td>-0.6%</td>
<td>-6.0%</td>
</tr>
</tbody>
</table>

(1) Note that RPS percentages by compliance period differ from the table on the previous slide due to timing of when projects come online and changes to load from year to year.
Storage Procurement

- Storage is a critical resource for renewable integration and reliable capacity
- The two proposed projects add 193.5 MW of storage to CPA’s portfolio:

<table>
<thead>
<tr>
<th>Project</th>
<th>Technology</th>
<th>Status</th>
<th>RPS MW</th>
<th>Storage MW</th>
<th>Commercial Operation Date</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voyager</td>
<td>Wind</td>
<td>Online</td>
<td>21.6</td>
<td></td>
<td>12/28/2018</td>
<td>15</td>
</tr>
<tr>
<td>Kaweah</td>
<td>Hydro</td>
<td>Online</td>
<td>20.1</td>
<td></td>
<td>6/16/2020</td>
<td>10</td>
</tr>
<tr>
<td>Isabella</td>
<td>Hydro</td>
<td>Online</td>
<td>11.95</td>
<td></td>
<td>12/8/2020</td>
<td>10</td>
</tr>
<tr>
<td>Mohave (White Hills)</td>
<td>Wind</td>
<td>Contracted</td>
<td>300</td>
<td></td>
<td>12/31/2020</td>
<td>20</td>
</tr>
<tr>
<td>Golden Fields</td>
<td>Solar</td>
<td>Contracted</td>
<td>40</td>
<td></td>
<td>3/31/2021</td>
<td>15</td>
</tr>
<tr>
<td>Arlington Solar*</td>
<td>Solar</td>
<td>Contracted</td>
<td>233</td>
<td></td>
<td>12/31/2021</td>
<td>15</td>
</tr>
<tr>
<td>Luna Storage</td>
<td>Battery</td>
<td>Contracted</td>
<td>100</td>
<td></td>
<td>7/31/2021</td>
<td>15</td>
</tr>
<tr>
<td>Sanborn Storage</td>
<td>Battery</td>
<td>Contracted</td>
<td>100</td>
<td></td>
<td>8/1/2021</td>
<td>15</td>
</tr>
<tr>
<td>High Desert</td>
<td>Solar + Battery</td>
<td>Contracted</td>
<td>100</td>
<td>50</td>
<td>8/1/2021</td>
<td>15</td>
</tr>
<tr>
<td>Azalea</td>
<td>Solar + Battery</td>
<td>Contracted</td>
<td>60</td>
<td>38</td>
<td>12/31/2022</td>
<td>15</td>
</tr>
<tr>
<td>Rexford</td>
<td>Solar + Battery</td>
<td>Contracted</td>
<td>300</td>
<td>180</td>
<td>10/1/2023</td>
<td>15</td>
</tr>
<tr>
<td>Chalan</td>
<td>Solar + Battery</td>
<td>Contracted</td>
<td>64.9</td>
<td>25</td>
<td>12/31/2023</td>
<td>15</td>
</tr>
<tr>
<td>Daggett</td>
<td>Solar + Battery</td>
<td>In negotiation</td>
<td>123</td>
<td>61.5</td>
<td>3/31/2023</td>
<td>15</td>
</tr>
<tr>
<td>Arlington Storage*</td>
<td>Battery</td>
<td>In negotiation</td>
<td>132</td>
<td></td>
<td>8/1/2022</td>
<td>15</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>1,274.6</strong></td>
<td><strong>686.5</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Once executed, the Arlington Solar + Storage project will be one hybrid project; but shown here separately to distinguish between the previously executed solar PPA and the incremental storage to be added in the PPA amendment.
Project Overviews
Dagget Solar + Storage Snapshot

Project Overview

- 123 MW solar and 61.5 MW / 246 MWh lithium-ion battery storage facility
- Located in unincorporated San Bernardino County on site of a former fossil fuel power plant
- New build project with a March 31, 2023 online date
- Developer: Clearway
- Remaining project in negotiation from the 2018 Clean Energy RFO

Evaluation Summary

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>1st quartile</td>
</tr>
<tr>
<td>Development Risk Score</td>
<td>High</td>
</tr>
<tr>
<td>Workforce Development</td>
<td>High</td>
</tr>
<tr>
<td>Environmental Stewardship</td>
<td>High</td>
</tr>
<tr>
<td>Benefits to DACs</td>
<td>High</td>
</tr>
<tr>
<td>Project Location</td>
<td>Medium</td>
</tr>
</tbody>
</table>
Daggett Rationale

- Competitively priced - offer places the project in the first quartile of value relative to valuation of the 2019 Clean Energy RFO offers

- Developer Clearway successful financed CPA’s Golden Fields project, which will be coming online in December 2020

- Compelling from a land use perspective as it will be built on the site of shuttered natural gas power plant

- Contributes to CPA’s 2021-2024 SB 350 compliance

- Cost effectively meets CPA’s customers’ large renewable energy demand
Arlington Solar + Storage Snapshot

Project Overview

- 233 MW solar and 132 MW / 528 MWh lithium-ion battery storage facility
- Located near Blythe, Riverside County
- New build project with an October 1, 2022 online date
- Developer: NextEra
- Solar portion of project is already contracted by CPA; seeking an amendment to add storage portion

Evaluation Summary

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>1st quartile</td>
</tr>
<tr>
<td>Development Risk Score</td>
<td>High</td>
</tr>
<tr>
<td>Workforce Development</td>
<td>High</td>
</tr>
<tr>
<td>Environmental Stewardship</td>
<td>Medium</td>
</tr>
<tr>
<td>Benefits to DACs</td>
<td>Neutral</td>
</tr>
<tr>
<td>Project Location</td>
<td>Medium</td>
</tr>
</tbody>
</table>
Arlington Rationale

• CPA is currently under contract with NextEra Energy for the 233 MW Arlington Solar PV project

• The Arlington Storage project was bid and shortlisted in the 2019 Reliability RFO as a standalone storage project

• Staff has negotiated to attach storage to the currently contracted Arlington Solar PV project. The new configuration offers a 29% decrease in storage price over the original offer

• The configuration makes the storage eligible for the Investment Tax Credit (ITC), resulting in cost savings compared to standalone storage

• This configuration will be effectuated via an Amended and Restated PPA, which will include contract provisions applicable to storage and retain the same terms for the solar portion of the project
Upcoming Procurement Activities
2020 Clean Energy RFO

- The 2018 and 2019 Clean Energy RFO cycles are concluding
  - One remaining solar + storage project from the 2019 Clean Energy RFO is in negotiation, which is planned for Board consideration in November
- CPA plans to launch its 2020 Clean Energy RFO in mid-October, with a target of procuring 1,500 – 2,000 GWh of annual generation
- Renewable, renewable + storage, and standalone storage, from 5 MW – 300 MW, will all be considered
- CPA will consider projects with an online date through 12/31/2025, however preference will be for online dates prior to 12/31/2023 for SB 350 compliance
- Proposals will be evaluated on the same six criteria as in the 2018 and 2019 RFOs\(^1\) and a proposed shortlist will be presented to the Energy Committee in Q1 2021

(1) Value, Environmental Stewardship, Workforce Development, Development Score, Project Location, Benefits to Disadvantaged Communities
Other Local Procurement Efforts

<table>
<thead>
<tr>
<th>Description</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>100% Green Discount Program and Community Solar RFO</strong></td>
<td>• Launch pending CPUC approval</td>
</tr>
<tr>
<td>• Procurement of new build projects in DACs</td>
<td></td>
</tr>
<tr>
<td>• 20% bill discount for eligible customers</td>
<td></td>
</tr>
<tr>
<td>• Above market costs subsidized by CPUC</td>
<td></td>
</tr>
<tr>
<td><strong>Clean Back-Up for Essential Facilities Program</strong></td>
<td>• Member RFI completed</td>
</tr>
<tr>
<td>• Storage or solar + storage for critical facilities in each member agency jurisdiction</td>
<td>• Engineering consultant selection underway</td>
</tr>
<tr>
<td><strong>Behind the Meter Request for Proposals (RFP)</strong></td>
<td>• Evaluating product and contract structures</td>
</tr>
<tr>
<td>• Energy and/or capacity purchases from aggregated customer resources</td>
<td>• Collecting lessons learned</td>
</tr>
</tbody>
</table>
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller**: Daggett Solar Power 3 LLC, a Delaware limited liability company

**Buyer**: Clean Power Alliance of Southern California, a California joint powers authority

**Description of Facility**: A dedicated and separately metered 123 MW AC portion of an approximately 482 MW AC solar photovoltaic generating facility, along with a dedicated 61.5 MW/246 MWh battery energy storage facility, all located in San Bernardino County, in the State of California, as further described in Exhibit A and subject to adjustment as described in Sections 2.5, 2.6, 2.7 and Section 5 of Exhibit B.

**Milestones**:

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Complete</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td>Complete</td>
</tr>
<tr>
<td>[X] CEQA, [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [X] EIR</td>
<td></td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td>Complete</td>
</tr>
<tr>
<td>Financial Close</td>
<td>[ ]</td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td>[ ]</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>10/1/2022</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>3/31/2023</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>3/31/2023</td>
</tr>
</tbody>
</table>

**Delivery Term**: Fifteen (15) Contract Years
**Delivery Term Expected Energy:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>383,063</td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>

**Guaranteed Capacity:** 184.5 MW of total Facility capacity

**Guaranteed Storage Capacity:** 61.5 MW of Installed Storage Capacity at four (4) hours of continuous discharge

**Guaranteed PV Capacity:** 123 MW of Installed PV Capacity

**Guaranteed Efficiency Rate:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Guaranteed Efficiency Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>
Guaranteed Construction Start Date: 6/30/2022

Guaranteed Commercial Operation Date: 3/31/2023

**Contract Price**

The Renewable Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$ /MWh (flat) with no escalation</td>
</tr>
</tbody>
</table>

The Storage Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$ /kW-mo. (flat) with no escalation</td>
</tr>
</tbody>
</table>
Product

☒ PV Energy
☒ Discharging Energy
☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
☐ Portfolio Content Category 1
☐ Portfolio Content Category 2
☐ Portfolio Content Category 3
☒ Installed Storage Capacity and Effective Storage Capacity
☒ Ancillary Services
☒ Capacity Attributes (select options below as applicable)
☐ Energy Only Status
☒ Full Capacity Deliverability Status
  a) RA Guarantee Date: Commercial Operation Date

Scheduling Coordinator: Buyer

Security and Guarantor:

Development Security: $60/kW of Guaranteed PV Capacity plus $90/kW of Guaranteed Storage Capacity

Performance Security: $60/kW of the lesser of Guaranteed PV Capacity and Installed PV Capacity plus $90/kW of the lesser of Guaranteed Storage Capacity and Installed Storage Capacity

Guarantor: N/A on Effective Date
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE 1 DEFINITIONS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Contract Definitions</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Rules of Interpretation</td>
<td>25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 2 TERM; CONDITIONS PRECEDENT</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Contract Term</td>
<td>26</td>
</tr>
<tr>
<td>2.2 Conditions Precedent</td>
<td>26</td>
</tr>
<tr>
<td>2.3 Development; Construction; Progress Reports</td>
<td>27</td>
</tr>
<tr>
<td>2.4 Remedial Action Plan</td>
<td>28</td>
</tr>
<tr>
<td>2.5 Guaranteed PV Capacity Adjustment</td>
<td>28</td>
</tr>
<tr>
<td>2.6 Guaranteed Storage Capacity Adjustment</td>
<td>28</td>
</tr>
<tr>
<td>2.7 Expected Energy Adjustment</td>
<td>28</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 3 PURCHASE AND SALE</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Purchase and Sale of Product</td>
<td>28</td>
</tr>
<tr>
<td>3.2 Sale of Green Attributes</td>
<td>29</td>
</tr>
<tr>
<td>3.3 Imbalance Energy</td>
<td>29</td>
</tr>
<tr>
<td>3.4 Ownership of Renewable Energy Incentives</td>
<td>29</td>
</tr>
<tr>
<td>3.5 Future Environmental Attributes</td>
<td>29</td>
</tr>
<tr>
<td>3.6 Test Energy</td>
<td>30</td>
</tr>
<tr>
<td>3.7 Capacity Attributes</td>
<td>30</td>
</tr>
<tr>
<td>3.8 Resource Adequacy Failure</td>
<td>30</td>
</tr>
<tr>
<td>3.9 CEC Certification and Verification</td>
<td>31</td>
</tr>
<tr>
<td>3.10 Eligibility</td>
<td>31</td>
</tr>
<tr>
<td>3.11 California Renewables Portfolio Standard</td>
<td>31</td>
</tr>
<tr>
<td>3.12 Compliance Expenditure Cap</td>
<td>31</td>
</tr>
<tr>
<td>3.13 Project Configuration</td>
<td>32</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 4 OBLIGATIONS AND DELIVERIES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 Delivery</td>
<td>32</td>
</tr>
<tr>
<td>4.2 Title and Risk of Loss</td>
<td>33</td>
</tr>
<tr>
<td>4.3 Forecasting</td>
<td>33</td>
</tr>
<tr>
<td>4.4 Dispatch Down/Curtailment</td>
<td>35</td>
</tr>
<tr>
<td>4.5 Energy Management</td>
<td>36</td>
</tr>
<tr>
<td>4.6 Reduction in Energy Delivery Obligation</td>
<td>38</td>
</tr>
<tr>
<td>4.7 Guaranteed Energy Production</td>
<td>39</td>
</tr>
<tr>
<td>4.8 Storage Facility Availability; Guaranteed Efficiency Rate; Ancillary Services</td>
<td>40</td>
</tr>
<tr>
<td>4.9 Storage Facility Testing</td>
<td>40</td>
</tr>
<tr>
<td>4.10 WREGIS</td>
<td>42</td>
</tr>
<tr>
<td>4.11 Financial Statements</td>
<td>43</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ARTICLE 5 TAXES</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Allocation of Taxes and Charges</td>
<td>43</td>
</tr>
<tr>
<td>5.2 Cooperation</td>
<td>44</td>
</tr>
</tbody>
</table>
ARTICLE 6 MAINTENANCE OF THE FACILITY ..............................................................44

6.1 Maintenance of the Facility ..............................................................................44
6.2 Maintenance of Health and Safety ....................................................................44
6.3 Shared Facilities .................................................................................................44

ARTICLE 7 METERING .............................................................................................................45

7.1 Metering ..............................................................................................................45
7.2 Meter Verification ...............................................................................................46

ARTICLE 8 INVOICING AND PAYMENT; CREDIT ..............................................................46

8.1 Invoicing ..............................................................................................................46
8.2 Payment ...............................................................................................................46
8.3 Books and Records .............................................................................................47
8.4 Payment Adjustments; Billing Errors .................................................................47
8.5 Billing Disputes ..................................................................................................47
8.6 Netting of Payments ...........................................................................................47
8.7 Seller’s Development Security ...........................................................................47
8.8 Seller’s Performance Security ............................................................................48
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral ...............48

ARTICLE 9 NOTICES ........................................................................................................50

9.1 Addresses for the Delivery of Notices ...............................................................50
9.2 Acceptable Means of Delivering Notice ...........................................................50

ARTICLE 10 FORCE MAJEURE ..........................................................................................50

10.1 Definition ...........................................................................................................50
10.2 No Liability If a Force Majeure Event Occurs ....................................................51
10.3 Notice ................................................................................................................51
10.4 Termination Following Force Majeure Event or Development Cure Period ........52

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION ..................................................52

11.1 Events of Default ...............................................................................................52
11.2 Remedies; Declaration of Early Termination Date .............................................55
11.3 Damage and Termination Payments ..................................................................56
11.3 Notice of Payment of Termination Payment or Damage Payment ..................58
11.4 Disputes With Respect to Termination Payment or Damage Payment ...........58
11.5 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date ................................................58
11.6 Rights And Remedies Are Cumulative ...............................................................58
11.7 Mitigation ............................................................................................................59
11.8 Seller Pre-Commercial Operation Liability Limitations ...................................59

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES .......59

12.1 No Consequential Damages .............................................................................59

ii
### Exhibits:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Facility Description</td>
</tr>
<tr>
<td>B</td>
<td>Facility Construction and Commercial Operation</td>
</tr>
<tr>
<td>C</td>
<td>Compensation</td>
</tr>
<tr>
<td>D</td>
<td>Scheduling Coordinator Responsibilities</td>
</tr>
<tr>
<td>E</td>
<td>Progress Reporting Form</td>
</tr>
<tr>
<td>F-1</td>
<td>Form of Annual Expected Available Generating Facility Capacity Report</td>
</tr>
<tr>
<td>F-2</td>
<td>Form of Monthly Expected PV Energy Report</td>
</tr>
<tr>
<td>F-3</td>
<td>Form of Monthly Expected Available Effective Storage Capacity Report</td>
</tr>
<tr>
<td>F-4</td>
<td>Form of Monthly Expected Available Storage Capability Report</td>
</tr>
<tr>
<td>G</td>
<td>Guaranteed Energy Production Damages Calculation</td>
</tr>
<tr>
<td>H</td>
<td>Form of Commercial Operation Date Certificate</td>
</tr>
<tr>
<td>I-1</td>
<td>Form of Installed Capacity Certificate</td>
</tr>
<tr>
<td>I-2</td>
<td>Form of Effective Storage Capacity Certificate</td>
</tr>
<tr>
<td>J</td>
<td>Form of Construction Start Date Certificate</td>
</tr>
<tr>
<td>K</td>
<td>Form of Letter of Credit</td>
</tr>
<tr>
<td>L</td>
<td>Form of Guaranty</td>
</tr>
<tr>
<td>M</td>
<td>Form of Replacement RA Notice</td>
</tr>
<tr>
<td>N</td>
<td>Notices</td>
</tr>
<tr>
<td>O</td>
<td>Storage Capacity Tests</td>
</tr>
<tr>
<td>P</td>
<td>Annual Storage Capacity Availability Calculation</td>
</tr>
<tr>
<td>Q</td>
<td>Operating Restrictions</td>
</tr>
<tr>
<td>R</td>
<td>Metering Diagram</td>
</tr>
<tr>
<td>S</td>
<td>Form of Assignment Agreement</td>
</tr>
</tbody>
</table>
RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of ___________ (the "Effective Date"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "Party" and jointly as the "Parties." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.12(c).

“Adjusted Energy Production” has the meaning set forth in Exhibit G.

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“Alternative Dispatches” has the meaning set forth in Section 4.5(j).

“Ancillary Services” means spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is
capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“Ancillary Services Dispatch” means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

“Annual Storage Capacity Availability” has the meaning set forth in Exhibit P.

“Approved Forecast Vendor” means (x) any of CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“Assignment Agreement” has the meaning set forth in Section 14.5.

“Automated Dispatch System” or “ADS” has the meaning set forth in the CAISO Tariff.

“Automated Dispatches” has the meaning set forth in Section 4.5(j).

“Automatic Generation Control” or “AGC” has the meaning set forth in the CAISO Tariff.

“Availability Notice” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the Available Effective Storage Capacity and Available Storage Capability.

“Available Effective Storage Capacity” has the meaning in Exhibit P.

“Available Generating Capacity” means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“Available Storage Capability” has the meaning in Exhibit P.

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

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.
“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Assignee” has the meaning set forth in Section 14.5.

“Buyer Bid Curtailment” means the occurrence of both of the following:

(a) the CAISO provides notice to a Party or the SC for the Generating Facility, requiring the Party to curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility either (i) not having submitted a Self-Schedule for the MWhs subject to the reduction or (ii) having submitted a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter having submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not delivered or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period).

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event affecting the Facility and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer Default hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).
“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff, including in Appendix K - Part A for Certification for Regulation, Part B for Spinning Reserve and Part C for Non-Spinning Reserve, that are applicable to the Facility for the certification and testing for all Ancillary Services, PMAX, and PMIN.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means collectively Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or “CT” means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.
“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all PV Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“Change of Control” means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller or otherwise ceases to retain the ability to control the decision making of Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

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

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; provided, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“COD Certificate” has the meaning set forth in Exhibit B.

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, including the rules or regulations promulgated thereunder, in each case as in
effect from time to time. References to sections of the Code shall be construed to also refer to any successor sections.

“Commercial Operation” has the meaning set forth in Exhibit B.

“Commercial Operation Date” means the date Commercial Operation is achieved.

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“Commercial Operation Storage Capacity Test” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.12(a).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12.

“Confidential Information” has the meaning set forth in Section 18.1.

“Construction Start” has the meaning set forth in Exhibit B.

“Construction Start Date” has the meaning set forth in Exhibit B.

“Contract Price” has the meaning set forth on the Cover Sheet and is each of the Renewable Rate and the Storage Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.
“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

“CPM Price” has the meaning set forth in Section 3.8(b).

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

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

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWHs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) (it being acknowledged, for the avoidance of doubt, that any CAISO direction to curtail PV Energy in response to an Energy oversupply or potential Energy oversupply in circumstances where Buyer or the SC for the Facility submitted an Energy Supply Bid (as defined in the CAISO Tariff) for the MWHs curtailed (based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) during the relevant time period, shall be deemed Buyer Bid Curtailment and not a Curtailment Order);

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;
(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Cycles” means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

“Day-Ahead Forecast” has the meaning set forth in Section 4.3(c).

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

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

“Deemed Delivered Energy” means the amount of PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode during any Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.10(e).
“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

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

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; provided, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Effective FCDS Date” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

“Effective Storage Capacity” means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a
Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate of converting Charging Energy into Discharging Energy, as calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In.

“Efficiency Rate Factor” has the meaning set forth in Exhibit C.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) between the Delivery Point and/or the Generating Facility and the Storage Facility Metering Point, as applicable, associated with delivery of Charging Energy. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy, measured in kilowatt-hours, megawatt-hours, or multiple units thereof. Energy shall include without limitation, reactive power and any other electrical energy products that may be developed or evolve from time to time during the Contract Term.

“Energy In” has the meaning set forth in Section III.A(5) of Exhibit O.

“Energy Management System” or “EMS” means the Facility’s energy management system.

“Energy Out” has the meaning set forth in Section III.A(10) of Exhibit O.

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

“Excess MWh” has the meaning set forth in Exhibit C.

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted (i) proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable, and (ii) in accordance with Section 2.7.
“Facility” means the combined Generating Facility and the Storage Facility. For the avoidance of doubt, as used in this Agreement, the Facility means the dedicated and separately metered 123 MW AC portion of the larger solar photovoltaic generating facility along with the dedicated 61.5 MW/246 MWh battery energy storage facility.

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period, as measured by the Generating Facility Meter and/or Storage Facility Meter, as applicable, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

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

“Financial Close” means Seller and/or one of its Affiliates has obtained debt and/or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forecasting Penalty” has the meaning set forth in Section 4.3(f).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

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

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant
rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

"Generating Facility" means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (a) PV Energy to the Delivery Point, and (b) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

"Generating Facility Meter" means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"Generating Facility Metering Point" means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

"Governmental Authority" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided, “Governmental Authority” shall not in any event include any Party.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (c) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power
attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated Green Tags in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of PV Energy.

“Green-e Certified” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“Guaranteed Capacity” means the sum of (a) the Guaranteed PV Capacity and (b) the Guaranteed Storage Capacity.

“Guaranteed Commercial Operation Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7.

“Guaranteed PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.5.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point)
for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet, as may be adjusted pursuant to Section 2.6.

“Guarantor” means, with respect to Seller, any Person that is listed on the Cover Sheet or that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Million Dollars ($100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of PV Energy, Charging Energy or Discharging Energy deviates from the amount of Scheduled Energy.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the initial delivery of Energy from the Facility to the Delivery Point.

“Installed Capacity” means the sum of (a) the Installed PV Capacity and (b) the Installed Storage Capacity.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to the Delivery Point), that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; provided, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and (for the avoidance of doubt) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.
“Inter-SC Trade” or “IST” has the meaning set forth in the CAISO Tariff.

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

“Interconnection Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 123 MW.

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

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the Code.


“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of
the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resource” has the meaning set forth in the CAISO Tariff.

“Local RAR” means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. “Local RAR” may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

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

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.3(b).

“Moody’s” means Moody’s Investors Service, Inc., or its successor.
“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars ($0).

“**NERC**” means the North American Electric Reliability Corporation or any successor entity.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

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

“**Operating Restrictions**” means those rules, requirements, and procedures set forth on Exhibit Q.

“**Party**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; provided, a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“**Performance Security**” means (a) cash, (b) a Letter of Credit, or (c) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

“**Permitted Transferee**” means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(i) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s;
(ii) At least two (2) years of experience in the ownership and operations of power
generation facilities similar to the Generating Facility, or has retained a third-party with such
experience to operate the Generating Facility; and

(iii) At least __________ of experience in the ownership and operations of energy
storage facilities similar to the Storage Facility, or has retained a third-party with such experience
to operate the Storage Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability
company, limited or general partnership, joint venture, association, joint-stock company, trust,
incorporated organization, institution, public benefit corporation, unincorporated organization,
government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part
not capable of providing service due to planned maintenance that has been scheduled in accordance
with Section 4.6(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Storage
Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage
Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or
other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or
the interests of their respective direct or indirect parent companies), that is pledged as collateral
security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or “PCC1” means any Renewable Energy Credit
associated with the generation of electricity from an Eligible Renewable Energy Resource
consisting of the portfolio content set forth in California Public Utilities Code Section
399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or “PCC2” means any Renewable Energy Credit
associated with the generation of electricity from an Eligible Renewable Energy Resource
consisting of the portfolio content set forth in California Public Utilities Code Section
399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or “PCC3” means any Renewable Energy Credit
associated with the generation of electricity from an Eligible Renewable Energy Resource
consisting of the portfolio content set forth in California Public Utilities Code Section
399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.
“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the Code.

“PV Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means all Energy delivered from the Generating Facility to the Generating Facility Metering Point and measured by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Compliance Showing” means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the date set forth in the deliverability Section of the Cover
Sheet, which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

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

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.4.

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Code); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource; provided, Replacement RA may be Resource Adequacy Benefits
with an NP26 designation unless Buyer has demonstrably reached Buyer’s limit for such resources in such month.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

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

“Resource Adequacy Requirements” or “RAR” means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

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

“Schedule” has the meaning set forth in the CAISO Tariff, and “Scheduled” and “Scheduling” have a corollary meaning.

“Scheduled Energy” means the PV Energy, Charging Energy or Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Security Interest” has the meaning set forth in Section 8.9.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller Initiated Test” has the meaning set forth in Section 4.9(c).
“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

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

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

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

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Showing Month**” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**SOC**” or “**State of Charge**” means (a) the level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by four (4) hours, expressed as a percentage.

“**SP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“**Station Use**” means the Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“**Storage Capability**” has the meaning in Exhibit P.
“Storage Capacity Availability Payment True-Up” has the meaning set forth in Exhibit C.

“Storage Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Storage Capacity Test” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity, and/or Efficiency Rate, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Cure Plan” has the meaning set forth in Section 11.1(b)(iv).

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Meter” means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location(s) of the Storage Facility Meter(s) shown on Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.
“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

“Tax” or “Taxes” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities or battery storage facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means PV Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Total YTD Calculation Intervals” has the meaning set forth in Exhibit P.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

“Ultimate Parent” means Clearway Renew LLC, a Delaware limited liability company.

“Unavailable Calculation Interval” has the meaning set forth in Exhibit P.
“Variable Energy Resource” or “VER” has the meaning set forth in the CAISO Tariff.

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or
reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

   (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

   (j) references to any amount of money shall mean a reference to the amount in United States Dollars;

   (k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

   (l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

   (m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

   (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term"); provided, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

   (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

   (a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed
PV Capacity, the Installed Storage Capacity and the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages and Commercial Operation Delay Damages.

2.3 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)- day period following the Milestone completion date, a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor). Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

2.5 **Guaranteed PV Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days’ Notice to Buyer, increase the Guaranteed PV Capacity upward by up to one and a half (1.5) MW AC. Upon such Notice, each reference to the Guaranteed PV Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions, provided that for purposes of calculating the amount of Development Security, Seller shall have thirty (30) days to provide such increased amounts after delivery of such Notice.

2.6 **Guaranteed Storage Capacity Adjustment.** At any time prior to Construction Start, Seller may, upon ten (10) Business Days’ Notice to Buyer, increase the Guaranteed Storage Capacity upward by up to one and a half (1.5) MW AC. Upon the issuance of such Notice, each reference to Guaranteed Storage Capacity under this Agreement shall automatically be amended and deemed to be a reference to such adjusted amount, without the need for written amendment by the Parties, including references in the description of the Facility and the Operating Restrictions, provided that for purposes of calculating the amount of Development Security, Seller shall have thirty (30) days to provide such increased amounts after delivery of such Notice.

2.7 **Expected Energy Adjustment.** If Seller adjusts the Guaranteed PV Capacity pursuant to Section 2.5, then the Expected Energy shall be adjusted pro rata in proportion to such increase to the Guaranteed PV Capacity without the need for written amendment by the Parties.

**ARTICLE 3**

**PURCHASE AND SALE**

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise
submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer’s efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy and/or Discharging Energy delivered from the Generating Facility and received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set
forth above; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the “**Test Energy Rate**”). The conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“**CPM Price**”); provided that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility.
Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect) with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month; provided, further, that (i) the amount of Replacement RA shall not to exceed percent (\%) of the Qualifying Capacity of the Facility for any such RA Shortfall Month, (ii) any Replacement RA is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Pre-certification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (a) the Generating Facility qualifies and is certified by the CEC (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (b) the Generating Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the PV Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying, providing or effectuating Buyer’s use of Green Attributes and Capacity Attributes (as applicable),
then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear (x) during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity and (y) in any Contract Year to comply with such obligations shall be capped at seven thousand five hundred dollars ($7,500) per MW of Guaranteed Capacity; (“Compliance Expenditure Cap”).

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-allowed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 Project Configuration. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; provided, neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery.
(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Except as otherwise provided herein, Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy and Discharging Energy will be scheduled with the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with Test Energy and the PV Energy during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer’s designee).

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month’s average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of PV Energy and Available Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) PV Energy, (iii) Available Effective Storage Capacity, and (iv) Available Storage Capability (items (i)-(iv) collectively referred to as the “**Forecasted Product**”), for each
day of the following month in a form substantially similar to Exhibits F-2, F-3 and F-4, as applicable (“Monthly Forecast”).

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (“Day-Ahead Forecast”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day, and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only, Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product (“Real-Time Forecast”), in each case, whether due to a Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of the outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a “Forecasting Penalty” for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which assumes no Charging Energy or
Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual PV Energy (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) **CAISO Tariff Requirements.** Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; provided, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) **Seller Equipment Required for Curtailment Instruction Communications.** Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for
failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5  **Energy Management.**

(a)   **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b)   **Charging Notices.** During the Delivery Term, Buyer will have the right to direct Seller to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c)   **No Unauthorized Charging.** Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then Seller shall pay Buyer the Renewable Rate for all Energy associated with such charging of the Storage Facility and Buyer shall be entitled to discharge such energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.
(d) **No Unauthorized Discharging.** Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice in order to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. Buyer will have the right to direct Seller to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Buyer’s SC or the CAISO to provide Discharging Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) **Curtailments.** Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(f) **Unauthorized Charges and Discharges.** If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder, or as is expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then such shall be a failure to perform a material covenant under Section 11.1(a)(iii).

(g) **CAISO Dispatches.** During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer’s SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation. To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) **Pre-Commercial Operation Date Period, etc.** Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or

37
Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Storage Facility. Buyer and Buyer’s SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy) prior to (and after) the Commercial Operation Date, and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

(i) **Station Use.** Notwithstanding anything to the contrary in this Section 4.5 or this Agreement, the Parties acknowledge that Seller is responsible for providing all Energy to serve Station Use, that Station Use may be supplied from the grid or the Facility, and that the supply of Station Use shall not be deemed a deviation for purposes of Section 4.5(g) or a violation of this Agreement, including Sections 4.5(c), (d), and (f); provided that Seller shall be responsible for the cost of any Energy to serve such Station Use.

(j) **Maintenance of SCADA Systems; Back-up Procedures.** During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice (“**Automated Dispatches**”). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices (“**Alternative Dispatches**”).

4.6 **Reduction in Energy Delivery Obligation.** Without limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.**

(i) Unless otherwise agreed to in writing by Buyer in its sole discretion, Seller shall provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer’s comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages.

(ii) Seller shall have the right during each Contract Year, on no less than sixty (60) days advance Notice to Buyer, to make changes to each such schedule, and shall reasonably coordinate to obtain comments from Buyer on such changes; provided, Buyer shall cooperate with Seller to make changes to each such schedule and shall permit any changes if doing so would not have a material adverse impact on Buyer and Seller agrees to reimburse Buyer for any costs or charges associated with such changes. Notwithstanding anything in this Agreement
to the contrary, Seller shall not be required to provide Notice to Buyer of maintenance of the Generating Facility occurring during nighttime hours not otherwise impacting the Storage Facility.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility’s unavailability for purposes of calculating the Annual Storage Capacity Availability, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller’s obligation to deliver Capacity Attributes.

4.7 **Guaranteed Energy Production.** During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). *Guaranteed Energy Production* means an amount of PV Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Event of Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV Energy to the Delivery Point. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“Lost Output”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement
Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed the lower of (x) twenty percent (20%) of the Expected Energy for the previous Contract Year or (y) ten percent (10%) of the sum of the annual average Expected Energy for the previous two Contract Years.

4.8 **Storage Facility Availability; Guaranteed Efficiency Rate; Ancillary Services.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [redacted] percent (\(\%\)) (the “**Guaranteed Storage Availability**”), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) Buyer’s exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(c) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate shall be an adjustment to the Monthly Capacity Payment pursuant to Section (d) of Exhibit C.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s initial CAISO Certification associated with the Installed Storage Capacity. For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility fails to respond at all to an Ancillary Services Dispatch, then as the exclusive remedy the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%).

(e) Upon Buyer’s reasonable request, Seller shall submit the Storage Facility for additional CAISO Certification so that the Storage Facility may provide additional Ancillary Services that the Facility is at the relevant time actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with such additional CAISO Certification.

4.9 **Storage Facility Testing.**

(a) **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.
Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate, as applicable, at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO Dispatches.

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“Buyer Dispatched Test”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “Seller Initiated Test”.

(i) For any Seller Initiated Test other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability pursuant to Exhibit P. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility dispatch during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer’s payment of the Renewable Rate to Seller for all PV Energy used as Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Green
Attributes associated therewith shall be for Buyer’s account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 WREGIS. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“Buyer’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this
Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy for the same calendar month (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any action or inaction of, Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller has not reimbursed Buyer. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) Subject to Section 3.12, if WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement.

4.11 Financial Statements. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

ARTICLE 5
TAXES

5.1 Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party
shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

5.3 **Ownership.** Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all Tax Credits or other tax benefits associated with the Facility, including any such tax credits or tax benefits under the Code and all Renewable Energy Incentives. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return or in any other filings suggesting that this Agreement is anything other than a purchase of the Product from the Seller or that this Agreement is anything other than a “service contract” within the meaning of Section 7701(e)(3) of the Code.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the generation and sale of Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer’s emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided, such agreements (i) shall permit
Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

**ARTICLE 7**

**METERING**

7.1 **Metering.**

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall separately meter all Station Use (other than Station Use associated with transformers and power converters which are supplied from the AC terminals, for which Seller shall provide Buyer with good faith estimates as to the quantities of such Station Use consumed by the Facility upon Buyer’s reasonable request). All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface (MRI-S) web and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties’ mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include as the sole meters for the Facility the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.
7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists, then such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; provided, that such period may not exceed twelve (12) months.

**ARTICLE 8**

**INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Replacement RA, and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; provided, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

46

Agenda Page 102
8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B, G, and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect, provided that Seller
shall have no obligation to replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement. Upon the earlier of (a) Seller’s delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security for another permitted form; provided that a Guaranty may not be provided as Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) the later of (i) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting), or (ii) one hundred eighty (180) days after such Delivery Term expiration or termination; *provided*, if Buyer does not provide written notice to Seller of any such payment obligations within one hundred eighty (180) days after such Delivery Term expiration or termination, clause (ii) above shall govern the termination of Seller’s Performance Security obligation. Following the occurrence of both (a) and (b) above, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form; *provided, however*, that a Guaranty shall be considered on a case-by-case basis only for Performance Security, not Development Security, and Buyer’s acceptance of a Guaranty shall be subject, in Buyer’s sole discretion, to Guarantor meeting Buyer’s credit requirements.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“**Security Interest**”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9.9):
(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of
public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order except to the extent such event is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 Notice. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. The Parties acknowledge and agree that the extent and impact of COVID-19 on the Parties’ performance hereunder may not be immediately or readily
ascertainable, but that each Party shall promptly notify the other in accordance with this Section 10.3 and Section 10.1 once any impacts of COVID-19 that constitute a Force Majeure Event result in any delay or nonperformance hereunder.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party; provided, Seller shall be entitled to six (6) additional months to remedy the Force Majeure Event if (a) Seller has been unable to remedy the Force Majeure Event within the original twelve (12) month period despite exercising diligent efforts and (b) Seller provides Notice to Buyer at least sixty (60) days prior to the expiration of the original twelve (12) month period that contains (i) a detailed plan reasonably acceptable to an independent, professional engineer selected by Buyer, licensed in the State of California, that explains how Seller will restore the Facility, and (ii) a certificate from a Licensed Professional Engineer attesting that the Facility could not reasonably be restored to operational status within the original twelve (12) month period but is reasonably likely to be restored to operational status within the additional six (6) month period by Seller’s execution of the plan described in Section 10.4(b)(i). Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

**ARTICLE 11**

**DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default
is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (C) failures related to the Annual Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver Energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii) the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date as may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten
percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, for any full Contract Year, the Annual Storage Capacity Availability for such Contract Year multiplied by the Effective Storage Capacity for such Contract Year is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (other than to the extent additional time is needed to mobilize construction at the Site, receive any necessary permits to implement such Storage Cure Plan, or remedy any serial defects of the Storage Facility, in which case, such one hundred eighty (180) day cure period may be extended to a maximum of [redacted] (60 days) (a "Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) to the extent approved by Buyer in its sole discretion, a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) to the extent approved by Buyer in its sole discretion, a replacement Guaranty from a Guarantor meeting the criteria set forth in the definition of Guarantor, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the following rights:
(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“Early Termination Date”) that terminates this Agreement (the “Terminated Transaction”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment calculated in accordance with Section 11.3 below;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Damage and Termination Payments.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

(a) **Damage Payment Prior to Commercial Operation Date.** If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security and any interest accrued thereon if the Development Security is posted as cash. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) (Seller’s Losses, which shall not include consequential, incidental, punitive, exemplary, indirect, or business interruption damages, less all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) incurred or paid by Seller or its Affiliates, from the Effective Date through the Early Termination Date, allocable to the Facility (including in connection with acquisition, development, financing and construction thereof, but excluding any costs and expenses associated with the solar photovoltaic and energy storage
facilities adjacent to the Site which Seller or its Affiliates are developing and constructing in connection with the Facility)) plus (ii) without duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder, less (B) the fair market value (determined in a commercially reasonable manner by a third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer’s sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller’s Facility-related assets (which exclude, for clarity, any assets associated with the solar photovoltaic and energy storage facilities adjacent to the Site which Seller or its Affiliates are developing and constructing in connection with the Facility) if sold individually, or (b) the Facility, whichever is greater, regardless of whether or not any Seller asset or the Facility is actually sold or disposed of. Fair market value will be based on the value of Seller’s Facility-related assets or the Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date.** The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date (“**Termination Payment**”) shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination
Payment described in this Section 11.3 (b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.3 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.4 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.5 **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller’s Event of Default, neither Seller nor Seller’s Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller’s Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer’s receipt thereof. Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.6 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
11.7 Mitigation. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 No Consequential Damages. Except to the extent part of (A) an express remedy or measure of damages herein, (B) an IP indemnity claim, (C) an Article 16 indemnity claim, (D) included in a liquidated damages calculation, or (E) resulting from a party’s gross negligence or willful misconduct, neither party shall be liable to the other or its indemnified persons for any special, punitive, exemplary, indirect, or consequential damages, or losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with this Agreement, by statute, in tort or contract.

12.2 Waiver and Exclusion of Other Damages. Except as expressly set forth herein, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The parties confirm that the express remedies and measures of damages provided in this agreement satisfy the essential purposes hereof. All limitations of liability contained in this agreement, including, without limitation, those pertaining to seller’s limitation of liability and the parties’ waiver of consequential damages, shall apply even if the remedies for breach of warranty provided in this agreement are deemed to “fail of their essential purpose” or are otherwise held to be invalid or unenforceable.

For breach of any provision for which an express and exclusive remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor’s liability shall be limited as set forth in such provision, and all other remedies or damages at law or in equity are waived.

If no remedy or measure of damages is expressly provided herein, the obligor’s liability shall be limited to direct damages only. The value of any tax credits, determined on an after-tax basis, lost due to buyer’s default (which seller has not been able to mitigate after use of reasonable efforts) and amounts due in connection with the
RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller’s Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been
obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

13.2 **Buyer’s Representations and Warranties.** As of the Effective Date, and in the case of Section 13.2(h) as of each date on which Buyer delivers financial statements to Seller pursuant to Section 8.10(a)(i)(B) (or, if Buyer’s means of satisfying Section 8.10(a)(i) is through the public posting of financial statements, then as of the date Buyer publicly posts such financial statements), Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its
terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.
ARTICLE 14
ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 Collateral Assignment. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender(s) to accommodate reasonable requests from Lender(s) for adjustments to the reporting obligations under Sections 8.10(a)(ii) and 8.10(b) and to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided, such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received Notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.
(c) Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender’s receipt of Notice of such Event of Default from Buyer, indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a Bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(e) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(f) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(g) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller’s obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer’s right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(h) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller’s obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(i) Subject to Lender’s cure of any Events of Defaults under the Agreement in accordance with Section 14.2(d), if (i) this Agreement is rejected in Seller’s Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such
rejection or termination of this Agreement, promptly after Buyer’s written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof; provided, in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (a) utilizing tax equity or cash equity investment, and/or (b) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions; provided, Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect or pose an undue administrative burden on Buyer and all reasonable attorney’s fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction (“Buyer Assignee”) at any time upon not less than thirty (30) days’ notice by delivering a Notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit S (“Assignment Agreement”), provided that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer’s Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody’s and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect
to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5 and Buyer and Seller’s ability to make the representations and warranties contained therein. Buyer

ARTICLE 15
DISPUTE RESOLUTION

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

15.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 Attorneys’ Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16
INDEMNIFICATION

16.1 Indemnification.

(a) Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “Indemnified Party”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) for third-party claims resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

66
(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an “IP Indemnity Claim”).

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, provided, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars ($2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars ($5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars ($10,000,000). Defense costs shall be provided
as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer’s Liability Insurance.** Employer’s Liability insurance shall not be less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall also maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of Law.

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) **Contractor Insurance.** Seller shall require the contractor under its engineering, procurement, and construction contract for the Facility and each other contractor Seller directly contracts with in connection with the Facility to carry (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. The contractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). The contractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) **Evidence of Insurance.** Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least ten (10) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker’s compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, then, without restricting Buyer’s remedies under Article 11, applicable Law or otherwise, Seller shall (in accordance with the applicable provisions
of Section 16.2) indemnify and defend Buyer against all claims and liabilities for which, and to the same extent that, Buyer would have been covered by Seller’s insurance pursuant to this Article 17 if Seller had not failed to comply with the provisions of this Article 17.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the **Receiving Party**) from the other Party (the **Disclosing Party**) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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 Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for
taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“Buyer’s Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

**ARTICLE 19**

**MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

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

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any Bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 **Further Assurances.** Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

DAGGETT SOLAR POWER 3 LLC, a Delaware limited liability company

By: ___________________________  By: ___________________________
Name: _________________________  Name: _________________________
Title: ___________________________  Title: ___________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority

By: ___________________________  By: ___________________________
Name: _________________________  Name: _________________________
Title: ___________________________  Title: ___________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Daggett Solar Project

Site includes all or some of the following APNs: See attached Schedule 1.

City: unincorporated San Bernardino County

County: San Bernardino County

Zip Code: 92327

Latitude and Longitude: 34.857883, -116.816181

Facility Description: A dedicated and separately metered 123 MW AC portion of an approximately 482 MW AC solar photovoltaic generating facility, along with a dedicated 61.5 MW/246 MWh battery energy storage facility, all located in San Bernardino County, in the State of California, and subject to adjustment as described in Sections 2.5, 2.6, 2.7 and Section 5 of Exhibit B.

Delivery Point: Southern California Edison’s Kramer substation

Generating Facility Metering Points: See Exhibit R.

Storage Facility Metering Points: See Exhibit R.

PNode: PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder, to reflect the PNode then closest to the Facility.

Transmission Provider: Southern California Edison
SCHEDULE 1 TO
EXHIBIT A

APNs

0515-011-03
0515-011-14
0515-011-15
0515-021-06
0515-021-07
0515-051-24
0515-051-25
0515-051-31
0515-051-36
0515-051-38
0515-041-21
0515-041-22
0515-041-28
0515-041-29
0515-051-03
0515-051-19
0515-051-04
0515-051-07
0515-051-09
0515-051-14
0515-051-15
0515-051-16
0515-051-09
0515-051-17
0515-051-22
0515-051-23
0515-051-22
0515-061-02
0515-041-18
0515-041-09
0515-111-05
<table>
<thead>
<tr>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>0515-111-06</td>
</tr>
<tr>
<td>0515-111-07</td>
</tr>
<tr>
<td>0515-111-08</td>
</tr>
<tr>
<td>0515-111-09</td>
</tr>
<tr>
<td>0515-131-11</td>
</tr>
<tr>
<td>0515-131-12</td>
</tr>
<tr>
<td>0515-131-13</td>
</tr>
<tr>
<td>0515-131-36</td>
</tr>
<tr>
<td>0515-111-10</td>
</tr>
<tr>
<td>0515-061-19</td>
</tr>
<tr>
<td>0515-071-02</td>
</tr>
<tr>
<td>0515-041-15</td>
</tr>
<tr>
<td>0515-041-25</td>
</tr>
<tr>
<td>0515-111-12</td>
</tr>
<tr>
<td>0515-111-13</td>
</tr>
<tr>
<td>0515-111-14</td>
</tr>
<tr>
<td>0515-111-15</td>
</tr>
<tr>
<td>0515-111-16</td>
</tr>
<tr>
<td>0515-151-04</td>
</tr>
<tr>
<td>0515-151-30</td>
</tr>
<tr>
<td>0515-151-29</td>
</tr>
</tbody>
</table>
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION


   a. “Construction Start” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the commencement of construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “Construction Start Date.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month, and, within ten (10) days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2, subject to the limitation of liability set forth in Section 11.9. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

2. Commercial Operation of the Facility. “Commercial Operation” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from a Licensed Professional Engineer to Buyer substantially in the form of Exhibit H (the “COD Certificate”).

Exhibit B - 1
a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b). The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for the first ninety (90) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Sections 2(b) and 4 of this Exhibit B, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent such circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:

   a. Seller has not acquired by the Guaranteed Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or

   b. a Force Majeure Event occurs; or
c. the Interconnection Facilities or Reliability Network Upgrades are not complete, commissioned, and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed one hundred eighty (180) days for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity.

a. Guaranteed PV Capacity. If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay “PV Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.

b. Guaranteed Storage Capacity. If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “Storage Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW at four hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.
6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.
EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of PV Energy, plus Deemed Delivered Energy, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional PV Energy and/or Deemed Delivered Energy shall be $0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours ("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

    (i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity x Efficiency Rate Factor. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity and/or Efficiency Rate are applicable.

    “Efficiency Rate Factor” means:

    (A) If the Efficiency Rate is greater than or equal to the Guaranteed Efficiency Rate, then:

        Efficiency Rate Factor = 100%

    (B) If the Efficiency Rate is less than the Guaranteed Efficiency Rate, but greater than or equal to 75%, then:

        Efficiency Rate Factor = 100% – (Guaranteed Efficiency Rate – Efficiency Rate)

    (C) If the Efficiency Rate is less than 75%, then:
Efficiency Rate Factor = 0

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “Storage Capacity Availability Payment True-Up”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; provided, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to A x B - C, where:

A = The sum of the year-to-date Monthly Capacity Payments
B = The Capacity Availability Factor
C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

(A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

(B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the

Installed Storage Capacity.

Exhibit C - 2
Capacity Availability Factor = Guaranteed Storage Availability – YTD Annual Storage Capacity Availability

(C) If the sum of (a) YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = ((Guaranteed Storage Availability – YTD Annual Storage Capacity Availability) * 

(e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(ii) Notices. Buyer (as the Facility’s SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In addition, if during the

Exhibit D - 1

Agenda Page 141
Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

(iv) **CAISO Settlements.** Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and, if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(v) **Dispute Costs.** Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) **Terminating Buyer’s Designation as Scheduling Coordinator.** At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) **Master Data File and Resource Data Template.** Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent.

(viii) **NERC Reliability Standards.** Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1

ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY

[MW Per Hour] – [Insert Month]

<table>
<thead>
<tr>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>JUL</th>
<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
<th>NOV</th>
<th>DEC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-2

MONTHLY EXPECTED PV ENERGY

[MWh Per Hour] – [Insert Month]

| 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN  |
| FEB  |
| MAR  |
| APR  |
| MAY  |
| JUN  |
| JUL  |
| AUG  |
| SEP  |
| OCT  |
| NOV  |
| DEC  |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

<table>
<thead>
<tr>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Jul</th>
<th>Aug</th>
<th>Sep</th>
<th>Oct</th>
<th>Nov</th>
<th>Dec</th>
</tr>
</thead>
<tbody>
<tr>
<td>1:00</td>
<td>2:00</td>
<td>3:00</td>
<td>4:00</td>
<td>5:00</td>
<td>6:00</td>
<td>7:00</td>
<td>8:00</td>
<td>9:00</td>
<td>10:00</td>
<td>11:00</td>
<td>12:00</td>
</tr>
</tbody>
</table>

Exhibit F-3

Agenda Page 146
## MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – [Insert Month]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[(A - B) \times (C - D)\]

where:

- **A** = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh
- **B** = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh
- **C** = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) lesser of (x) $50/MWh and (y) the market value of Replacement Green Attributes
- **D** = the Renewable Rate, in $/MWh

“Adjusted Energy Production” shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“Replacement Energy” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

“Replacement Product” means (a) Replacement Energy and (b) Replacement Green Attributes, in an amount not to exceed the lower of (i) twenty percent (20%) of the Expected Energy for the previous Contract Year or (ii) ten percent (10%) of the sum of the annual average Expected Energy for the previous two Contract Years.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty
(30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.
EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by _______[licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _______ ("Agreement") by and between Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _______[DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.

3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.

4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]____.

5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _______[DATE]____.

6. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _______[DATE]____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ______________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Its:______________________________

Date:__________________________
EXHIBIT I-1
FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC ("Installed PV Capacity");

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "Installed Storage Capacity");

(c) The sum of (a) and (b) is __ MW AC and shall be the "Installed Capacity"; and

(d) The Commercial Operation Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this ________ day of _____________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]

By: _______________________________

Its: _______________________________

Date: ____________________________

Exhibit I-1
EXHIBIT I-2
FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification ("Certification") of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between Daggett Solar Power 3 LLC, a Delaware limited liability company, and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the "Effective Storage Capacity"); and

(b) The Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ______________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:______________________________

Its:______________________________

Date:___________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by Daggett Solar Power 3 LLC, a Delaware limited liability company ("Seller") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on __________ (the "Construction Start Date"); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____________________________________________________________________
(such description shall amend the description of the Site in Exhibit A of the Agreement).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of ________.

DAGGETT SOLAR POWER 3 LLC

By: ________________________________
Its: _______________________________

Date: ______________________________

Agenda Page 153
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$$[XXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
801 S Grand, Suite 400
Los Angeles, CA 90017

Ladies and Gentlemen:

By the order of __________ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5th Street, 35th Floor, Los Angeles, CA 90013, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. New York time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.
The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, electronic messaging (e-mail), or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 555 West 5th Street, 35th Floor, Los Angeles, CA 90013. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance

Exhibit L - 2
Agenda Page 155
with this paragraph shall be void and of no force or effect.

[Bank Name]

___________________________
[Insert officer name]
[Insert officer title]
EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of __________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

_______________________________
Name and Title of Authorized Representative

Date __________________________

Exhibit L - 4

Agenda Page 157
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [______], a [______] (“Guarantor”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

A. Buyer and Daggett Solar Power 3 LLC, a Delaware limited liability company (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20___.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed ________ Dollars ($__________). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to
the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Guarantor is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA, or (z) one hundred eighty (180) days after the early termination of the PPA or expiration of the PPA by its terms, unless Buyer has provided Notice to Seller pursuant to Section 8.8 of the Agreement that the Guaranteed Amounts have not been paid in full. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it
has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at [___]
Attn: [___]
Fax: [___]

If delivered to Guarantor, to it at [___]
Attn: [___]
Fax: [___]

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument
executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT
TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]
IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[________]

By:____________________________

Printed Name:__________________

Title:____________________________

BUYER:

[________]

By:____________________________

Printed Name:__________________

Title:____________________________

By:____________________________

Printed Name:__________________

Title:____________________________

Exhibit L - 11
EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by Daggett Solar Power 3 LLC, a Delaware limited liability company (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [date] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:

<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAISO Resource ID</td>
<td>Unit SCID</td>
</tr>
<tr>
<td>Prorated Percentage of Unit Factor</td>
<td>Resource Type</td>
</tr>
<tr>
<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
<td>Path 26 (North or South)</td>
</tr>
<tr>
<td>LCR Area (if any)</td>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
<td>Delivery Period</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*1 To be repeated for each unit if more than one.*
DAGGETT SOLAR POWER 3 LLC

By: ____________________________
Its: ____________________________

Date: ____________________________
## EXHIBIT N

### NOTICES

<table>
<thead>
<tr>
<th><strong>DAGGETT SOLAR POWER 3 LLC</strong>, a Delaware limited liability company (&quot;Seller&quot;)</th>
<th><strong>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA</strong>, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 4900 Scottsdale Road, Suite 5000</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>c/o Solar Asset Management LLC</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>City: Scottsdale, AZ 85251</td>
<td>Attn: Executive Director</td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Phone: 480-424-1240</td>
<td>E-mail: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Monique.menconi@clearwayenergy.com">Monique.menconi@clearwayenergy.com</a></td>
<td></td>
</tr>
<tr>
<td>With a copy to:</td>
<td></td>
</tr>
<tr>
<td>Street: 5790 Fleet Street, Suite 200</td>
<td></td>
</tr>
<tr>
<td>City: Carlsbad, CA 92008</td>
<td></td>
</tr>
<tr>
<td>Attn: General Counsel</td>
<td></td>
</tr>
<tr>
<td>Phone: 760-710-2187</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:jennifer.hein@clearwayenergy.com">jennifer.hein@clearwayenergy.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Reference Numbers:</strong></td>
<td><strong>Reference Numbers:</strong></td>
</tr>
<tr>
<td>Duns: N/A</td>
<td>Duns:</td>
</tr>
<tr>
<td>Federal Tax ID Number: 36-4840955</td>
<td>Federal Tax ID Number:</td>
</tr>
<tr>
<td><strong>Invoices:</strong></td>
<td><strong>Invoices:</strong></td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone: 480-424-1240</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Monique.menconi@clearwayenergy.com">Monique.menconi@clearwayenergy.com</a></td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td><strong>Scheduling:</strong></td>
<td><strong>Scheduling:</strong></td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>TBD</td>
</tr>
<tr>
<td>Phone: 480-424-1240</td>
<td></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Monique.menconi@clearwayenergy.com">Monique.menconi@clearwayenergy.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Confirmations:</strong></td>
<td><strong>Confirmations:</strong></td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone: 480-424-1240</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Monique.menconi@clearwayenergy.com">Monique.menconi@clearwayenergy.com</a></td>
<td>E-mail: <a href="mailto:nkeefer@cleanpoweralliance.org">nkeefer@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td><strong>Payments:</strong></td>
<td><strong>Payments:</strong></td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone: 480-424-1240</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Monique.menconi@clearwayenergy.com">Monique.menconi@clearwayenergy.com</a></td>
<td>E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
</tr>
<tr>
<td>BNK: [redacted]</td>
<td>BNK: River City Bank</td>
</tr>
<tr>
<td>ABA: [redacted]</td>
<td>ABA: 121133416</td>
</tr>
<tr>
<td>ACCT: [redacted]</td>
<td>ACCT: [redacted]</td>
</tr>
<tr>
<td><strong>Emergency Contact:</strong></td>
<td><strong>Emergency Contact:</strong></td>
</tr>
<tr>
<td>Attn: VP Asset Management</td>
<td>Attn:</td>
</tr>
<tr>
<td>Phone: 480-424-1240</td>
<td>Phone:</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Monique.menconi@clearwayenergy.com">Monique.menconi@clearwayenergy.com</a></td>
<td>E-mail:</td>
</tr>
<tr>
<td>DAGGETT SOLAR POWER 3 LLC, a Delaware limited liability company (&quot;Seller&quot;)</td>
<td>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</td>
</tr>
</tbody>
</table>
EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days’ prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) Business Days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

(1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a “CT”. Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

(2) Conditions Prior to Testing.
(1) **EMS Functionality.** The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

(2) **Communications.** The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer’s RTU and the Facility SCADA system should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer’s RTU and Seller’s EMS interface and the ability to record SCADA data.

(3) **Commissioning Checklist.** Commissioning shall be successfully completed per manufacturer guidance on all installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

(4) **Generating Facility Conditions.** Any CTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period, provided that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

**PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.**

A. **Test Elements.** Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed “complete,” and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

(1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and

(2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage
Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

B. Parameters. During each CT, the following parameters shall be measured (or calculated) and recorded simultaneously for the Storage Facility, at two (2) second intervals:

1. Time;
2. The amount of Discharging Energy delivered to the Storage Facility Meter (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
3. Net electrical energy input from the Storage Facility Meter (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
4. Stored Energy Level (MWh).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

1. Relative humidity (%);
2. Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
3. Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

1. That the CT successfully started;
2. The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
3. The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
4. Amount of time between the Storage Facility’s electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);
5. Amount of time between the Storage Facility’s electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);
(6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC; and

(7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. **Test Conditions.**

(1) **General.** At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.

(2) **Abnormal Conditions.** If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.

(3) **Instrumentation and Metering.** Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. **Incomplete Test.** If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. **Test Report.** Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

(1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

(2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and

(3) Seller’s statement of either Seller’s acceptance of the CT or Seller’s rejection of the CT results and reason(s) therefor.

Exhibit O - 4
Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer’s acceptance of the CT results or Buyer’s rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility (“Supplementary Capacity Test Protocol”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:

(1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

(2) The total amount of Discharging Energy (as measured in Section II.D(7) above) divided by the total amount of Charging Energy (as measured in Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used thereafter for the purposes of Exhibit C unless updated pursuant to a subsequent Storage Capacity Test.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

The initial Supplementary Capacity Test Protocol outlined below shall be binding on the Parties until Section II.H modifies this Part III.

A. Effective Storage Capacity and Efficiency Rate Test
Procedure:

(1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.

(2) Record the initial value of the Storage Facility SOC.

(3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Storage Facility commenced charging.

(4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.

(5) For purposes related to testing capacity, record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter. For purposes related to testing round trip efficiency, record and store the AC energy charged to the Storage Facility at the Storage Facility Meter (“Energy In”).

(6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility’s maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.

(7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.

(8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.

(9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.

(10) For purposes related to testing capacity, record and store the AC Energy discharged from the Storage Facility (in MWh) as measured at the Facility Meter, if applicable. For purposes related to testing round-trip efficiency, record and store the total AC Energy discharged (in MWh) as measured at the Storage Facility Meter from the commencement of discharging pursuant
to Section III.A.6 until the Storage Facility has reached a 0% SOC pursuant to either Section III.A.6 or Section III.A.9, as applicable (“Energy Out”).

- **Test Results**
  1. The resulting Efficiency Rate is calculated as Energy Out/Energy In.
  2. The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

**B. AGC Discharge Test**

- **Purpose:** This test will demonstrate the AGC discharge capability to achieve the Storage Facility’s maximum discharging level within 1 second.

- **System starting state:** The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- **Procedure:**
  1. Record the Storage Facility active power level at the Storage Facility Meter.
  2. Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.
  3. Record and store the Storage Facility active power response (in seconds).

- **System end state:** The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

**C. AGC Charge Test**

- **Purpose:** This test will demonstrate the AGC charge capability to achieve the Storage Facility’s full charging level within 1 second.

- **System starting state:** The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.

- **Procedure:**
  1. Record the Storage Facility active power level at the Storage Facility Meter.
(2) Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.

(3) Record and store the Storage Facility active power response (in seconds).

- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. **Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.

- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

- Procedure:
  
  (1) Record the Storage Facility reactive power level at the Facility Meter.
  
  (2) Command the Storage Facility to follow 50 MVAR for ten (10) minutes.
  
  (3) Record and store the Storage Facility reactive power response.

- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. **Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.

- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.

- Procedure:
  
  (1) Record the Storage Facility reactive power level at the Facility Meter.
  
  (2) Command the Storage Facility to follow -50 MVAR for ten (10) minutes.
  
  (3) Record and store the Storage Facility reactive power response.
• System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month of the Delivery Term Buyer shall calculate the year-to-date (YTD) “Annual Storage Capacity Availability” for the current Contract Year using the formula set forth below:

\[
\text{Annual Storage Capacity Availability} \% = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}
\]

“Calculation Interval” or “C.I.” means each successive five-minute interval, but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“Unavailable Calculation Intervals” means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

\[
\text{Unavailable Calculation Interval} = 1 \times C.I. \times \left(1 - \text{the lesser of:} \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}}\right)
\]

where:

“A” is the “Available Effective Storage Capacity” (as defined below), which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, expected from all system inverters in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“Storage Capacity” means the sum of the following (taking into account the SOC at the time of calculation) (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability in MWh) in the applicable Calculation Interval x the Battery Charging Factor (as measured as of the most recent Storage Capacity Test)) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability in MWh) in the applicable Calculation Interval x the Battery Discharging Factor (as measured as of the most recent Storage Capacity Test)). In calculating Storage Capacity, the “available battery charging capability” and “available
battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer’s guidelines). The charging and discharging capability (in MWh) in a Calculation Interval shall be measured according to Section (b) of this Exhibit P.

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “Available Effective Storage Capacity,” and “Available Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, including compliance with the Operating Restrictions as set forth herein, the calculations of Available Effective Storage Capacity and Available Storage Capability in the foregoing sentence shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond). For avoidance of doubt, any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall be deemed an Unavailable Calculation Interval.

(c) If the total rated power of the Storage Facility inverters associated with the Installed Storage Capacity taking into account Electrical Losses to the Delivery Point is less than 61.5 MW charging and 61.5 MW discharging at °C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate based on manufacturer’s specifications to the applicable Calculation Interval.

(d) After Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to the such period of time.
EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; provided, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

| File Update Date: | [XX/XX/20XX] |
| Technology: | Lithium-ion |
| Storage Unit Name: | [Unit Name and Number] |

A. Contract Capacity

| Guaranteed Storage Capacity (MW): | 61.5 |
| Effective Storage Capacity (MW): | 61.5 |

B. Total Unit Dispatchable Range Information

| Interconnect Voltage (kV): | 230 |
| Maximum Storage Level (MWh): | 246 |
| Minimum Storage Level (MWh): | 0 |
| Stored energy capability (MWh): | 246 |
| Maximum Discharge (MW): | 61.5 |
| Maximum Charge (MW): | 61.5 |
| Guaranteed Efficiency Rate: | See Cover Sheet |
| Maximum energy throughput (BET) (MWh/year): |  |

C. Charge and Discharge Rates

<table>
<thead>
<tr>
<th>Mode</th>
<th>Maximum (MW)</th>
<th>Ramp Rate (MW/s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy (Charge)</td>
<td>61.5</td>
<td></td>
</tr>
<tr>
<td>Energy (Discharge)</td>
<td>61.5</td>
<td></td>
</tr>
</tbody>
</table>

D. Ancillary Services

| Frequency regulation is included: | Yes, subject to Operating Restrictions |
| Spin is included: | Yes |

II. ADDITIONAL OPERATING RESTRICTIONS

1. Annual Cycles: Maximum of [ ] Cycles per Contract Year with no monthly cap.
2. Daily Dispatch Limits: [ ] Cycles per day.
4. **Grid Charging**: The Storage Facility shall not use grid energy to provide Charging Energy, subject to Section 3.13.

5. **Scheduling Controls**: All manual dispatch commands must use the Seller-supplied EMS.

6. **Resting State of Charge**: The average resting state of charge per Contract Year must be below [ ] percent (\%).

7. **Interconnection Capacity Limit**: Dispatch cannot cause Facility Energy to exceed the Interconnection Capacity Limit.
The Metering Diagram shall be subject to minor adjustments at the Commercial Operation Date based on the as-built design of the Facility; provided, such adjustments shall be consistent with the metering provisions of the Agreement.
EXHIBIT S
FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of [______________] by and among Daggett Solar Power 3 LLC, a Delaware limited liability company (“PPA Seller”), Clean Power Alliance of Southern California, a California joint powers authority (“PPA Buyer”), and [Financing Party] (“Financing Party”), and relates to that certain Renewable Power Purchase Agreement (the “PPA”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “Parties” hereto; each is a “Party”) agree as follows:

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “Assigned Products”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “Assigned Product Rights”). All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.

(b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “Delivered Product Payment Obligation” and together with the Assigned Product Rights, collectively the “Assigned Rights and Obligations”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.

(c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller will provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby
authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.

(e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;

(2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party’s failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day (as defined in the PPA) following receipt by Financing Party of written notice thereof;

(3) delivery of a written notice by PPA Seller if any of the events described in Section 11.1(a)(iv) occurs with respect to Financing Party; or

(4) delivery of a written notice by Financing Party if any of the events described in Section 11.1(a)(iv) occurs with respect to PPA Seller.

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

(c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 9 of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices
to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

__________________

Email: _____________

4. **Miscellaneous.** Sections 19.2, 19.4, 19.5, and 19.7 of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. **Governing Law, Jurisdiction, Waiver of Jury Trial**

   (a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction’s laws; *provided*, the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

   (b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

   (c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

By: .............................................
   Name: 
   Title: 

PPA BUYER

By: .............................................
   Name: 
   Title: 

FINANCING PARTY

By: .............................................
   Name: 
   Title: 

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: .............................................
   Name: 
   Title:
Appendix 1

Assigned Rights and Obligations

PPA: The Renewable Power Purchase Agreement, dated [___________], 2020 by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on [___________] and extending until [___________], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA.

Assigned Product: [Describe and define]

Further Information: [Include, if any]²

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

¹ The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the Delivery Term under the PPA

² To include transfer and settlement mechanics for RECs, as applicable.
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** Arlington Energy Center II, LLC

**Buyer:** Clean Power Alliance of Southern California, a California joint powers authority

**Description of Facility:** A solar photovoltaic electric generating facility with a net nameplate capacity of 233 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 132 MW AC/528 MWh located near the City of Blythe within unincorporated Riverside County, California, as further described in Exhibit A.

**Guaranteed Interim Commercial Operation Date** has the meaning set forth in Exhibit B.

**Guaranteed Storage Commercial Operation Date** has the meaning set forth in Exhibit B.

**Guaranteed Full Commercial Operation Date** has the meaning set forth in Exhibit B.

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Complete</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td>Complete</td>
</tr>
<tr>
<td>CEQA [ ] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [x] EIR</td>
<td></td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td>Complete</td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td></td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>September 30, 2021</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>August 31, 2021</td>
</tr>
</tbody>
</table>
### Milestone Expected Date for Completion

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expected Interim Commercial Operation Date</td>
<td>December 31, 2021</td>
</tr>
<tr>
<td>Expected Storage Commercial Operation Date</td>
<td>August 1, 2022</td>
</tr>
<tr>
<td>Expected Full Commercial Operation Date</td>
<td>October 1, 2022</td>
</tr>
</tbody>
</table>

**Delivery Term**: Fifteen (15) Contract Years, as further defined in Section 1.1.

**Interim Facility - Expected Energy**: An amount of MWh calculated from the table below as the sum of the Expected Energy in each month constituting the Interim Facility Contract Period, as may be adjusted as described in Section 4.7.

<table>
<thead>
<tr>
<th>Month</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>17,372</td>
</tr>
<tr>
<td>February</td>
<td>19,489</td>
</tr>
<tr>
<td>March</td>
<td>27,300</td>
</tr>
<tr>
<td>April</td>
<td>29,841</td>
</tr>
<tr>
<td>May</td>
<td>33,329</td>
</tr>
<tr>
<td>June</td>
<td>33,275</td>
</tr>
<tr>
<td>July</td>
<td>31,295</td>
</tr>
<tr>
<td>August</td>
<td>29,875</td>
</tr>
<tr>
<td>September</td>
<td>26,662</td>
</tr>
<tr>
<td>October</td>
<td>23,600</td>
</tr>
<tr>
<td>November</td>
<td>18,092</td>
</tr>
<tr>
<td>December</td>
<td>15,765</td>
</tr>
</tbody>
</table>

**Full Facility - Expected Energy:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
</table>
### Guaranteed Capacity
- 365 MW of total Facility capacity

### Guaranteed Storage Capacity
- 132 MW of Installed Storage Capacity at four (4) hours of continuous discharge

### Guaranteed Interim PV Capacity
- 100 MW of PV capacity

### Guaranteed Full PV Capacity
- 233 MW of PV capacity

### Guaranteed Efficiency Rate:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Guaranteed Storage Efficiency Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>
**Contract Price**

The Renewable Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$\text{[redacted]}/\text{MWh (flat)} with no escalation</td>
</tr>
</tbody>
</table>

The Storage Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$\text{[redacted]}/\text{kW-mo. (flat) with no escalation}</td>
</tr>
</tbody>
</table>

**Product**
PV Energy
Discharging Energy
Green Attributes (if Renewable Energy Credit, please check the applicable box below):
☐ Portfolio Content Category 1
☐ Portfolio Content Category 2
☐ Portfolio Content Category 3
Installed Storage Capacity and Effective Storage Capacity
Ancillary Services
Capacity Attributes (select options below as applicable)
☐ Energy Only Status
☒ Full Capacity Deliverability Status
  a) RA Guarantee Date: Interim Commercial Operation Date

Scheduling Coordinator: Buyer

Security and Guarantor

Development Security: $60/kW of Guaranteed Full PV Capacity plus $90/kW of Guaranteed Storage Capacity

Performance Security: $60/kW of the lesser of Guaranteed Full PV Capacity and Installed PV Capacity plus $90/kW of the lesser of Guaranteed Storage Capacity and Installed Storage Capacity

Guarantor: NextEra Energy Capital Holdings, Inc.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>ARTICLE 1</th>
<th>DEFINITIONS ........................................................................................................</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Contract Definitions ...............................................................................................</td>
<td>1</td>
</tr>
<tr>
<td>1.2</td>
<td>Rules of Interpretation .........................................................................................</td>
<td>26</td>
</tr>
<tr>
<td>ARTICLE 2</td>
<td>TERM; CONDITIONS PRECEDENT..............................................................................</td>
<td>27</td>
</tr>
<tr>
<td>2.1</td>
<td>Contract Term. .....................................................................................................</td>
<td>27</td>
</tr>
<tr>
<td>2.2</td>
<td>Conditions Precedent to Commencement of the Delivery Term. ........................</td>
<td>28</td>
</tr>
<tr>
<td>2.3</td>
<td>Conditions Precedent to Storage Commercial Operation ....................................</td>
<td>28</td>
</tr>
<tr>
<td>2.4</td>
<td>Additional Conditions Precedent to Full Commercial Operation .......................</td>
<td>29</td>
</tr>
<tr>
<td>2.5</td>
<td>Development; Construction; Progress Reports...................................................</td>
<td>30</td>
</tr>
<tr>
<td>2.6</td>
<td>Remedial Action Plan ..........................................................................................</td>
<td>30</td>
</tr>
<tr>
<td>ARTICLE 3</td>
<td>PURCHASE AND SALE ...........................................................................................</td>
<td>30</td>
</tr>
<tr>
<td>3.1</td>
<td>Purchase and Sale of Product ...............................................................................</td>
<td>30</td>
</tr>
<tr>
<td>3.2</td>
<td>Sale of Green Attributes. ......................................................................................</td>
<td>31</td>
</tr>
<tr>
<td>3.3</td>
<td>Imbalance Energy. .................................................................................................</td>
<td>31</td>
</tr>
<tr>
<td>3.4</td>
<td>Ownership of Renewable Energy Incentives. ......................................................</td>
<td>31</td>
</tr>
<tr>
<td>3.5</td>
<td>Future Environmental Attributes. ........................................................................</td>
<td>31</td>
</tr>
<tr>
<td>3.6</td>
<td>Test Energy. .........................................................................................................</td>
<td>32</td>
</tr>
<tr>
<td>3.7</td>
<td>Capacity Attributes. .............................................................................................</td>
<td>32</td>
</tr>
<tr>
<td>3.8</td>
<td>Resource Adequacy Failure ...................................................................................</td>
<td>32</td>
</tr>
<tr>
<td>3.9</td>
<td>CEC Certification and Verification. ....................................................................</td>
<td>33</td>
</tr>
<tr>
<td>3.10</td>
<td>Eligibility. ............................................................................................................</td>
<td>33</td>
</tr>
<tr>
<td>3.11</td>
<td>California Renewables Portfolio Standard .......................................................</td>
<td>34</td>
</tr>
<tr>
<td>3.12</td>
<td>Compliance Expenditure Cap. ...............................................................................</td>
<td>34</td>
</tr>
<tr>
<td>3.13</td>
<td>Project Configuration ...........................................................................................</td>
<td>34</td>
</tr>
<tr>
<td>3.14</td>
<td>Additional Guaranteed Capacity .........................................................................</td>
<td>35</td>
</tr>
<tr>
<td>ARTICLE 4</td>
<td>OBLIGATIONS AND DELIVERIES.............................................................................</td>
<td>35</td>
</tr>
<tr>
<td>4.1</td>
<td>Delivery................................................................................................................</td>
<td>35</td>
</tr>
<tr>
<td>4.2</td>
<td>Title and Risk of Loss. .........................................................................................</td>
<td>35</td>
</tr>
<tr>
<td>4.3</td>
<td>Forecasting...........................................................................................................</td>
<td>35</td>
</tr>
<tr>
<td>4.4</td>
<td>Dispatch Down/Curtailment. ...............................................................................</td>
<td>37</td>
</tr>
<tr>
<td>4.5</td>
<td>Energy Management ............................................................................................</td>
<td>38</td>
</tr>
<tr>
<td>4.6</td>
<td>Reduction in Energy Delivery Obligation ...........................................................</td>
<td>40</td>
</tr>
<tr>
<td>4.7</td>
<td>Guaranteed Energy Production. ...........................................................................</td>
<td>40</td>
</tr>
<tr>
<td>4.8</td>
<td>Storage Facility Availability; Ancillary Services .............................................</td>
<td>41</td>
</tr>
<tr>
<td>4.9</td>
<td>Storage Facility Testing .......................................................................................</td>
<td>42</td>
</tr>
<tr>
<td>4.10</td>
<td>WREGIS ................................................................................................................</td>
<td>43</td>
</tr>
<tr>
<td>4.11</td>
<td>Financial Statements. ...........................................................................................</td>
<td>45</td>
</tr>
<tr>
<td>ARTICLE 5</td>
<td>TAXES ..................................................................................................................</td>
<td>45</td>
</tr>
<tr>
<td>5.1</td>
<td>Allocation of Taxes and Charges. .........................................................................</td>
<td>45</td>
</tr>
<tr>
<td>5.2</td>
<td>Cooperation. .........................................................................................................</td>
<td>45</td>
</tr>
<tr>
<td>ARTICLE 6</td>
<td>MAINTENANCE OF THE FACILITY .......................................................................</td>
<td>45</td>
</tr>
</tbody>
</table>

i
6.1 Maintenance of the Facility ................................................................. 45
6.2 Maintenance of Health and Safety .................................................... 46
6.3 Shared Facilities ................................................................................. 46

ARTICLE 7 METERING ............................................................................. 46
7.1 Metering .......................................................................................... 46
7.2 Meter Verification .............................................................................. 46

ARTICLE 8 INVOICING AND PAYMENT; CREDIT .................................... 47
8.1 Invoicing .......................................................................................... 47
8.2 Payment ........................................................................................... 47
8.3 Books and Records .......................................................................... 47
8.4 Payment Adjustments; Billing Errors ............................................. 47
8.5 Billing Disputes ................................................................................ 48
8.6 Netting of Payments ......................................................................... 48
8.7 Seller’s Development Security ....................................................... 48
8.8 Seller’s Performance Security ........................................................ 49
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral 49

ARTICLE 9 NOTICES ................................................................................. 51
9.1 Addresses for the Delivery of Notices ............................................ 51
9.2 Acceptable Means of Delivering Notice ......................................... 52

ARTICLE 10 FORCE MAJEURE ................................................................. 52
10.1 Definition ....................................................................................... 52
10.2 No Liability If a Force Majeure Event Occurs ............................... 53
10.3 Notice ............................................................................................ 53
10.4 Termination Following Force Majeure Event or Development Cure Period .... 53
10.5 Right of First Refusal ..................................................................... 54

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION ......................... 55
11.1 Events of Default ........................................................................... 55
11.2 Remedies; Declaration of Early Termination Date ....................... 58
11.3 Damage and Termination Payments .............................................. 58
11.4 Notice of Payment of Termination Payment or Damage Payment ... 60
11.5 Disputes With Respect to Termination Payment or Damage Payment .... 60
11.6 Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date ......... 60
11.7 Rights And Remedies Are Cumulative .......................................... 61
11.8 Mitigation ....................................................................................... 61

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES ...... 61
12.1 No Consequential Damages .......................................................... 61
12.2 Waiver and Exclusion of Other Damages ...................................... 61
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY ...................... 62
  13.1 Seller’s Representations and Warranties ................................................. 62
  13.2 Buyer’s Representations and Warranties ................................................. 63
  13.3 General Covenants .................................................................................. 64
  13.4 Workforce Development ......................................................................... 64

ARTICLE 14 ASSIGNMENT ........................................................................... 64
  14.1 General Prohibition on Assignments ....................................................... 64
  14.2 Collateral Assignment ............................................................................. 65
  14.3 Permitted Assignment by Seller ............................................................... 65
  14.4 Shared Facilities; Portfolio Financing ...................................................... 65
  14.5 Buyer Financing Assignment .................................................................... 66
  14.6 Permitted Transfer by Seller .................................................................... 66

ARTICLE 15 DISPUTE RESOLUTION ............................................................... 66
  15.1 Governing Law ....................................................................................... 66
  15.2 Dispute Resolution .................................................................................. 66
  15.3 Attorneys’ Fees ...................................................................................... 67

ARTICLE 16 INDEMNIFICATION ................................................................. 67
  16.1 Indemnification ....................................................................................... 67
  16.2 Claims ..................................................................................................... 67

ARTICLE 17 INSURANCE .............................................................................. 68
  17.1 Insurance ............................................................................................... 68

ARTICLE 18 CONFIDENTIAL INFORMATION ........................................ 69
  18.1 Definition of Confidential Information ...................................................... 69
  18.2 Duty to Maintain Confidentiality ............................................................... 69
  18.3 Irreparable Injury; Remedies .................................................................... 70
  18.4 Further Permitted Disclosure ................................................................... 70
  18.5 Press Releases ......................................................................................... 71

ARTICLE 19 MISCELLANEOUS ................................................................. 71
  19.1 Entire Agreement; Integration; Exhibits ................................................... 71
  19.2 Amendments .......................................................................................... 71
  19.3 No Waiver ............................................................................................. 71
  19.4 No Agency, Partnership, Joint Venture or Lease ......................................... 71
  19.5 Severability ........................................................................................... 71
  19.6 Mobile-Sierra .......................................................................................... 72
  19.7 Counterparts ........................................................................................... 72
  19.8 Electronic Delivery .................................................................................. 72
  19.9 Binding Effect .......................................................................................... 72
  19.10 No Recourse to Members of Buyer ......................................................... 72
  19.11 Forward Contract ................................................................................... 72
  19.12 Change in Electric Market Design .......................................................... 72
Exhibits:

Exhibit A  Facility Description
Exhibit B  Facility Construction and Commercial Operation
Exhibit C  Compensation
Exhibit D  Scheduling Coordinator Responsibilities
Exhibit E  Progress Reporting Form
Exhibit F-1  Form of Monthly Expected Available Generating Facility Capacity Report
Exhibit F-2  Form of Monthly Expected Generating Facility Energy Report
Exhibit F-3  Form of Monthly Expected Available Effective Storage Capacity Report
Exhibit F-4  Form of Monthly Expected Available Storage Capability Report
Exhibit G  Guaranteed Energy Production Damages Calculation
Exhibit H  Form of Interim, Storage and Full Commercial Operation Date Certificates
Exhibit I-1  Form of Installed Capacity Certificate
Exhibit I-2  Form of Effective Storage Capacity Certificate
Exhibit J  Form of Construction Start Date Certificate
Exhibit K  Form of Letter of Credit
Exhibit L  Form of Guaranty
Exhibit M  Form of Replacement RA Notice
Exhibit N  Notices
Exhibit O  Storage Capacity Tests
Exhibit P  Annual Storage Capacity Availability Calculation
Exhibit Q  Operating Restrictions
Exhibit R  Metering Diagram
Exhibit S  Form of Collateral Assignment Agreement
Exhibit T  Provisions to Amend with Additional Guaranteed Capacity
Exhibit U  Form of Buyer Assignment Agreement
AMENDED AND RESTATED
RENEWABLE POWER PURCHASE AGREEMENT

This Amended and Restated Renewable Power Purchase Agreement (“Agreement”) is entered into as of July 10, 2020 (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, the Parties entered into that certain Power Purchase and Sale Agreement dated as of July 1, 2019 (the “Original PPA”), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, on the terms and conditions set forth in the Original PPA, the Product (as defined in the Original PPA);

WHEREAS, the Parties desire to amend and restate the Original PPA in accordance with the terms of the transaction as set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1
DEFINITIONS

1.1 Contract Definitions. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.12.

“Additional Guaranteed PV Capacity” has the meaning set forth in Section 3.14.

“Adjusted Energy Production” has the meaning set forth in Exhibit G.

“Adjusted Facility Energy” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Storage Facility Loss Factor.
“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect Affiliate subsidiaries.

“**After-Tax Basis**” means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the “Base Payment”), supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

“**Annual Storage Capacity Availability**” has the meaning set forth in Exhibit P.

“**Approved Forecast Vendor**” means (x) any of CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Notice**” means the portion of the Forecasted Product with respect to the Storage Facility.
“Available Generating Capacity” means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

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

“Battery Charging Factor” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“Battery Discharging Factor” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” has the meaning set forth on the Cover Sheet.

“Buyer Bid Curtailment” means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of Energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Facility:

(i) not having submitted a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) having submitted an Energy Supply Bid and the MW subject to the reduction were not awarded a schedule in connection with such Energy Supply Bid; or

(iii) having submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not
generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Dispatched Test” has the meaning in Section 4.9(c).

“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

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

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including
the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

“Calculation Interval” has the meaning set forth in Exhibit P.

“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-2 2 (2011), 350 (2015), and 100 (2018) as codified in, inter alia, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Availability Factor” has the meaning set forth in Exhibit C.

“Capacity Damages” means, collectively, Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Interim Commercial Operation Date or the Full Commercial Operation Date, as applicable, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

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

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and
(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

**Charging Energy** means the as-available Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

**Charging Notice** means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; **provided**, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. For the avoidance of doubt, (i) any Buyer Dispatched Test shall be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means an amount equal to (a) for the Interim Commercial Operation Date, five hundred dollars ($500) per day for each MW of Delayed Capacity, (b) for the Full Commercial Operation Date, one thousand dollars ($1000) per day for each MW of Delayed Capacity, and (c) for the Storage Commercial Operation Date, one thousand dollars ($1500) per day for each MW of Delayed Capacity.

“**Commercial Operation Storage Capacity Test**” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“**Communications Protocols**” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“**Compliance Actions**” has the meaning set forth in Section 3.12.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.
“Contract Price” has the meaning set forth on the Cover Sheet. For clarity, the Contract Price is each of the Renewable Rate and the Storage Rate.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Full Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Full Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged or financed its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

“CPM Price” has the meaning set forth in Section 3.5(b).

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

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by Fitch, S&P or Moody’s.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Generating Facility during the relevant time period;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not
limited to, any abnormal condition that requires action to prevent circumstances such as equipment
damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation
of conditions or situations that jeopardize the Transmission Provider’s electric system integrity or
the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a
Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection
Agreement with the Transmission Provider or distribution operator.

To the extent permitted by CAISO, Buyer shall use commercially reasonable efforts to deliver
Charging Energy to the Storage Facility during such Curtailment Order.

“Curtailment Period” means the period of time, as measured using current Settlement
Intervals, during which Seller reduces generation from the Generating Facility pursuant to a
Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for
the Facility to ramp down and ramp up.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount
required hereunder, divided by (b) one hundred twenty (120).

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-
Defaulting Party after a Terminated Transaction occurring prior to the Full Commercial Operation
Date, in a dollar amount equal to the Development Security amount required hereunder. For
avoidance of doubt, any Delay Damages paid by Seller to Buyer under Exhibit B shall not be
subtracted from the Damage Payment amount.

“Day-Ahead Forecast” has the meaning set forth in Section 4.3(c).

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

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

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the
Generating Facility would have produced and delivered to the Storage Facility or the Delivery
Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period or
Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to
deliver Facility Energy to the Delivery Point, which amount shall be equal to the Real-Time
Forecast (of the hourly expected Energy produced by the Generating Facility) provided pursuant
to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant
period), less the amount of Energy delivered to the Storage Facility or the Delivery Point during
the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference
is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode
during such Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in
any Settlement Interval by the amount of any Charging Energy that was not able to be delivered
to the Storage Facility during such Settlement Interval due to the unavailability of the Storage
Facility due to a Forced Facility Outage.
“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delayed Capacity” means the positive difference between (a) the Guaranteed Interim PV Capacity, the Guaranteed Storage Capacity, or the Guaranteed Full PV Capacity, as applicable, and (b) the current Installed PV Capacity at the time of the Guaranteed Interim Commercial Operation Date, Installed Storage Capacity at the time of the Guaranteed Storage Commercial Operation Date, and Installed PV Capacity at the time of the Guaranteed Full Commercial Operation Date, as applicable.

“Delivery Point” has the meaning set forth in Exhibit A.

“Delivery Term” shall commence on the Interim Commercial Operation Date and continue through the period of Contract Years set forth on the Cover Sheet following the Full Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

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

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses and Station Use, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Disclosing Party” has the meaning set forth in Section 18.2.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or amount of MWh; provided; (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the total Facility Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Early Termination Date” has the meaning set forth in Section 11.2(a).
“Effective Date” has the meaning set forth on the Preamble.

“Effective FCDS Date” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

“Effective Storage Capacity” means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point pursuant to a Capacity Test (including the Commercial Operation Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“Efficiency Rate” means the rate of conversion of the Charging Energy into Discharging Energy, as calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (a) delivery of PV Energy to the Delivery Point, and (b) delivery of Discharging Energy to the Delivery Point.

“Eligible Intermittent Resource Protocol” or “EIRP” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy generated by the Generating Facility, measured in kilowatt-hours or multiple units thereof. Energy shall include without limitation, reactive power and any other electrical energy products that may be developed or evolve from time to time during the Contract Term.

“Energy In” has the meaning set forth in Section III.A(5) of Exhibit O.

“Energy Management System” or “EMS” means the Facility’s energy management system.

“Energy Out” has the meaning set forth in Section III.A(10) of Exhibit O.

“Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

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

“Exercise Period” has the meaning set forth in Section 10.5(b)
“Excess MWh” has the meaning set forth in Exhibit C.

“Expected Interim Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during the Interim Facility Contract Period and each Contract Year (assuming no Charging Energy or Discharging Energy in such Contract Year), which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Full PV Capacity to Installed PV Capacity, if applicable.

“Expected FCDS Date” means the date set forth in the Milestones Section of the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

“Expected Full Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Facility” means the Generating Facility and the Storage Facility.

“Facility Energy” means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter.

“Facility Meter” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the high voltage side of the main step up transformer and will be subject to adjustment to measure Facility Energy at the Delivery Point in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses.

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

“Financial Close” means Seller and/or one of its Affiliates on Seller’s behalf has obtained approval from its operating committee to commit capital sufficient for the full construction of the Facility and Seller has delivered to Buyer documentation reasonably satisfactory to Buyer evidencing the foregoing.

“Fitch” means Fitch Ratings Ltd., or its successor.

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating some or all Energy or making some or all Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.
“**Forecasted Product**” has the meaning set forth in Section 4.3(b).

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.10(a).

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

“**Full Capacity Deliverability Status Finding**” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“**Full COD Certificate**” has the meaning set forth in Exhibit B.

“**Full Commercial Operation**” has the meaning set forth in Exhibit B.

“**Full Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Full Facility**” means the 233 MW AC solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver photovoltaic Energy to the Delivery Point.

“**Future Environmental Attributes**” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“**Gains**” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“**Generating Facility**” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii)
Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include
the Storage Facility or the Shared Facilities.

“Governmental Authority” means any federal, state, provincial, local or municipal
government, any political subdivision thereof or any other governmental, congressional or
parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau,
or entity with authority to bind a Party at law, including CAISO; provided, “Governmental
Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and
allowances, howsoever entitled, attributable to the generation from the Facility and its
displacement of conventional energy generation. Green Attributes include but are not limited to
Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or
water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other
pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide,
hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs)
that have been determined by the United Nations Intergovernmental Panel on Climate Change, or
otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by
trapping heat in the atmosphere; (3) the reporting rights to such avoided emissions, such as Green
Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents
the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not
include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax
Credits associated with the construction or operation of the Facility and other financial incentives
in the form of credits, reductions, or allowances associated with the Facility that are applicable to
a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or
used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to
report ownership of accumulated “green tags” in compliance with and to the extent permitted by
applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy
Act of 1992, and any present or future federal, state or local certification program or emissions
trading program, including pursuant to the WREGIS Operating Rules.

“Green Tags” means a unit accumulated on a MWh basis where one (1) represents the
Green Attributes associated with one (1) MWh of Facility Energy.

“Green-e Certification” or “Green-e Certified” means the Green Attributes provided to
Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard by
Buyer after delivery by Seller of such Green Attributes to Buyer.

“Green-e Energy National Standard” means the Green-e Renewable Energy Standard
for Canada and the United States (formerly Green-e Energy National Standard) version 3.4,
updated November 12, 2019, as may be further amended from time to time.

“Green-e Tracking Attestation” means that certain Green-e Energy Attestation Form, as
described in the Green-e Energy National Standard.

13
“Guaranteed Capacity” means the sum of (x) the Guaranteed Full PV Capacity and (y) the Guaranteed Storage Capacity.

“Guaranteed Construction Start Date” means the Expected Construction Start Date, as such date may be extended pursuant to Exhibit B.

“Guaranteed Efficiency Rate” means the minimum guaranteed Efficiency Rate of the Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” has the meaning set forth in Section 4.7(d).

“Guaranteed Interim Commercial Operation Date” has the meaning set forth in Exhibit B.

“Guaranteed Full Commercial Operation Date” has the meaning set forth in Exhibit B.

“Guaranteed Storage Commercial Operation Date” has the meaning set forth in Exhibit B.

“Guaranteed Interim PV Capacity” means the interim generating capacity of the Facility, as measured in MW AC at the Delivery Point, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guaranteed Full PV Capacity” means the generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guaranteed Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric Energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“Guarantor” means, with respect to Seller, any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) has a Credit Rating of BBB- or better from S&P or Fitch, or a Credit Rating of Baa3 or better from Moody’s, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer. If ratings by S&P, Moody’s and Fitch are not equivalent, the lowest rating shall apply.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L, or as reasonably acceptable to Buyer.

“Imbalance Energy” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.
“**Indemnified Party**” has the meaning set forth in Section 16.1.

“**Indemnifying Party**” has the meaning set forth in Section 16.1.

“**Initial Synchronization**” means the initial delivery of Facility Energy to the Delivery Point.

“**Installed Capacity**” means the sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

“**Installed PV Capacity**” means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that achieves Interim Commercial Operation or Full Commercial Operation, as applicable, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“**Installed Storage Capacity**” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

“**Inter-SC Trade**” or **IST** has the meaning set forth in the CAISO Tariff.

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

“**Interconnection Capacity Limit**” means the maximum instantaneous amount of Energy that can be delivered to the Delivery Point, in the amount of 269 MW.

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

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Interim COD Certificate**” has the meaning set forth in Exhibit B.

“**Interim Commercial Operation**” has the meaning set forth in Exhibit B.

“**Interim Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Interim Deliverability Status**” has the meaning set forth in the CAISO Tariff.

“**Interim Facility**” means the initial one hundred (100) MW AC portion of the Full Facility.
“Interim Facility Contract Period” means the period of time commencing on the Interim Commercial Operation Date and continuing until the occurrence of the Full Commercial Operation Date.

“Interim Guaranteed Energy Production” has the meaning set forth in Section 4.7(c).

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.


“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“Letter(s) of Credit” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Licensed Professional Engineer” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.
“Locational Marginal Price” or “LMP” has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

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

“Milestones” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“Monthly Forecast” has the meaning set forth in Section 4.3(b).

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

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“NEER” means NextEra Energy Resources, LLC.

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars ($0).

“Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Non-Buyer Dispatch” means a dispatch by Seller pursuant to a Seller Initiated Test.

“Non-Defaulting Party” has the meaning set forth in Section 11.2.
“Notice” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“Operating Restrictions” means those rules, requirements, and procedures set forth on Exhibit Q.

“Original PPA” has the meaning in the Recitals.

“Party” has the meaning set forth in the Preamble.

“Performance Measurement Period” means each two (2) full Contract Year period beginning on the Full Commercial Operation Date.

“Performance Security” means (i) cash, (ii) a Letter of Credit or (iii) a Guaranty, in the amount set forth on the Cover Sheet.

“Permitted Transfer” means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; provided (i)(A) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (B) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility, and (ii) if Seller is not the surviving entity, the transferee (A) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (B) meets the Seller Security requirements;

(b) A Change of Control of Ultimate Parent;

(c) Any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender; or

(e) A transfer of the Facility packaged with any of the following: (i) all or substantially all of the assets of NEER or Ultimate Parent; (ii) all or substantially all of NEER’s or Ultimate Parent’s renewable energy generation portfolio; or (iii) all or substantially all of NEER’s or Ultimate Parent’s solar generation and/or energy storage portfolio; provided, that in the case of each of (i), (ii) and (iii): (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller Security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a qualified operator.
“Permitted Transferee” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; provided that if ratings by S&P, Moody’s and Fitch are not equivalent, the lowest rating shall apply; and

(b) At least two (2) years of experience in the ownership and operations of power generation and energy storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect subsidiaries.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

“PMAX” means the applicable CAISO-certified maximum operating level of the Storage Facility.

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage Facility.

“PNode” has the meaning set forth in the CAISO Tariff.

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or “PCC1” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or “PCC2” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource
consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or “PCC3” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any tax equity or debt transaction entered into by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PV Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means that portion of Energy that is delivered directly from the Generating Facility to the Delivery Point and is not Discharging Energy.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the date set forth in the deliverability Section of the Cover
“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

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

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Receiving Party” has the meaning set forth in Section 18.2.

“Reliability Network Upgrades” has the meaning set forth in the CAISO Tariff.

“Remedial Action Plan” has the meaning set forth in Section 2.6.

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that
the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

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

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“ROFR Offer” has the meaning set forth in Section 10.5(a).

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

“Schedule” has the meaning set forth in the CAISO Tariff, and “Scheduled” has a corollary meaning.

“Scheduled Energy” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Security Interest” has the meaning set forth in Section 8.9.

“Self-Schedule” has the meaning set forth in the CAISO Tariff.

“Seller” has the meaning set forth on the Cover Sheet.

“Seller Initiated Test” has the meaning set forth in Section 4.9(c).

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(a).

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

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

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

“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“Showing Month” shall be the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“Site Control” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“SOC” or “State of Charge” means the level of charge of the Storage Facility relative to its maximum capacity.

“SP-15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“Station Use” means:

(a) The Energy produced or discharged by the Facility (and not otherwise included in the Efficiency Rate) that is used within the Facility to power information technology, telecommunications, lights, motors, temperature control systems, facility control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility’s electric energy distribution system as losses.
“Storage Capability” has the meaning in Exhibit P.

“Storage Capacity Availability Payment True-Up” has the meaning set forth in Exhibit C.

“Storage Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“Storage Capacity Test” means any test or retest of the Storage Facility to establish the Installed Storage Capacity, Effective Storage Capacity and/or Efficiency Rate, conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Cure Plan” has the meaning set forth in Section 11.1(b)(iv).

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Loss Factor” shall be the greater of (i) the Guaranteed Efficiency Rate set forth on the Cover Sheet, or (ii) the percentage calculated by dividing Discharging Energy in the applicable month of the Delivery Term by Charging Energy in the same month of the Delivery Term.

“Storage Facility Meter” means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Points” means the locations of the Storage Facility Meters shown on Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Effective Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.
“Stored Energy Level” means, at a particular time, the amount of electric Energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“Tax” or “Taxes” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3(b).

“Test Energy” means with respect to (1) the Interim Facility, Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Interim Commercial Operation Date; and (2) the Full Facility, Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO from the Full Facility and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid for the Full Facility and (b) ending upon the occurrence of the Full Commercial Operation Date, as applicable.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Third Party Offer” has the meaning set forth in Section 10.5(a).

“Third Party Transaction” has the meaning set forth in Section 10.4.

“Total YTD Calculation Settlement Intervals” has the meaning set forth in Exhibit C.

“Transmission Provider” means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.
“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Transmission System Outage” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.


“Unavailable Calculation Interval” has the meaning set forth in Exhibit P.

“Variable Energy Resource” or “VER” has the meaning set forth in the CAISO Tariff.

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

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 Rules of Interpretation. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” mean “include or including (as applicable) without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) the expression “and/or” when used as a conjunction shall connote “any or all of”;

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“Contract Term”); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2 for the Interim Facility, Section 2.3 for the Storage Facility, and Section 2.4 for the Full Facility.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties,
obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent to Commencement of the Delivery Term. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H for Interim Commercial Operation and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed Capacity on the Interim Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Interim Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has obtained CAISO Certification for the Interim Facility;

(f) Seller has received CEC Precertification of the Interim Facility (and reasonably expects to receive final CEC Certification and Verification for the Interim Facility in no more than one hundred eighty (180) days from the Interim Commercial Operation Date);

(g) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Interim Facility, QRE service agreements, and other appropriate documentation required to effect Interim Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Interim Facility within the WREGIS system;

(h) Seller has delivered the Performance Security for the Guaranteed Capacity of the Interim Facility to Buyer in accordance with Section 8.8; and

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.3 Conditions Precedent to Storage Commercial Operation. Seller shall achieve Storage Commercial Operation upon completion, to Buyer’s reasonable satisfaction, of each of the
following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H for Storage Commercial Operation and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Capacity on the Storage Commercial Operation Date;

(b) All applicable regulatory authorizations, approvals and permits for the operation of the Storage Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(c) Seller has obtained CAISO Certification for the Storage Facility;

(d) Seller has delivered the Performance Security for the Guaranteed Capacity of the Storage Facility to Buyer in accordance with Section 8.8;

(e) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages; and

(f) Seller shall have achieved Interim Commercial Operation for Installed PV Capacity of not less than 100 MW, unless reduced in accordance with Section 5(a) of Exhibit B.

2.4 **Additional Conditions Precedent to Full Commercial Operation.**

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H for Full Commercial Operation and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed Capacity on the Full Commercial Operation Date;

(b) All applicable regulatory authorizations, approvals and permits for the operation of the Full Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(c) Seller has obtained CAISO Certification for the Full Facility;

(d) Seller has received CEC Precertification of the Full Facility (and reasonably expects to receive final CEC Certification and Verification for the Full Facility in no more than one hundred eighty (180) days from the Full Commercial Operation Date);

(e) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Full Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Full Facility within the WREGIS system, and shall reasonably have assisted Buyer to complete any other requirements to enable Buyer to use the Product toward fulfilling its RPS requirements;
(f) Seller has delivered the Performance Security for the Guaranteed Capacity of the Full Facility to Buyer in accordance with Section 8.8; and

(g) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.5 Development; Construction; Progress Reports. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Full Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.6 Remedial Action Plan. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Interim Commercial Operation Date, Guaranteed Full Commercial Operation Date, or the Guaranteed Storage Commercial Operation Date, as applicable; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Interim Commercial Operation Date, Guaranteed Full Commercial Operation Date, and the Guaranteed Storage Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 Purchase and Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise
submit the Product, and/or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer’s obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process) for the Green-e Tracking Attestation and (b) support Buyer’s efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of
further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** No less than thirty (30) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy and provide a forecast in accordance with Section 4.3(b). If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the **Test Energy Rate**”). For the avoidance of doubt, the conditions precedent in Section 2.2 and Section 2.4 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

   (a) Throughout the Delivery Term and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

   (b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

   (c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

   (a) **RA Deficiency Determination.** For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer; provided further, Seller will pursue Interim Deliverability Status in the event that Seller anticipates that it will not achieve FCDS by the Expected FCDS Date.
(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the **RA Deficiency Amount**) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the Guaranteed Capacity), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the lesser of (A) the Storage Rate and (B) the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (**CPM Price**); provided, Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that the amount of Replacement RA shall not, in any given twelve (12) month period, exceed ten percent (10%) of the aggregate amount of Qualifying Capacity for such twelve (12) month period, and provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the RPS Eligibility Guidebook (or its successor). Seller shall obtain CEC Precertification for the Interim Facility by the Interim Commercial Operation Date. Within thirty (30) days after the Interim Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification for the Interim Facility. Within one hundred eighty (180) days after the Interim Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification for the Interim Facility. Seller shall obtain CEC Precertification for the Full Facility by the Full Commercial Operation Date. Within thirty (30) days after the Full Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification for the Full Facility. Within one hundred eighty (180) days after the Full Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification for the Full Facility. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term
“commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity ("Compliance Expenditure Cap").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

(b) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; provided that neither Party shall be obligated to agree to
any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

3.14 Additional Guaranteed Capacity. Notwithstanding anything to the contrary herein, Seller may elect to increase the amount of Guaranteed Full PV Capacity by up to thirty-six (36) additional MW AC from 233 MW AC (not to exceed 269 MW AC) (such additional capacity, “Additional Guaranteed PV Capacity”) at any time between the Effective Date and December 31, 2020, by providing not less than sixty (60) days’ prior Notice thereof to Buyer, which Additional Guaranteed Capacity Buyer shall acknowledge acceptance of in a writing to Seller, and the Parties shall, within thirty (30) days thereafter, amend and restate this Agreement to include the changes specified in Exhibit T solely to account for the actual MWh of such Additional Guaranteed Capacity.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Interim Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

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

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Forecasting. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format
reasonably acceptable to Buyer (or Buyer’s designee).

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Interim Facility Contract Period and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month’s average-day expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Energy and Available Capacity.** No less than thirty (30) days before the first day on which Test Energy is expected to be available from the Facility, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) Energy produced by the Generating Facility, (iii) available Effective Storage Capacity, and (iv) available Storage Capability (items (i) - (iv) collectively referred to as the “**Forecasted Product**”), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable (“**Monthly Forecast**”).

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product (“**Real-Time Forecast**”) that directly result from a Forced Facility Outage or Force Majeure, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy produced by the Generating Facility shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage
or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) **Forced Facility Outages.** Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) **Forecasting Penalties.** In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, due to Seller’s failure to provide such forecast, Seller shall be responsible for a “**Forecasting Penalty**” for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Energy produced by the Generating Facility for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Day-Ahead Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) **CAISO Tariff Requirements.** Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment.**

(a) **General.** Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; provided, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a
Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically; provided, Buyer’s right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Charging Notice by providing the Facility with an updated Charging Notice.

(c) Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice, (b) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), or (c) charges the Storage Facility in connection with maintenance of the Storage Facility or to achieve any Operating
Restrictions (which charging shall not be a violation of the first sentence of this Section 4.5(c)), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices or Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(f) If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder, it shall be a breach by Seller and Seller shall hold Buyer harmless from and indemnify Buyer against all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then it shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer’s SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation. To the extent the Storage Facility is unable to respond to ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Capacity Availability.
4.6 **Reduction in Energy Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.** Seller will provide to Buyer written schedules for Planned Outages for the Interim Facility Contract Period and for each Contract Year no later than thirty (30) days prior to the first day of the Interim Facility Contract Period and applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer’s comments. Seller shall be permitted to change any Planned Outages within the current Contract Year if such changes are required to comply with Prudent Operating Practices, or by providing at least sixty (60) days’ notice, in both cases subject to consent by Buyer not to be unreasonably withheld, conditioned or delayed. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Notwithstanding anything in this Agreement to the contrary, no outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System Outage, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility’s unavailability for purposes of calculating the Annual Storage Capacity Availability, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller’s obligation to deliver Capacity Attributes.

4.7 **Guaranteed Energy Production.**

(a) **During the Delivery Term,** Seller shall deliver to Buyer an amount of Adjusted Facility Energy equal to no less than (i) the Interim Guaranteed Energy Production (as defined below) in the Interim Performance Measurement Period and (ii) the Guaranteed Energy Production in each Performance Measurement Period.

(b) **Seller shall be excused from achieving the Interim Guaranteed Energy Production** during the Interim Performance Measurement Period and the Guaranteed Energy
Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Transmission System Outage, Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Interim Guaranteed Energy Production or the Guaranteed Energy Production, as applicable, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (1) any Deemed Delivered Energy plus (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“Lost Output”) plus (3) the amount of undelivered Energy during such Interim Performance Measurement Period or Performance Measurement Period, as applicable, with respect to which Seller has already (A) paid liquidated damages or (B) provided Replacement Product in accordance with this Section 4.7(b) and Exhibit G. If Seller fails to achieve the (i) Interim Guaranteed Energy Production during the Interim Performance Measurement Period or (ii) the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Interim Guaranteed Energy Production or the Guaranteed Energy Production during such Contract Years, (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

(c) “Interim Guaranteed Energy Production” means an amount of Adjusted Facility Energy, as measured in MWh, equal to seventy (70%) of the total aggregate amount of Expected Energy for the Interim Facility Contract Period as such Expected Energy is shown on the Cover Sheet. The amount may be adjusted, upward or downward, to the extent that the Interim Facility Contract Period includes a partial month. For example, if the Interim Facility Contract Period begins on January 1, 2022 and ends on September 15, 2022, the Interim Guaranteed Energy Production shall be the sum of the Expected Energy for January through August, and 15/30ths of the Expected Energy for September.

(d) “Guaranteed Energy Production” means an amount of Adjusted Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the Performance Measurement Period.

4.8 Storage Facility Availability; Ancillary Services.

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [ ] percent ( [ ]) (the “Guaranteed Storage Availability”), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that
is less than the Guaranteed Efficiency Rate is established in the definitions of the Storage Facility Loss Factor and Adjusted Facility Energy as applied in Section (a) of Exhibit C.

(c) Buyer’s remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iii), the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Storage Facility throughout the Contract Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Operating Restrictions and the Storage Facility’s CAISO Certification associated with the Installed Storage Capacity. To the extent the Storage Facility is unable to provide Ancillary Services for any reason not excused hereunder during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval, then as exclusive remedies, the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%).

4.9 Storage Facility Testing.

(a) Storage Capacity Tests. Prior to the Storage Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

   (i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

   (ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO Dispatch instructions.

(c) Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests shall be deemed Buyer-instructed dispatches of the Facility (“Buyer Dispatched Test”). Any other test of the Facility (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that
Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-
performing a required test within a reasonable number of days of the initial required test
(considering the circumstances that led to the need for a retest)) shall be deemed a “Seller Initiated
Test”.

(i) For any Seller Initiated Test other than a Storage Capacity Test, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) Buyer shall be responsible for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for all Charging Energy at the Renewable Rate and shall be entitled to all CAISO revenues associated with a Seller Initiated Test, and all Green Attributes associated therewith shall be for Buyer’s account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the Facility Energy during such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller, which shall be provided by Seller to Buyer in writing. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Project or Site solely to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 WREGIS. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Interim Commercial Operation Date, Seller shall register the Interim Facility with WREGIS and establish an account with WREGIS (“Seller’s WREGIS Account”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the
WREGIS Certificates using “Forward Certificate Transfers” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“Buyer’s WREGIS Account”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility’s metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction of, Seller, then the amount of Adjusted Facility Energy in the Deficient Month shall be reduced by three times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8, the Interim Guaranteed Energy Production for the Interim Facility Contract Period and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.
(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

4.11 **Financial Statements.** If requested by Buyer, and not publicly available on Ultimate Parent’s website, Seller shall deliver within one hundred twenty (120) days following the end of each fiscal year of Ultimate Parent: (i) a copy of Ultimate Parent’s annual report or 10K report, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Ultimate Parent’s quarterly report containing unaudited consolidated financial statements for such fiscal quarter, in each case unless otherwise publicly available. If any such statements shall not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

**ARTICLE 5**

**TAXES**

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, however, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

**ARTICLE 6**

**MAINTENANCE OF THE FACILITY**

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.
6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person’s property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer’s emergency contact identified on Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

**ARTICLE 7**

**METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. Seller shall separately meter all Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller’s cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.
ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy as read by the Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; provided, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid
is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon Seller’s delivery of the Performance Security for Interim Commercial Operation, Buyer shall return the Guaranteed Capacity portion of the Development Security for Interim Commercial Operation to Seller, less the amounts drawn in accordance with this Agreement. Upon Seller’s delivery of the Performance Security for Storage Commercial Operation, Buyer shall return the Guaranteed Capacity portion of the Development Security for Storage Commercial Operation to Seller, less the amounts drawn in accordance with this Agreement. Upon the earlier of (i) Seller’s delivery of the Performance Security for Full Commercial Operation, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the remaining Development Security to Seller, less the amounts drawn in accordance with this Agreement.

48
8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security (i) for the Guaranteed Capacity for Interim Commercial Operation to Buyer on or before the Interim Commercial Operation Date, (ii) for the Guaranteed Storage Capacity for Storage Commercial Operation to Buyer on or before the Storage Commercial Operation Date, and (iii) for the Guaranteed Capacity for Full Commercial Operation to Buyer on or before the Full Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting):

Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("Security Interest") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer’s Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.
Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
ARTICLE 9
NOTICES

9.1 Addresses for the Delivery of Notices. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth in Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.
9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

**ARTICLE 10**  
**FORCE MAJEURE**

10.1 **Definition.**

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or
operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event or Development Cure Period.**

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal one hundred eighty (180) days for the Guaranteed Interim Commercial Operation Date, one hundred eighty (180) days for the Guaranteed Storage Commercial Operation Date, or one hundred eighty (180) days for the Guaranteed Full Commercial Operation Date, and Seller has demonstrated to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.
(b) If a Force Majeure Event has occurred after the Full Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the either Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event; provided that, in the case of Seller as the Party electing to terminate this Agreement, for a period of two (2) years from the date of the termination of this Agreement, Seller shall not, and shall cause its Affiliates and any successors or assign to not, following such termination directly or indirectly enter into any agreement or consummate any transaction relating to the sale of Facility Energy with any Person other than Buyer (a “Third Party Transaction”) except in compliance with the terms and conditions of Section 10.5. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b) and this Section 10.4, and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

10.5 Right of First Refusal.

(a) Following a termination by Seller under Section 10.4, if Seller receives a bona fide written offer for a Third Party Transaction that Seller desires to accept (each, a “Third Party Offer”), Seller shall immediately notify Buyer in writing (the “Offer Notice”) of, subject to any confidentiality obligations that may apply to Seller, the identity of all proposed parties to such Third Party Transaction and the material financial and other terms and conditions of such Third Party Offer (the “Material Terms”). Each Offer Notice shall constitute an offer by Seller to enter into an agreement with Buyer on the same Material Terms of such Third Party Offer (the “ROFR Offer”).

(b) At any time prior to the expiration of the forty-five (45) day period following Buyer’s receipt of the Offer Notice (the “Exercise Period”), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent containing the Material Terms and any standard and customary conditions applicable to a transaction of this nature, executed by Buyer; provided, however, that Buyer is not required to accept any non-financial terms or conditions contained in any Material Terms that cannot be fulfilled by Buyer as readily as by any other Person (e.g., an agreement conditioned upon the services of a particular individual or the supply of goods or services exclusively under the control of such third party offeror).

(c) If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 10.5, at any time following the expiration of the Exercise Period, Seller may consummate the Third Party Transaction with the counterparty identified in the applicable Offer Notice, on Material Terms that are the same or more favorable to Seller as the Material Terms set forth in the Offer Notice. If such Third Party Transaction is not consummated, the terms and conditions of this Section 10.5 will again apply and Seller shall not enter into any Third Party Transaction without affording Buyer the right of first refusal on the terms and conditions of this Section 10.5.
ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party (the “Defaulting Party”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (C) failures related to the Annual Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if applicable; or

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;
(ii) the failure by Seller to achieve (A) Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date, (B) Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date, or (C) Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date, except as each date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, in any Contract Year, the Annual Storage Capacity Availability multiplied by the Effective Storage Capacity of the applicable period is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) threshold multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“Storage Cure Plan”) and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty;

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or Fitch or A3 by Moody’s, provided that if ratings by S&P, Moody’s and Fitch are not equivalent, the lowest rating shall apply;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time;

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in
11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Full Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage and Termination Payments. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Interim Commercial Operation Date, the Storage Commercial Operation Date or the Full Commercial Operation Date, as the case may be, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then in the event of an Early Termination Date occurring before the Interim Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. In the event of an Early Termination Date occurring after the Interim
Commercial Operation Date but before the Storage Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the Development Security amount for the Storage Facility as defined in the Cover Sheet and any interest accrued thereon. In the event of an Early Termination Date occurring after the Interim Commercial Operation Date but before the Full Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the Development Security amount for the portion of the Guaranteed Full PV Capacity that has not achieved Full Commercial Operation and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit the amounts held as Development Security in connection with the Damage Payment for an Early Termination prior to the Interim Commercial Operation Date, the Storage Commercial Operation Date, or the Full Commercial Operation Date, as the case may be, and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer up to the amount of the Damage Payment will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller’s assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date.** The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("Termination Payment") shall be the aggregate of all Settlement Amounts plus any or all other amounts otherwise due to or from the Non-Defaulting Party under this Agreement (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section...
11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Interim Commercial Operation Date due to Seller’s Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller’s Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer’s receipt thereof.

   (a) Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

   (b) Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.
11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**

**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE
RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 Seller’s Representations and Warranties. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed
of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

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

13.2 **Buyer’s Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by
way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Workforce Development.** The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

**ARTICLE 14**
**ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without the required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.
14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in substantially the form attached as Exhibit S ("Collateral Assignment Agreement").

14.3 **Permitted Assignment by Seller.**

(a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

(b) Notwithstanding anything to the contrary in Sections 14.1 and 14.3(a), Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to (1) NextEra Energy Operating Partners, LP or (2) NextEra Energy Partners, LP; if, and only if:

(i) (x) A wholly-owned indirect subsidiary of Ultimate Parent or NextEra Energy Resources, LLC or a Permitted Transferee under clause (ii) of the definition continues to operate the Facility and (y) there is no material adverse effect on the ability of Seller’s Guarantor to perform under the Performance Security;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed transfer or assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to transfer or assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by
Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney’s fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction (“Buyer Assignee”) at any time upon not less than fifteen (15) Business Days’ notice by delivering a written notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit U (“Assignment Agreement”), provided that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to or greater than Baa3 from Moody’s and BBB- from S&P, and if ratings by S&P and Moody’s are not equivalent, the lower rating shall apply. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5; provided, (a) Seller shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Seller or its financing parties, and

14.6 **Permitted Transfer by Seller.** Seller may make a Permitted Transfer, without the prior written consent of Buyer, provided that Seller gives at least thirty (30) days’ prior written notice to Buyer.

**ARTICLE 15**

**DISPUTE RESOLUTION**

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

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.
15.3 **Attorneys’ Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

**ARTICLE 16**
**INDEMNIFICATION**

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the “**Indemnified Party**”) from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) (i) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents, or (ii) resulting from the Indemnifying Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used in connection with the Facility (an “**IP Indemnity Claim**”).

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnifying Party shall notify the Indemnified Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by the Indemnifying Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion...
of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 17
INSURANCE

17.1 Insurance

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Ten Million Dollars ($10,000,000) per occurrence, and an annual aggregate of not less than Ten Million Dollars ($10,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella or excess insurance policy in a minimum limit of liability of Ten Million Dollars ($10,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer’s Liability Insurance. Employers’ Liability insurance shall not be less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with a combined single limit of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller’s use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Builder’s All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Interim Facility and the Full Facility prior to the Full Commercial Operation Date, builder’s all-risk insurance covering the Facility during such construction periods.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) commercial general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried
pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) **Evidence of Insurance.** Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

(h) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and self-insure in accordance with the terms and conditions above. With respect to the required general liability, umbrella or excess liability and business automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the “Receiving Party”) from the other Party (the “Disclosing Party”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent
system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. 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 Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“Buyer’s Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 **Irreparable Injury; Remedies.** Except as provided in Section 18.2, Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees
in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

**ARTICLE 19**

**MISCELLANEOUS**

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof (including the Original PPA), which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this
Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.13 Further Assurances. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

ARLINGTON ENERGY CENTER II, LLC, a Delaware limited liability company  
By: ____________________________  
Name: ____________________________  
Title: ____________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority  
By: ____________________________  
Name: ____________________________  
Title: ____________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Arlington Energy Center II

Site includes all or some of the following APNs: 812-130-009, 812-130-012, 812-120-002,

County: Riverside, CA

Zip Code: 92225

Latitude and Longitude: 33.6552; -114.7503

Facility Description: A solar photovoltaic electric generating facility with a net nameplate capacity of 233 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 132 MW AC / 528 MWh located near the City of Blythe within unincorporated Riverside County, California. Seller may install additional inverter capacity to account for production and delivery losses.

Site Diagram
Delivery Point: PNode

Facility Meter: See Exhibit R

Storage Facility Meter Locations: See Exhibit R

P-node: To be established prior to the Interim Commercial Operation Date at the Colorado River Substation 220kV bus. Seller shall promptly notify Buyer following the establishment of the PNode.

Participating Transmission Owner: Southern California Edison

Additional Information: None
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

   a. **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all primary contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. If Seller achieves Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller applicable to the Interim Facility prior to such date. If Seller achieves Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller applicable to the Interim Facility prior to such date. If Seller achieves Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

Exhibit B - 1

Agenda Page 273
2. **Commercial Operation of the Facility**

   a. **Interim Commercial Operation** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "Interim COD Certificate").

   i. Seller shall cause the Interim Commercial Operation for the Facility to occur by the Expected Interim Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "Guaranteed Interim Commercial Operation Date"). Seller shall notify Buyer that it intends to achieve Interim Commercial Operation at least sixty (60) days before the anticipated Interim Commercial Operation Date.

   ii. If Seller does not achieve Interim Commercial Operation by the Guaranteed Interim Commercial Operation Date, Seller may extend the Guaranteed Interim Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

   b. **Storage Commercial Operation** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.3 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "Storage COD Certificate").

   i. Seller shall cause the Storage Commercial Operation for the Facility to occur by the Expected Storage Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the "Guaranteed Storage Commercial Operation Date"). Seller shall notify Buyer that it intends to achieve Storage Commercial Operation at least sixty (60) days before the anticipated Storage Commercial Operation Date.

   ii. If Seller does not achieve Storage Commercial Operation by the Guaranteed Storage Commercial Operation Date, Seller may extend the Guaranteed Storage Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Storage Commercial Operation Date until the Storage Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Storage Commercial Operation Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

   c. **Full Commercial Operation** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.4 of the Agreement and
provided Notice to Buyer substantially in the form of Exhibit H (the “Full COD Certificate”).

i. Seller shall cause the Full Commercial Operation for the Facility to occur by the Expected Full Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “Guaranteed Full Commercial Operation Date”). Seller shall notify Buyer that it intends to achieve Full Commercial Operation at least sixty (60) days before the anticipated Full Commercial Operation Date.

ii. If Seller does not achieve Full Commercial Operation by the Guaranteed Full Commercial Operation Date, Seller may extend the Guaranteed Full Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Full Commercial Operation Date until the Full Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Full Commercial Operation Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

3. **Termination for Failure to Achieve Full Commercial Operation.** If the Interim Facility has not achieved Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2 for the Storage Facility, and the other applicable provisions of this Agreement shall be adjusted accordingly. If the Facility has not achieved Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2 for the portion of Capacity that has not achieved Full Commercial Operation, and the other applicable provisions of this Agreement shall be adjusted accordingly.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date, the Guaranteed Interim Commercial Operation Date, the Guaranteed Storage Commercial Operation Date, and the Guaranteed Full Commercial Operation Date shall, subject to notice and documentation requirements set forth below, each be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances
are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:

a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or

b. a Force Majeure Event occurs; or

c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Interim Commercial Operation Date, the Guaranteed Storage Commercial Operation Date, or the Guaranteed Full Commercial Operation Date, as applicable, despite the exercise of diligent and commercially reasonable efforts by Seller; or

d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Interim Commercial Operation Date, the Guaranteed Storage Commercial Operation Date, or the Guaranteed Full Commercial Operation Date, as applicable.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days for the Guaranteed Interim Commercial Operation Date, one hundred eighty (180) days for the Guaranteed Storage Commercial Operation Date, or one hundred eighty (180) days for the Guaranteed Full Commercial Operation Date, for any reason, including a Force Majeure Event:

The cumulative extensions granted by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days for the Guaranteed Storage Commercial Operation Date, or two hundred seventy (270) days for the Guaranteed Full Commercial Operation Date regardless of reason. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Interim/Full PV Capacity or Guaranteed Storage Capacity.**

a. **Guaranteed Interim/Full PV Capacity.** If, at Interim Commercial Operation or Full Commercial Operation, as applicable, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Interim PV Capacity, or the Guaranteed Full PV Capacity, Seller shall have ninety (90) days after the Interim Commercial
Operation Date or the Full Commercial Operation Date, as applicable, to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Interim PV Capacity, or the Guaranteed Full PV Capacity, as applicable, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Interim PV Capacity or Guaranteed Full PV Capacity, as applicable, by such date, Seller shall pay “PV Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Interim PV Capacity or Guaranteed Full PV Capacity, as applicable, exceeds the Installed PV Capacity, and the applicable portions of the Agreement shall be adjusted accordingly consistent with the Installed PV Capacity.

b. Guaranteed Storage Capacity. If, at Storage Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Storage Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “Storage Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW at four hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity, and the applicable portions of the Agreement shall be adjusted accordingly consistent with the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. Buyer’s Right to Draw on Development Security. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.
EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) **Renewable Rate.** Buyer shall pay Seller the Renewable Rate for each MWh of Adjusted Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) **Excess Contract Year Deliveries Over 115%.** Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of Adjusted Facility Energy, plus Deemed Delivered Energy, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy and Deemed Delivered Energy shall be $0.00/MWh.

(c) **Excess Settlement Interval Deliveries.** If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Interconnection Capacity Limit and the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) **Monthly Capacity Payment.**

   (i) Commencing on the Storage Commercial Operation Date and for each applicable month of the Delivery Term (and pro-rated for the first month in which Storage Commercial Operation is achieved and the last month of the Delivery Term if Storage Commercial Operation does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x Effective Storage Capacity. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than the first day of calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage is applicable.

   (ii) **Storage Capacity Availability Payment True-Up.** Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Capacity Availability in accordance with Exhibit P. If (A) such YTD Annual Capacity Availability is less than ninety percent (90%), or (B) the final Annual Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “**Storage Capacity Availability Payment True-Up**”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; **provided, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence.** If Buyer withholds any
Storage Capacity Availability Payment True-Up Amount pursuant to subsection (d)(ii)(A) above, and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to $A \times B - C$, where:

$A =$ The sum of the year-to-date Monthly Capacity Payments

$B =$ The Capacity Availability Factor

$C =$ The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

(A) If (i) the YTD Annual Capacity Availability multiplied by the Effective Storage Capacity is greater than or equal to (ii) the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

(B) If (i) the YTD Annual Capacity Availability multiplied by the Effective Storage Capacity is less than (ii) the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = Guaranteed Storage Availability − YTD Annual Capacity Availability

(C) If (i) the YTD Annual Capacity Availability multiplied by the Effective Storage Capacity is less than (ii) seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = (Guaranteed Storage Availability − YTD Annual Capacity Availability) \times 1.5

provided that, if the result of any of the calculations in clauses (A) through (C) above is greater than 1.0, then the Capacity Availability Factor shall be deemed to be equal to 1.0.

(e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(f) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits.
Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility’s SC) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer.

(ii) Notices. Buyer (as the Facility’s SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO by (in order of preference) telephonically or electronic mail to the personnel designated to receive such information.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In

Exhibit D - 1

Agenda Page 281
addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

(iv) CAISO Settlements. Buyer (as the Facility’s SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties (“CAISO Charges Invoice”) for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and, if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for such CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(v) Dispute Costs. Buyer (as the Facility’s SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(vi) Terminating Buyer’s Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(vii) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent.

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1
MONTHLY EXPECTED AVAILABLE GENERATING FACILITY CAPACITY
[MW Per Hour] – [Insert Month]

<table>
<thead>
<tr>
<th>1:00</th>
<th>2:00</th>
<th>3:00</th>
<th>4:00</th>
<th>5:00</th>
<th>6:00</th>
<th>7:00</th>
<th>8:00</th>
<th>9:00</th>
<th>10:00</th>
<th>11:00</th>
<th>12:00</th>
<th>13:00</th>
<th>14:00</th>
<th>15:00</th>
<th>16:00</th>
<th>17:00</th>
<th>18:00</th>
<th>19:00</th>
<th>20:00</th>
<th>21:00</th>
<th>22:00</th>
<th>23:00</th>
<th>24:00</th>
</tr>
</thead>
<tbody>
<tr>
<td>JAN</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FEB</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MAR</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>APR</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MAY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>JUN</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>JUL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>AUG</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SEP</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OCT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NOV</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DEC</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Exhibit F-1

Agenda Page 284
EXHIBIT F-2

MONTHLY EXPECTED GENERATING FACILITY ENERGY

[MWh Per Hour] – [Insert Month]

|       | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|-------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| JAN   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| FEB   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAR   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| APR   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| MAY   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUN   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| JUL   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| AUG   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| SEP   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| OCT   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| NOV   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| DEC   |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-3

MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY

[MW Per Hour] – [Insert Month]

<table>
<thead>
<tr>
<th>JAN</th>
<th>FEB</th>
<th>MAR</th>
<th>APR</th>
<th>MAY</th>
<th>JUN</th>
<th>JUL</th>
<th>AUG</th>
<th>SEP</th>
<th>OCT</th>
<th>NOV</th>
<th>DEC</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-4

MONTHLY AVAILABLE STORAGE CAPABILITY

[MWh Per Hour] – [Insert Month]

|        | 1:00 | 2:00 | 3:00 | 4:00 | 5:00 | 6:00 | 7:00 | 8:00 | 9:00 | 10:00 | 11:00 | 12:00 | 13:00 | 14:00 | 15:00 | 16:00 | 17:00 | 18:00 | 19:00 | 20:00 | 21:00 | 22:00 | 23:00 | 24:00 |
|--------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| Day 1  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 2  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 3  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 4  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 5  |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

[insert additional rows for each day in the month]

| Day 29 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 30 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |
| Day 31 |      |      |      |      |      |      |      |      |      |       |       |       |       |       |       |       |       |       |       |       |       |       |       |       |

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[ [(A - B) \times (C - D)] \]

where:

\[ A = \text{the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh} \]

\[ B = \text{the Adjusted Energy Production amount for the Performance Measurement Period, in MWh} \]

\[ C = \text{Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes} \]

\[ D = \text{the Renewable Rate, in $/MWh} \]

“\text{Adjusted Energy Production}” shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“\text{Replacement Energy}” means Energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“\text{Replacement Green Attributes}” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided, that are provided by Seller to Buyer as Replacement Product, in an amount not to exceed A – E, where E = Facility Energy + Deemed Delivered Energy + Lost Output.

“\text{Replacement Product}” means (a) Replacement Energy, and (b) Replacement Green Attributes.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.
Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.
EXHIBIT H

FORM OF INTERIM, STORAGE, AND FULL COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of [Interim][Storage][Full] Commercial Operation is delivered by _______[licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _______ ("Agreement") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _______[DATE]____, Engineer hereby certifies and represents to Buyer the following:

1. The [Interim] [Storage] [Full] Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the [Guaranteed Interim PV Capacity] [Guaranteed Full PV Capacity].

3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the [Guaranteed Storage Capacity].

4. Authorization to parallel the [Interim] Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]____.

5. The Transmission Provider has provided documentation supporting full unrestricted release for [Interim][Storage][Full] Commercial Operation by [Name of Transmission Provider as appropriate] on _______[DATE]____.

6. The CAISO has provided notification supporting [Interim][Storage][Full] Commercial Operation, in accordance with the CAISO Tariff on _______[DATE]____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____________________________

Its: _____________________________

Date: ___________________________
EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW AC ("Installed PV Capacity");

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "Installed Storage Capacity");

(c) The sum of (a) and (b) is __ MW AC and shall be the "Installed Capacity"; and

(d) The Commercial Operation Storage Capacity Test demonstrated an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this ________ day of ______________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:________________________________________

Its:________________________________________

Date:________________________________________
EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification (“Certification”) of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“Engineer”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “Effective Storage Capacity”); and

(b) The Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of ____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____________________________
Its:____________________________
Date:__________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated __________ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.

(2) the Construction Start Date occurred on ____________ (the “Construction Start Date”); and

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

___________________________________________________________________________

(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of ________.

[SELLER ENTITY]

By: ________________________________
Its: ________________________________

Date: ________________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: 
Bank Ref.: 
Amount: US$[XXXXXXXX]

Beneficiary:

Clean Power Alliance of Southern California, 
a California joint powers authority 
801 S Grand, Suite 400 
Los Angeles, CA 90017

Ladies and Gentlemen:

By the order of NextEra Energy Capital Holdings, Inc. on behalf of [name of NextEra project company], 700 Universe Blvd, Juno Beach, Florida 33408 (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5th Street, 35th Floor, Los Angeles, CA 90013, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXX] (United States Dollars [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of ______ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

Exhibit K - 3
The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Request.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer’s Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

Exhibit K - 2
[Bank Name]

___________________________
[Insert officer name]
[Insert officer title]
Ladies and Gentlemen:

The undersigned, a duly authorized officer of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of __________ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of ____________, 20__ (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $___________, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

Name and Title of Authorized Representative

Date___________________________
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between NextEra Energy Capital Holdings, Inc., a Delaware corporation (“Guarantor”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

A. Buyer and [SELLER ENTITY], a Delaware limited liability company (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 2020.

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed [_____] Dollars ($[_____] ). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to
the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

Exhibit L - 2

Agenda Page 299
the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment, restitution, or reimbursement.

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and
other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor’s ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor’s parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at [____] Attn: [____]

If delivered to Guarantor, to it at [____] Attn: [____]

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, except to the extent that the PPA is assigned in accordance with the terms
thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A FEDERAL COURT OF THE STATE OF CALIFORNIA, OR, TO THE EXTENT SUCH FEDERAL COURT LACKS SUBJECT MATTER JURISDICTION, IN A STATE COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]
IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

**NEXTERA ENERGY CAPITAL HOLDINGS, INC.**

By: ____________________________

Printed Name: ____________________

Title: ____________________________

BUYER:

[_______]

By: ____________________________

Printed Name: ____________________

Title: ____________________________

By: ____________________________

Printed Name: ____________________

Title: ____________________________

Exhibit L - 7

Agenda Page 304
EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated ________ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section [3.6] [3.8(b)] of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information:

<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>CAISO Resource ID</th>
<th>Unit SCID</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prorated Percentage of Unit Factor</th>
<th>Resource Type</th>
<th>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</th>
<th>Path 26 (North or South)</th>
<th>LCR Area (if any)</th>
<th>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</th>
<th>Run Hour Restrictions</th>
<th>Delivery Period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td></td>
<td></td>
</tr>
<tr>
<td>February</td>
<td></td>
<td></td>
</tr>
<tr>
<td>March</td>
<td></td>
<td></td>
</tr>
<tr>
<td>April</td>
<td></td>
<td></td>
</tr>
<tr>
<td>May</td>
<td></td>
<td></td>
</tr>
<tr>
<td>June</td>
<td></td>
<td></td>
</tr>
<tr>
<td>July</td>
<td></td>
<td></td>
</tr>
<tr>
<td>August</td>
<td></td>
<td></td>
</tr>
<tr>
<td>September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>October</td>
<td></td>
<td></td>
</tr>
<tr>
<td>November</td>
<td></td>
<td></td>
</tr>
<tr>
<td>December</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1 To be repeated for each unit if more than one.
[SELLER ENTITY]

By:______________________________
Its:______________________________

Date:______________________________
## EXHIBIT N
### NOTICES

<table>
<thead>
<tr>
<th>ARLINGTON ENERGY CENTER II, LLC, a Delaware limited liability company (“Seller”)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 700 Universe Blvd</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: Juno Beach, FL 33408</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>Attn: Business Management</td>
<td>Attn: Executive Director</td>
</tr>
<tr>
<td>Phone: (561) 691-3062</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile: (561) 304-5161</td>
<td>Email: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Email: <a href="mailto:dan.couch@nee.com">dan.couch@nee.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Reference Numbers:</strong></td>
<td><strong>Reference Numbers:</strong></td>
</tr>
<tr>
<td>Duns:</td>
<td>Duns:</td>
</tr>
<tr>
<td>Federal Tax ID Number:</td>
<td>Federal Tax ID Number:</td>
</tr>
<tr>
<td><strong>Invoices:</strong></td>
<td><strong>Invoices:</strong></td>
</tr>
<tr>
<td>Attn: Business Management</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone: (561) 691-3062</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile: (561) 304-5161</td>
<td>Email: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:dan.couch@nee.com">dan.couch@nee.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Scheduling:</strong></td>
<td><strong>Scheduling:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn:</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone:</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email:</td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td><strong>Confirmations:</strong></td>
<td><strong>Confirmations:</strong></td>
</tr>
<tr>
<td>Attn:</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile:</td>
<td>Email: <a href="mailto:nkeefer@cleanpoweralliance.org">nkeefer@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td><strong>Payments:</strong></td>
<td><strong>Payments:</strong></td>
</tr>
<tr>
<td>Attn: Business Management</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone: (561) 691-3062</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile: (561) 304-5161</td>
<td>Email: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:dan.couch@nee.com">dan.couch@nee.com</a></td>
<td></td>
</tr>
<tr>
<td><strong>Wire Transfer:</strong> Seller shall provide to Buyer the information below at least 60 days prior to the Interim Commercial Operation Date.</td>
<td></td>
</tr>
<tr>
<td>BNK: [TBD]</td>
<td>BNK: River City Bank</td>
</tr>
<tr>
<td>ABA: [TBD]</td>
<td>ABA: 121-133-416</td>
</tr>
<tr>
<td>ACCT: [TBD]</td>
<td>ACCT: [TBD]</td>
</tr>
</tbody>
</table>
| ARLINGTON ENERGY CENTER II, LLC,  
a Delaware limited liability company  
(“Seller”) | CLEAN POWER ALLIANCE OF  
SOUTHERN CALIFORNIA, a California  
joint powers authority ("Buyer") |
|---------------------------------------------------------------|---------------------------------------------------------------------|
| **Emergency Contact:**  
Attn: Renewable Operations Control Center  
(ROCC)  
(24-hour coverage):  
Phone: (561) 694-3636  
Toll Free: (866) 375-3737  
Fax: (561) 694-3615 |  

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days’ prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

(1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a “CT”. Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

(2) Conditions Prior to Testing.

Exhibit O - 1
(1) **EMS Functionality.** The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

(2) **Communications.** The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer’s RTU and the Facility SCADA system should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer’s RTU and Seller’s EMS interface and the ability to record SCADA data.

(3) **Commissioning Checklist.** Commissioning shall be successfully completed per manufacturer guidance on all installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

**PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.**

A. **Test Elements.** Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. For the avoidance of doubt, the Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed “complete,” and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

(1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and

(2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the Stored Energy Level reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the Stored Energy Level reaches 100%, not to exceed five (5) hours of total charging time.

B. **Parameters.** During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:

(1) Time;

(2) Net electrical energy output to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

(3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter);
(4) Stored Energy Level (MWh).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

(1) That the CT successfully started;

(2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;

(3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;

(4) Amount of time between the Storage Facility’s electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);

(5) Amount of time between the Storage Facility’s electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);

(6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% Stored Energy Level to 100% Stored Energy Level;

(7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% Stored Energy Level to 0% Stored Energy Level.

E. Test Conditions.

(1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
(3) **Instrumentation and Metering.** Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. **Incomplete Test.** If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. **Test Report.** Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

1. A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

2. The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and

3. Seller’s statement of either Seller’s acceptance of the CT or Seller’s rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer’s acceptance of the CT results or Buyer’s rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. **Supplementary Capacity Test Protocol.** No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility (“**Supplementary Capacity Test Protocol**”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:

(1) The total amount of Facility Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Storage Capacity and Efficiency Rate Test

- Procedure:
  
  (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
  
  (2) Record the initial value of the Storage Facility SOC.
  
  (3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have lapsed since the Storage Facility commenced charging.
  
  (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
  
  (5) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter (“Energy In”).
  
  (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility’s maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
(7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.

(8) Record and store the AC Energy discharged (in MWh) as measured at the Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.

(9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.

(10) Record and store the Discharging Energy as measured at the Storage Facility Meter for determining the Effective Storage Capacity. “Energy Out” means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter from the commencement of discharging pursuant to Section III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Section III.A.6 or Section III.A.9, as applicable.

- Test Results

  (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter.

  (2) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility’s maximum discharging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:

  (1) Record the Storage Facility active power level at the Facility Meter.

  (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.

  (3) Record and store the Storage Facility active power response (in seconds).

- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. AGC Charge Test
• Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility’s full charging level within 1 second.
• System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
• Procedure:
  (1) Record the Storage Facility active power level at the Facility Meter.
  (2) Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.
  (3) Record and store the Storage Facility active power response (in seconds).
• System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. Reactive Power Production Test

• Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.
• System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
• Procedure:
  (1) Record the Storage Facility reactive power level at the Facility Meter.
  (2) Command the Storage Facility to follow 50 MVAR for ten (10) minutes.
  (3) Record and store the Storage Facility reactive power response.
• System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test

• Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.
• System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
• Procedure:
  (1) Record the Storage Facility reactive power level at the Facility Meter.
(2) Command the Storage Facility to follow -50 MVAR for ten (10) minutes.

(3) Record and store the Storage Facility reactive power response.

System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Commencing on the Storage Commercial Operation Date and for each applicable month of the Delivery Term Buyer shall calculate the year-to-date (YTD) “Annual Storage Capacity Availability” using the formula set forth below:

\[
\text{Annual Storage Capacity Availability} \ (\%) = \frac{1 - \text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}
\]

“Calculation Interval” or “C.I.” means each successive five-minute interval.

“Unavailable Calculation Intervals” means the sum of year-to-date unavailable Calculation Intervals, where for each Calculation Interval:

\[
\text{Unavailable Calculation Interval} = 1 \times \left(1 - \frac{\text{the lesser of:} }{\text{or}} \right)
\]

\[
\begin{align*}
\text{A} &\leq \text{Effective Storage Capacity (MWh)} \\
&\leq \text{Effective Storage Capacity x 4 hrs}
\end{align*}
\]

A = the lesser of (i) available PMAX and (ii) available Effective Storage Capacity

“Storage Capability” means the sum of (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging charging capability (in MWh) in the applicable Calculation Interval x the Battery Discharging Factor).

During the period from the Storage Commercial Operation Date until the Full Commercial Operation Date, in all Calculation Intervals between 4:00 p.m. and 9:00 p.m., the Storage Capability shall be modified to be the lesser of the above definition and the sum of the PV Energy and Charging Energy produced by the Facility prior to 4:00 p.m. in such day multiplied by the Efficiency Rate.

“Total YTD Calculation Intervals” means the total Calculation Intervals year-to-date in
the applicable calendar year (commencing upon the Commercial Operation Date).

(b) The available PMAX, Effective Storage Capacity and Storage Capability in the above calculations shall be the lower of the amounts reported by (i) Seller’s real-time EMS data feed to Buyer for the Storage Facility, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.10), provided that any such revised Availability Notice indicating the Storage Facility is available for the applicable Calculation Interval is submitted by Seller (a) by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, or (b) at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market. Except as otherwise provided in this Agreement, the calculations of available PMAX and Storage Capability in the foregoing sentence shall be based solely on the availability of the Storage Facility to charge or discharge Energy, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond.) For avoidance of doubt, any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS signals shall be deemed an Unavailable Calculation Interval.

(c) If the total rated power of the Storage Facility inverters is less than the Installed Storage Capacity divided by 0.95 charging and divided by 0.95 discharging expressed in kVA at 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval.
EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; provided, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

| File Update Date: | [XX/XX/20XX] |
| Technology: | Lithium Ion Batteries |
| Storage Unit Name: | Arlington Energy Center II |

| A. Contract Capacity |
| Guaranteed Storage Capacity (MW): | 132 |
| Effective Storage Capacity (MW): | 132 |

| B. Total Unit Dispatchable Range Information |
| Interconnect Voltage (kV): | 220 |
| Maximum Storage Level (MWh): | 528 |
| Minimum Storage Level (MWh): | 0 |
| Stored energy capability (MWh): | 528 |
| Maximum Discharge (MW): | 132 |
| Maximum Charge (MW): | 0 |

| Maximum energy throughput (BET) (MWh/year): |

| C. Charge and Discharge Rates |
| Mode | Maximum (MW) | Ramp Rate (MW/min) |
| Energy (Charge) | 132 |  |
| Energy (Discharge) | 132 |  |

| D. Ancillary Services |
| Frequency regulation is included: | Yes |
| Spin is included: | Yes |

II. GENERATING FACILITY OPERATING RESTRICTIONS

1. Maximum energy throughput of [REDACTED]/year
EXHIBIT R
METERING DIAGRAM

The metering diagram is illustrative and a more precise metering diagram will be developed by Seller during detailed project design and shared with Buyer at least 90 Days prior to the Guaranteed Commercial Operation Date.
EXHIBIT S

FORM OF COLLATERAL ASSIGNMENT AGREEMENT

FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT

This Consent to Collateral Assignment Agreement (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority ("CPA"), (ii) Arlington Energy Center II, LLC, a Delaware limited liability company (the “Project Company”), and (iii) [Name of Collateral Agent], a [Legal Status of Collateral Agent], as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

RECITALS

The Parties enter into this Consent with reference to the following facts:

A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of [Date] [List all amendments as contemplated by Section 3.4] ("PPA"), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to CPA, and CPA will purchase the Product from Project Company;

B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);

C. Project Company has entered into that certain [Insert description of financing arrangements with Lender], dated as of [Date], among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;

D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and

E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

AGREEMENT
In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

SECTION 1.  CONSENT TO ASSIGNMENT, ETC.

1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA’s rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise, provided, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

1.2 Project Company’s Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that, following the occurrence of a default by Project Company under the PPA, CPA is authorized to act in accordance with Collateral Agent’s instructions and the terms of this Agreement, and that, other than arising due to the negligence or willful misconduct of CPA, CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company’s instructions.

1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a “PPA Default”), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent’s intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of ninety (90) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent’s receipt of the notice of such
PPA Default from CPA to cure such PPA Default; provided, that, such additional cure period for the Collateral Agent shall commence on the later of (1) the end of the Project Company’s cure period under the PPA and (2) the date the Collateral Agent receives notice of the PPA Default; provided, further, (a) if possession of the Facility is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA’s reasonable request.

1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies CPA (such notice, a “Financing Document Default Notice”) that an event of default has occurred and is continuing under the Financing Documents (a “Financing Document Event of Default”) then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the “Substitute Owner”) under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; provided, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA’s reasonable satisfaction that the Substitute Owner meets the qualifications of a Permitted Transferee under the PPA (a “Permitted Transferee”). For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) (“Replacement Owner”), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term (“Replacement PPA”); provided, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA’s reasonable satisfaction that the Replacement Owner satisfies the requirements of a
Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Facility and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Facility is transferred; provided, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

1.7 Assumption of Obligations.

(a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

(b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including curing defaults, posting and collateral assignment of the PPA Collateral; provided, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

(c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations.
against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Facility; provided, such limited recourse shall not limit CPA’s right to seek equitable or injunctive relief against Collateral Agent, or CPA’s rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA’s obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); provided, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA’s obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Facility is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA’s obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

SECTION 2. PAYMENTS UNDER THE PPA

Exhibit S – 5
Agenda Page 325
2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent’s instructions. [Collateral Agent may specific account information]

2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 No Default or Amendment.
Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA’s actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA’s actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

3.5 **No Previous Assignments.**

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

4.1 **Organization.**

Project Company is a limited liability company duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, 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 its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

4.2 **Authorization.**

The execution, delivery and performance of this Consent by Project Company, and Project Company’s assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

4.3 **Execution and Delivery; Binding Agreement.**

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

4.4 **No Default or Amendment.**
Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company’s actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company’s actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company’s actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

4.5  **No Previous Assignments.**

Project Company has not previously assigned all or any part of its rights under the PPA.

**SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT**

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

5.1  **Authorization.**

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

5.2  **Execution and Delivery; Binding Agreement.**

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors’ rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

**SECTION 6. MISCELLANEOUS**

6.1  **Notices.**

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with [Notice Section of the PPA] of the PPA, (b) if to Collateral Agent, to [Collateral Agent Name], [Collateral Agent Address], Attn: [Collateral Agent Contact Information], Telephone: [___], Fax: [___], and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.
6.2 **Governing Law; Submission to Jurisdiction.**

(a) **THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.**

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

6.3 **Headings Descriptive.**

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

6.4 **Severability.**

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

6.5 **Amendment, Waiver.**

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 **Termination.**

Each Party’s obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CPA has been notified by Collateral Agent that all of the
obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 **Successors and Assigns.**

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person’s successors and assigns permitted under and in accordance with this Consent.

6.8 **Further Assurances.**

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 **Waiver of Trial by Jury.**

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 **Entire Agreement.**

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 **Effective Date.**

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 **Counterparts; Electronic Signatures.**

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.
IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

ARLINGTON ENERGY CENTER II, LLC,
a Delaware limited liability company.

By: ____________________________
[Name]
[Title]
Date: ____________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,
a California joint powers authority.

By: ____________________________
[Name]
[Title]
Date: ____________________________

[NAME OF COLLATERAL AGENT],
[Legal Status of Collateral Agent].

By: ____________________________
[Name]
[Title]
Date: ____________________________
SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]
EXHIBIT T

PROVISIONS TO AMEND WITH ADDITIONAL GUARANTEED CAPACITY

If Seller provides the Additional Guaranteed Capacity in accordance with Section 3.15, the Parties shall amend and restate this Agreement to adjust the following provisions solely to account for the actual MWh of Additional Guaranteed Capacity:

1. Expected Energy (Interim Facility; Full Facility) – see Cover Page; definitions
2. Guaranteed Capacity – see Cover Page; definitions
3. Description of Facility – see Exhibit A
4. Average Expected Energy – see Exhibit F
EXHIBIT U

FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of [______________] by and among [PPA Seller], a [______________] (“PPA Seller”), Clean Power Alliance of Southern California, a California joint powers authority (“PPA Buyer”), and [Financing Party] (“Financing Party”), and relates to that certain power purchase agreement (the “PPA”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “Parties” hereto; each is a “Party”) agree as follows:

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “Assigned Products”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “Assigned Product Rights”). All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.

(b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “Delivered Product Payment Obligation” and together with the Assigned Product Rights, collectively the “Assigned Rights and Obligations”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer, including but not limited to the posting of Buyer Credit Support (as defined in the PPA). To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees to make such payment to PPA Seller within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment by Financing Party from PPA Seller.

(c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller will provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller to PPA Buyer in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product. PPA Buyer shall promptly reimburse PPA Seller
for any additional costs or expenses incurred by PPA Seller as a result of this sub-section (d).

2. Assignment Early Termination.

   (a) The Assignment Period may be terminated early upon the occurrence of any of the following:

   (1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;

   (2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party’s failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;

   (3) delivery of a written notice by PPA Seller if any of the events described in the definition of “Bankrupt” in the PPA occurs with respect to Financing Party; or

   (4) delivery of a written notice by Financing Party if any of the events described in the definition of “Bankrupt” in the PPA occurs with respect to PPA Seller.

   (b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

   (c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [____] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

   Financing Party
   
   Email: _____________

4. Miscellaneous. Sections 19.5 [Severability], 19.7 [Counterparts], 19.2 [Amendments] and
19.4 [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

5. **Governing Law, Jurisdiction, Waiver of Jury Trial**

   (a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction’s laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

   (b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

   (c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

By:  
Name:  
Title:  

PPA BUYER

By:  
Name:  
Title:  

FINANCING PARTY

By:  
Name:  
Title:  

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By:  
Name:  
Title:  

Appendix 1

Assigned Rights and Obligations

PPA: The Power Purchase Agreement dated [___________] by and between PPA Buyer and PPA Seller.

“Aiignment Period” means the period beginning on [___________] and extending until [___________], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the delivery period under the PPA.

Assigned Product: [Describe and define]

Further Information: [Include, if any]2

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

1 The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the delivery period under the PPA.
2 To include transfer and settlement mechanics for RECs, as applicable.
Staff Report – Agenda Item 5

To: Clean Power Alliance (CPA) Board of Directors
From: Ted Bardacke, Executive Director
Subject: COVID-19 Bill Assistance Program
Date: October 1, 2020

RECOMMENDATION
Authorize continuation of CPA’s COVID-19 Bill Assistance Program of up to $2 million in bill credits.

BACKGROUND
In May 2020, the CPA Board approved up to $1 million for bill assistance to residential and small business customers impacted by the COVID-19 induced economic downturn. Assistance is available in the form of credits on customer bills for customers that sign-up for the CARE/FERA/Medical Baseline (C/F/MB) programs and for existing CARE/FERA/Medical Baseline and small business customers who sign up for extended payment plans (PP-C/F/MB and PP-Small Com respectively).

In June 2020, the Board authorized an additional $250,000 for the program in FY 2020/21 using contingency funds in the Customer Programs budget if necessary. Also in June, the Board authorized up to an additional $1 million (for a total of up to $2 million) for the program should CPA’s FY 2019/20 results be better than projected.

As of September 11, 2020, CPA authorized bill credits of $1,326,025 to 51,556 customers (representing more than 5% of CPA’s total customer base) in the following manner.
<table>
<thead>
<tr>
<th>Program Type</th>
<th>Bill Credit Amount</th>
<th>Number of Accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>C/F/MB</td>
<td>$1,040,300</td>
<td>41,612</td>
</tr>
<tr>
<td>PP – C/F/MB</td>
<td>$211,475</td>
<td>8,459</td>
</tr>
<tr>
<td>PP – Small Com</td>
<td>$74,250</td>
<td>1,485</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>$1,326,025</strong></td>
<td><strong>51,556</strong></td>
</tr>
</tbody>
</table>

Over the past two months, total weekly bill credits have ranged between $45,000 and $65,000. Geographical distribution of the credits generally follows the trends presented to the Board in July 2020, with a larger proportion of credits overall going to more economically challenged areas and small business credits going to those areas where engagement in promoting the credits with the business community has been most robust (irrespective of overall income levels or a higher ratio of business to residential customers in a particular jurisdiction). A breakdown of credit disbursement by member agency with applicable income levels and ratio of customer types is attached.

**DISCUSSION**

While the conditions that caused the need for the program remain unfortunate and ongoing, staff believe the program has been a success so far as it has met clear customer needs, reduced the number of customers who fall behind on their bills, and shown CPA to be a nimble organization in the face of difficult circumstances.

Given weekly average disbursement levels, it is likely that demand for bill credits will continue through the fall. At the same time, staff can now confirm that FY 2019/20 results will be better than projected, thus satisfying the condition that the Board set in June. Therefore, staff requests that the Board formally authorize up to $2 million in total bill credits.

As the proposed $2 million limit approaches, CPA will re-evaluate the need and benefits of the program in light of several factors including fiscal outlook (including 2021 rates, PCIA, and bad debt levels), the potential for re-institution of customer disconnections in April 2021, and a potential new statewide ratepayer-funded program that would reimburse both CPA and SCE for bad debt write-offs of certain types of vulnerable customers.
FISCAL IMPACT
Following further research, staff determined that COVID-19 bill assistance program credits are accounted for as a reduction of revenue consistent with generally accepted accounting principles. Approximately $580,000 of the bill credits will be recorded as a revenue reduction in FY 2019-20. Should CPA reach the proposed $2 million program limit, the remaining $1.42 million would be recorded as a revenue reduction in FY 2020-21. Since bill credits are recorded as a reduction in revenue, a budget adjustment is not required.

ATTACHMENT
1) COVID-19 Bill Assistance Program Statistics
## COVID-19 Relief Program Update - Overview

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Total Credit Amount</th>
<th>Total Credits</th>
<th>Credits per 1,000 Accounts</th>
<th>Median Household Income by Quartile</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARAMOUNT, CITY OF</td>
<td>$38,825.00</td>
<td>1,491</td>
<td>95</td>
<td>4</td>
</tr>
<tr>
<td>HAWAIIAN GARDENS, CITY OF</td>
<td>$7,575.00</td>
<td>297</td>
<td>80</td>
<td>4</td>
</tr>
<tr>
<td>DOWNEY, CITY OF</td>
<td>$76,400.00</td>
<td>2,969</td>
<td>80</td>
<td>3</td>
</tr>
<tr>
<td>HAWTHORNE, CITY OF</td>
<td>$50,900.00</td>
<td>1,999</td>
<td>70</td>
<td>4</td>
</tr>
<tr>
<td>LOS ANGELES, COUNTY OF</td>
<td>$531,350.00</td>
<td>20,792</td>
<td>69</td>
<td>4</td>
</tr>
<tr>
<td>CARSON, CITY OF</td>
<td>$48,425.00</td>
<td>1,888</td>
<td>65</td>
<td>3</td>
</tr>
<tr>
<td>WHITTIER, CITY OF</td>
<td>$50,850.00</td>
<td>1,964</td>
<td>64</td>
<td>3</td>
</tr>
<tr>
<td>ALHAMBRA, CITY OF</td>
<td>$51,500.00</td>
<td>2,035</td>
<td>60</td>
<td>4</td>
</tr>
<tr>
<td>OXNARD, CITY OF</td>
<td>$82,325.00</td>
<td>3,187</td>
<td>58</td>
<td>4</td>
</tr>
<tr>
<td>TEMPLE CITY, CITY OF</td>
<td>$16,100.00</td>
<td>634</td>
<td>50</td>
<td>3</td>
</tr>
<tr>
<td>ARCADIA, CITY OF</td>
<td>$26,050.00</td>
<td>1,022</td>
<td>45</td>
<td>3</td>
</tr>
<tr>
<td>SIMI VALLEY, CITY OF</td>
<td>$48,675.00</td>
<td>1,887</td>
<td>44</td>
<td>2</td>
</tr>
<tr>
<td>CALABASAS, CITY OF</td>
<td>$9,675.00</td>
<td>383</td>
<td>39</td>
<td>1</td>
</tr>
<tr>
<td>VENTURA, CITY OF</td>
<td>$43,550.00</td>
<td>1,675</td>
<td>39</td>
<td>1</td>
</tr>
<tr>
<td>CLAREMONT, CITY OF</td>
<td>$11,775.00</td>
<td>455</td>
<td>36</td>
<td>2</td>
</tr>
<tr>
<td>MOORPARK, CITY OF</td>
<td>$10,500.00</td>
<td>405</td>
<td>35</td>
<td>2</td>
</tr>
<tr>
<td>AGOURA HILLS, CITY OF</td>
<td>$7,650.00</td>
<td>289</td>
<td>35</td>
<td>1</td>
</tr>
<tr>
<td>THOUSAND OAKS, CITY OF</td>
<td>$38,725.00</td>
<td>1,507</td>
<td>34</td>
<td>1</td>
</tr>
<tr>
<td>WEST HOLLYWOOD, CITY OF</td>
<td>$23,300.00</td>
<td>896</td>
<td>34</td>
<td>4</td>
</tr>
<tr>
<td>OJAI, CITY OF</td>
<td>$3,175.00</td>
<td>120</td>
<td>34</td>
<td>4</td>
</tr>
<tr>
<td>SIERRA MADRE, CITY OF</td>
<td>$4,050.00</td>
<td>160</td>
<td>31</td>
<td>2</td>
</tr>
<tr>
<td>VENTURA, COUNTY OF</td>
<td>$26,250.00</td>
<td>1,019</td>
<td>31</td>
<td>2</td>
</tr>
<tr>
<td>SOUTH PASADENA, CITY OF</td>
<td>$8,725.00</td>
<td>340</td>
<td>29</td>
<td>2</td>
</tr>
<tr>
<td>CAMARILLO, CITY OF</td>
<td>$21,125.00</td>
<td>814</td>
<td>29</td>
<td>2</td>
</tr>
<tr>
<td>BEVERLY HILLS, CITY OF</td>
<td>$14,275.00</td>
<td>527</td>
<td>28</td>
<td>2</td>
</tr>
<tr>
<td>CULVER CITY, CITY OF</td>
<td>$12,775.00</td>
<td>473</td>
<td>24</td>
<td>3</td>
</tr>
<tr>
<td>SANTA MONICA, CITY OF</td>
<td>$31,425.00</td>
<td>1,200</td>
<td>22</td>
<td>2</td>
</tr>
<tr>
<td>REDONDO BEACH, CITY OF</td>
<td>$19,725.00</td>
<td>752</td>
<td>22</td>
<td>1</td>
</tr>
<tr>
<td>WESTLAKE VILLAGE, CITY OF</td>
<td>$2,150.00</td>
<td>80</td>
<td>21</td>
<td>1</td>
</tr>
<tr>
<td>ROLLING HILLS ESTATES, CITY OF</td>
<td>$1,625.00</td>
<td>63</td>
<td>19</td>
<td>1</td>
</tr>
<tr>
<td>MALIBU, CITY OF</td>
<td>$2,925.00</td>
<td>99</td>
<td>14</td>
<td>1</td>
</tr>
<tr>
<td>MANHATTAN BEACH, CITY OF</td>
<td>$3,650.00</td>
<td>134</td>
<td>9</td>
<td>1</td>
</tr>
</tbody>
</table>

Chart is color coded based on "Median Household Income by Quartile."

The darkest blue represents the highest income quartile (1), the white represents the lowest income quartile (4).

"Median Household Income by Quartile" is the median household income expressed in 2018 dollars from the US census data broken into quartiles, 1 being the highest income, 4 being the lowest income.

As of September 11, 2020.
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Total Business Credit Amount</th>
<th>Total Business Credits</th>
<th>Business Credits per 100 Business Accounts</th>
<th>Ratio of Residential to Business Accounts Quartile</th>
<th>Median Household Income by Quartile</th>
</tr>
</thead>
<tbody>
<tr>
<td>PARAMOUNT, CITY OF</td>
<td>$3,100.00</td>
<td>62</td>
<td>2.17</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>DOWNNEY, CITY OF</td>
<td>$4,350.00</td>
<td>87</td>
<td>2.00</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>WHITTIER, CITY OF</td>
<td>$3,500.00</td>
<td>70</td>
<td>1.87</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>LOS ANGELES, COUNTY OF</td>
<td>$23,100.00</td>
<td>462</td>
<td>1.64</td>
<td>1</td>
<td>4</td>
</tr>
<tr>
<td>OXNARD, CITY OF</td>
<td>$5,300.00</td>
<td>106</td>
<td>1.49</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>MALIBU, CITY OF</td>
<td>$900.00</td>
<td>18</td>
<td>1.33</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>AGOURA HILLS, CITY OF</td>
<td>$850.00</td>
<td>17</td>
<td>1.18</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>CULVER CITY, CITY OF</td>
<td>$1,900.00</td>
<td>38</td>
<td>1.17</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>SIMI VALLEY, CITY OF</td>
<td>$3,000.00</td>
<td>60</td>
<td>1.15</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>CARSON, CITY OF</td>
<td>$2,450.00</td>
<td>49</td>
<td>1.14</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>BEVERLEY HILLS, CITY OF</td>
<td>$2,200.00</td>
<td>44</td>
<td>1.08</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>CLAREMONT, CITY OF</td>
<td>$800.00</td>
<td>16</td>
<td>1.08</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>HAWAIIAN GARDENS, CITY OF</td>
<td>$300.00</td>
<td>6</td>
<td>1.02</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>OJAI, CITY OF</td>
<td>$350.00</td>
<td>7</td>
<td>1.00</td>
<td>4</td>
<td>4</td>
</tr>
<tr>
<td>HAWTHORNE, CITY OF</td>
<td>$1,850.00</td>
<td>37</td>
<td>0.98</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>WEST HOLLYWOOD, CITY OF</td>
<td>$1,800.00</td>
<td>36</td>
<td>0.95</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>VENTURA, CITY OF</td>
<td>$3,350.00</td>
<td>67</td>
<td>0.95</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>MOORPARK, CITY OF</td>
<td>$750.00</td>
<td>15</td>
<td>0.93</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>REDONDO BEACH, CITY OF</td>
<td>$1,850.00</td>
<td>37</td>
<td>0.81</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>TEMPLE CITY, CITY OF</td>
<td>$500.00</td>
<td>10</td>
<td>0.76</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>THOUSAND OAKS, CITY OF</td>
<td>$2,100.00</td>
<td>42</td>
<td>0.72</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>CAMARILLO, CITY OF</td>
<td>$1,550.00</td>
<td>31</td>
<td>0.72</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>SANTA MONICA, CITY OF</td>
<td>$2,850.00</td>
<td>57</td>
<td>0.71</td>
<td>3</td>
<td>2</td>
</tr>
<tr>
<td>MANHATTAN BEACH, CITY OF</td>
<td>$600.00</td>
<td>12</td>
<td>0.67</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>SOUTH PASADENA, CITY OF</td>
<td>$450.00</td>
<td>9</td>
<td>0.65</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>WESTLAKE VILLAGE, CITY OF</td>
<td>$300.00</td>
<td>6</td>
<td>0.61</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>ARCADIA, CITY OF</td>
<td>$1,000.00</td>
<td>20</td>
<td>0.59</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>ALHAMBRA, CITY OF</td>
<td>$1,250.00</td>
<td>25</td>
<td>0.57</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>VENTURA, COUNTY OF</td>
<td>$1,550.00</td>
<td>31</td>
<td>0.56</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>SIERRA MADRE, CITY OF</td>
<td>$100.00</td>
<td>2</td>
<td>0.42</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>ROLLING HILLS ESTATES, CITY OF</td>
<td>$100.00</td>
<td>2</td>
<td>0.38</td>
<td>3</td>
<td>1</td>
</tr>
<tr>
<td>CALABASAS, CITY OF</td>
<td>$200.00</td>
<td>4</td>
<td>0.35</td>
<td>1</td>
<td>1</td>
</tr>
</tbody>
</table>

*Ratio of Residential to Business Accounts Quartile* is the ratio of residential to business accounts broken into quartiles, 1 represents jurisdictions with the least businesses per residential account, 4 represents jurisdictions with the most businesses per residential account.

*Median Household Income by Quartile* is the median household income expressed in 2018 dollars from the US census data broken into quartiles, 1 being the highest income, 4 being the lowest income.

As of September 11, 2020.
Staff Report – Management Update

To: Clean Power Alliance (CPA) Board of Directors
From: Ted Bardacke, Executive Director
Subject: Management Update
Date: October 1, 2020

Financial Performance
CPA closed out the first month of the new fiscal year ahead of budget, benefitting from lower than budgeted prices for both spot market and renewable energy, and lower operating expenditures compared to budget. The monthly financial dashboard is provided as Attachment 1. Staff will be presenting the FY 2019-20 audited financial results in November.

On September 25, 2020 CPA repaid Los Angeles County the $10 million start-up loan provided to the agency in 2017. With this repayment and no outstanding draws on its line of credit, CPA is now debt-free.

Grid Reliability Follow Up
Investigations continue into the root causes of the August and September reliability challenges faced by California’s electricity grid. In the meantime, CalCCA has called for actions in the regulatory, legislative, and federal policy arenas, as well an independent review of the ultimate conclusions reached by the three agencies – California Public Utilities Commission, California Energy Commission, California Independent System Operator – conducting the root cause analysis. A copy of the CalCCA letter to the governor outlining these recommended actions is provided as Attachment 2.

Legislative Update
The 2019/2020 State Legislative session has concluded. The majority of CPA’s priority bills failed, due to a de-prioritization of many bills that were not related to COVID-19.
CPA was successful in getting passage and the Governor’s signature on SB 115, which among other things, transfers $51 million to fund electric vehicle charging infrastructure through the California Electric Vehicle Infrastructure Project (CALeVIP). This amendment will enable CPA to receive state match funding for electric vehicle incentives in both Los Angeles and Ventura Counties.

Issues around wildfires and resiliency were largely left unresolved, and these may be addressed in a special session. Issues around grid reliability will be addressed in an oversight hearing in the Assembly Utilities and Energy Committee. Dates for that hearing have not been announced.

**SCE Rate Changes**

SCE will implement a 3-4% rate increase effective October 1 consisting almost exclusively of increases to customer transmission and delivery rates. Transmission and delivery rates are paid by both SCE and CPA customers, and are controlled and set by SCE. This rate increase is attributable to implementation of SCE’s Grid Safety and Management Program (GSRP) and its Wildfire Expense Memorandum Account (WEMA).

This rate increase comes after a 2% June 1 SCE transmission and delivery rate increase, which was attributable to SCE implementing its annual update filing of the Transmission Access Charge Balancing Account Adjustment (TACBAA). Neither SCE generation rates nor PCIA rates are changing as a result of October’s rate change and CPA’s customer bill comparisons continue to fall within the Board-approved ranges (1-2% discount for Lean Power, parity for Clean Power, and 7-9% premium for 100% Green Power).

The October SCE transmission and delivery rate increase will result in an average monthly bill increase of 4% for residential customers (approximately $4) and 3% for small commercial customers (approximately $6). CPA expects significant additional SCE transmission and delivery rate increases to occur in 2021.

**Annual Electricity Usage for Voting Shares**

Per CPA’s Joint Powers Agreement, in the case of a voting shares (weighted) vote by the CPA Board, voting shares are based on CPA’s overall retail load served, by jurisdiction, in the previous year. Attachment 3 shows the annual retail load by jurisdiction. These percentages will be used in the event of a weighted vote.
Customer Engagement & Community Based Outreach

In September CPA was honored with a 2020 Green Power Leadership Award for Green Power Market Development from the Center for Resource Solutions, in recognition of our achievement of having more customers receiving 100% renewable energy than any other utility in the nation. Other awardees this year included AT&T, Google, Microsoft, LevelTen Energy, and the Tennessee Valley Authority. Previous years’ awardees have included Bloomberg LLP, Cox Enterprises, Gap Inc., Salesforce, Apple, T-Mobile, the Department of the Navy, Austin Energy, Marin Clean Energy, and the Sacramento Municipal Utility District (SMUD).

CAC members David Lesser, Steve Nash and Neil Fromer along with Robyn Eason from the City of West Hollywood and Adriana Figueroa from the City of Paramount served as panelists at CPA’s Q3 Sustainable Energy Incubator workshop on September 24 on the subject of the next big steps for local government action on decarbonization. More than 50 community stakeholders participated in robust breakout discussions on topics ranging from building electrification reach codes to racial equity in energy development and climate action.

Community and customer engagement activities continue online and by mail. COVID-19 bill relief program marketing continues, with Phase 3 of the campaign launching this month.

The External Affairs team continues to market the CPA Power Response program via email and social media and will be promoting the Direct Install battery storage incentives and informational webinars in October. They have also provided 3-month progress coaching calls with all Community Based Organization (CBO) Outreach grantees to optimize their customer engagement and set CARE/FERA and CPA Power Response enrollment goals for the remainder of the year.

The Malibu, Sierra Madre, and Rolling Hills Estates\(^1\) new default changes will take effect October 1 and a second notice will be mailed to customers in those communities later in the month.

\(^1\) Commercial only
**Opt-Actions**

As of September 22, CPA’s commercial (Phases 1, 2, 4, and 5) opt-out rate was 7.35% and residential (Phase 3, 5) opt-out rate was 6.07%. A summary of opt-action data by jurisdiction is attached (Attachments 4 and 5). Opt-out rates among Phase X customers (missing enrollments subject to the June legal settlement between CPA and SCE) is currently at 3.21%.

While opt-out rates among new customer accounts continue to be significantly lower than opt-outs from accounts that were active during the mass enrollment phases, the economic downturn is starting to cause terminated accounts to outpace new account openings; to date in September there were 1,076 more move-outs than move-ins. Total active customers as of September 22 was 1,006,994.

**Customer Service Center Performance**

Incoming calls to CPA’s Customer Service Center are trending upwards in September compared to August as new Phase X customers receive their first CPA bills and other customers receive higher bills than normal due to the summer heat waves. Higher call volume, coupled with holidays and some call center staff turnover due to a move to work-from-home for all call center staff, has led to an increase in call center wait times. As of September 22, 86.7% of calls were answered within 60 seconds, and average wait time was 33 seconds, compared to 98.8% and 17 seconds respectively in Q2 2020. CPA’s call center manager is adding both temporary and permanent staff to improve performance.

**Staffing Updates**

Francis Choi has been hired as Regulatory Analyst. Francis joins CPA from the Millbank law firm where he was a contract attorney in the Energy and Infrastructure Finance Group. Francis has previous experience with the Environment Section of the Office of the California Attorney General, the White House Council on Environmental Quality, and the California State Assembly and will be working at CPA on regulatory matters before the California Public Utilities Commission. Francis has a JD from UC Berkeley, a Master’s in Public Policy from Harvard’s Kennedy School of Government, and BA in Political Science from UC San Diego.
Contracts Executed in September Under Executive Director Authority

A list of non-energy contracts executed under the Executive Director’s signing authority is attached (Attachment 6). The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.

ATTACHMENTS

1) July 2020 Financial Dashboard
2) CalCCA Letter to Governor Newsom
3) Annual Retail Load by Jurisdiction
4) Residential Opt-Actions Report by Jurisdiction
5) Non-Residential Opt-Actions Report by Jurisdiction
6) Non-Energy Contracts Executed under Executive Director Authority
Financial Dashboard

Summary of Financial Results

<table>
<thead>
<tr>
<th></th>
<th>July</th>
<th></th>
<th>Year-to-Date</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>in $000,000's</td>
<td>Actual</td>
<td>Budget</td>
<td>Variance</td>
</tr>
<tr>
<td>Energy Revenues</td>
<td>90.0</td>
<td>93.1</td>
<td>-3.0</td>
<td>-3%</td>
</tr>
<tr>
<td>Cost of Energy</td>
<td>71.4</td>
<td>77.9</td>
<td>-6.5</td>
<td>-8%</td>
</tr>
<tr>
<td>Net Energy Revenue</td>
<td>18.6</td>
<td>15.2</td>
<td>3.4</td>
<td>23%</td>
</tr>
<tr>
<td>Operating Expenditures</td>
<td>1.8</td>
<td>2.6</td>
<td>-0.9</td>
<td>-33%</td>
</tr>
<tr>
<td>Net Income</td>
<td>16.9</td>
<td>12.6</td>
<td>4.3</td>
<td>34%</td>
</tr>
</tbody>
</table>

Note: Numbers may not sum up due to rounding.

• CPA recorded net income for the month that was ahead of budget. Revenue was 3% lower than budgeted due to lower than forecast load. Cost of energy was lower than budgeted due to lower usage and spot market prices and lower renewable energy costs than assumed in the budget. Net income exceeded budgeted net income by 34%.

• For year-to-date:
  • Revenues of $90 million were $3.1 million or 3% below budget.
  • Cost of energy of $71.4 million was 6.5% below to budgeted energy costs.
  • Operating expenditures of $1.8 million were 33% lower than budgeted primarily due to lower than budgeted staffing, legal services, and SCE service fees.
  • Net income of $16.9M was $4.3 million above budgeted net income of $12.6M.
  • Management believes that available liquidity and bank lines of credit are sufficient for CPA to continue to meet its obligations.

Definitions:
Accounts: Active Accounts represent customer accounts of active customers served by CPA per Calpine Invoice.
Opt-out %: Customer accounts opted out divided by eligible CPA accounts
YTD Sales Volume: Year to date sales volume represents the amount of energy (in gigawatt hours) sold to retail customers
Revenues: Retail energy sales less allowance for doubtful accounts
Cost of energy: Cost of energy includes direct costs incurred to serve CPA’s load
Operating expenditures: Operating expenditures include general, administrative, consulting, payroll and other costs required to fund operations
Net income: Net income represents the difference between revenues and expenditures before depreciation and capital expenditures
Cash and Cash Equivalents: Includes cash held as bank deposits.
Year to date (YTD): Represents the fiscal period beginning July 1, 2020
September 9, 2020

The Honorable Gavin Newsom  
Governor, State of California  
State Capitol, 1st Floor  
Sacramento, California 95814

Dear Governor Newsom:

The California Community Choice Association (CalCCA) represents 20 Community Choice Aggregators (CCAs) providing energy to customers in more than 170 cities and counties throughout California, as well as several new CCAs planning to initiate service this fall and in 2021. Collectively, CCAs serve approximately 25% of the load in the California Independent System Operator (CAISO) balancing authority control area. CalCCA’s members are committed to reducing greenhouse gas emissions and, as local government agencies, are well positioned to work with the state to achieve long-term decarbonization goals.

CCAs also share the state’s strong interest in ensuring reliable energy supply and grid operations and have actively engaged in regulatory efforts to secure reliability. Collectively, CCAs have executed almost 5,000 MW (5GW) of long-term power purchase agreements for new-build solar, wind, geothermal and energy storage projects. The recent rolling blackouts, however, reveal an urgent need to reform the existing resource adequacy rules administered by the California Public Utilities Commission (CPUC) and the CAISO, and focus the CPUC’s integrated resource planning process more rigorously on supply reliability.

During the extreme emergency heat storms over Labor Day weekend and in August, CalCCA members took the following actions to support state efforts:

- Amplified messaging around Flex Alerts and energy conservation measures to the more than 10 million customers served by CCAs, and
- Called demand-response events and encouraged load shifting of customers, particularly those on time of use (TOU) rates.

Additionally, CalCCA members have implemented the following actions to secure reliability and prepare to respond to emergencies in the future:

- Expanding use of critical peak pricing and TOU pricing that maximizes incentives for shifting demand away from periods of high stress on the grid.
- Exceeding their share of the three-year 3,300 MW resource adequacy procurement ordered in October 2019 (to be installed between 2021 and 2023).
- Taking steps to form a Joint Powers Authority to enable cooperative procurement of large-scale resources (e.g., long duration storage projects).
- Installing hybrid generation and storage solutions to enhance the reliability of new solar resources and to reduce emissions from existing resources.
- Facilitating the installation of clean energy backup power systems at local critical facilities used by the community for disaster preparedness.

CCAs are prepared to do more and are committed to working with the Joint Agencies and the investor-owned utilities (IOUs) to support reliable energy service and ensure sufficient in-state renewable integration supply.
CalCCA Proposed Policy Changes

As the root causes of the extreme emergency events are revealed, they may point directly to solutions necessary to mitigate the risk of repeating similar events in the future. Even without certainty regarding those causes, however, California can begin now to take steps to increase reliability through action in the regulatory, legislative, and federal arenas. Going beyond individual CCA efforts, CalCCA proposes the following policy initiatives in response to the recent reliability challenges.

✓ **Regulatory:** The CPUC should continue to ensure adequate supplies will be in place for summer 2021 requirements and beyond through the procurement track of the integrated resource planning process, and review its import restrictions in the context of the lessons learned during the extreme emergency events.

The CPUC should use the Integrated Resource Plan (IRP) proceeding’s procurement track in 2021 to refine our understanding of near- and mid-term reliability needs in the 2024-2026 timeframe. CalCCA supported the 3,300 MW procurement order in 2019 and supports augmenting reliability analysis conducted in IRP to identify any incremental near-term procurement beyond the current 3,300 MW order. As the need for new resources in the 2024-2026 timeframe has already been clearly identified within the IRP proceeding, CalCCA proposes using the coming months to better refine four areas:

- Identify the specific technical needs in 2024-2026 (capacity, energy, evening ramp, etc.)
- Establish a fair process to allocate the technical need to load serving entities (LSEs) for procurement action, with recognition of early actors who contributed to reliability resources in the 2021-2023 time period
- Develop a deeper understanding of import resource availability and institutional barriers to securing firm import resources
- Provide appropriate market incentives and regulations for behind-the-meter infrastructure to act as supply-side energy and capacity resources

✓ **Legislative:** The Legislature should put in place a Central Reliability Authority (CRA) responsible for planning and coordinating the state’s resource adequacy with the CAISO and, where necessary, procuring backstop supply.

The Legislature should enact AB 3014 (Muratsuchi) to establish the Central Reliability Authority. AB 3014 was designed to address problems with resource adequacy (RA) that have been highlighted in recent years. At the heart of this bill, the goal is to improve reliability so that the necessary energy is available when needed but is designed in a way that both keeps costs down and incentivizes local initiatives. AB 3014 would establish a Governor-appointed board to oversee the formation and operation of a nonprofit public benefit corporation that would coordinate RA planning and implement forward (multi-year) collective RA energy procurement with all LSEs. RA requirements would continue to be determined by the CPUC but the CRA would oversee resource sufficiency in coordination with the CEC and CAISO. An additional function could be added to allow the CRA to procure new resources (new builds) where there is a collective deficiency that the LSEs are unable to fill.
**Federal:** California should support the expansion of the federal Investment Tax Credit (ITC) to standalone energy storage resources and the removal of charging restrictions currently limiting the flexibility of battery energy storage to support the state’s ramping and peak needs.

The Governor’s Office should work with California’s congressional delegation to support the extension of the ITC to stand-alone storage resources and/or to remove charging restrictions in place on existing hybrid credits. Currently, ITC-eligibility is limited to storage resources installed with renewable energy resources and requires that the storage be charged primarily with energy from the solar project. These restrictions potentially limit the flexibility of energy storage in meeting ramping and peak demand needs, which is essential to continuing to integrate renewables into the grid. While CalCCA’s members have entered into numerous contracts for hybrid solar and storage resources, eliminating these arbitrary regulatory constraints will increase the flexibility of these resources to meet reliability needs during constrained periods, and will make energy storage more cost-effective for ratepayers in California and across the country.

**Independent Review.** Finally, while a forensic review by the CAISO, CPUC and Energy Commission is foundational to an understanding of the extreme events, the review should not stop there. CalCCA supports an external review to ensure an objective assessment of the underlying causes. CalCCA recommends the Governor appoint an Independent Review Panel to consider the report of the Joint Agencies investigation and make recommendations. The panel should consist of former agency experts, non-market participants representing each of the three categories of load serving entities (IOUs, CCAs and ESPs), and other key stakeholders. While the Joint Agencies are no doubt motivated to prevent future shortages, an objective eye will ensure that natural biases do not affect the characterization of the root cause or proposed mitigation measures.

CalCCA and the CCA community are committed to providing clean, reliable service to safeguard California’s energy future. Internally, we have identified numerous mitigation measures for consideration by the broader stakeholder community and will work in tandem with the Joint Agencies to comprehensively review the state’s reliability program and to implement changes to prevent future outages and achieve our climate goals. We would welcome the opportunity to meet with you and your staff to discuss our proposals.

Sincerely,

Beth Vaughan
Executive Director

cc: Honorable Toni Atkins, President pro tempore, California State Senate
Honorable Anthony Rendon, Speaker of the Assembly
Honorable Chris Holden, Chair, Assembly Committee on Utilities and Energy
Honorable Ben Hueso, Chair, Senate Energy Utilities and Communications
Marybel Batjer, President, California Public Utilities Commission
David Hochschild, Chair, California Energy Commission
Stephen Berberich, President and CEO, California Independent System Operator
Ana Matosantos, Cabinet Secretary, Office of the Governor
Alice Reynolds, Senior Advisor, Office of the Governor
<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Annual Retail Load (kWh)</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>LOS ANGELES, COUNTY OF</td>
<td>3,007,412,712</td>
<td>27.66%</td>
</tr>
<tr>
<td>CARSON, CITY OF</td>
<td>675,954,866</td>
<td>6.22%</td>
</tr>
<tr>
<td>SANTA MONICA, CITY OF</td>
<td>565,956,370</td>
<td>5.21%</td>
</tr>
<tr>
<td>Oxnard, CITY OF</td>
<td>538,818,011</td>
<td>4.96%</td>
</tr>
<tr>
<td>THOUSAND OAKS, CITY OF</td>
<td>484,343,896</td>
<td>4.46%</td>
</tr>
<tr>
<td>SIMI VALLEY, CITY OF</td>
<td>437,611,320</td>
<td>4.03%</td>
</tr>
<tr>
<td>VENTURA, COUNTY OF</td>
<td>435,225,435</td>
<td>4.00%</td>
</tr>
<tr>
<td>DOWNEY, CITY OF</td>
<td>416,250,017</td>
<td>3.83%</td>
</tr>
<tr>
<td>BEVERLY HILLS, CITY OF</td>
<td>414,560,497</td>
<td>3.81%</td>
</tr>
<tr>
<td>VENTURA, CITY OF</td>
<td>370,846,534</td>
<td>3.41%</td>
</tr>
<tr>
<td>HAWTHORNE, CITY OF</td>
<td>318,219,110</td>
<td>2.93%</td>
</tr>
<tr>
<td>CAMARILLO, CITY OF</td>
<td>308,966,059</td>
<td>2.84%</td>
</tr>
<tr>
<td>WHITTIER, CITY OF</td>
<td>302,978,270</td>
<td>2.79%</td>
</tr>
<tr>
<td>ARCADIA, CITY OF</td>
<td>271,855,739</td>
<td>2.50%</td>
</tr>
<tr>
<td>ALHAMBRA, CITY OF</td>
<td>268,743,160</td>
<td>2.47%</td>
</tr>
<tr>
<td>WEST HOLLYWOOD, CITY OF</td>
<td>253,161,074</td>
<td>2.33%</td>
</tr>
<tr>
<td>CULVER CITY, CITY OF</td>
<td>252,846,657</td>
<td>2.33%</td>
</tr>
<tr>
<td>REDONDO BEACH, CITY OF</td>
<td>221,359,668</td>
<td>2.04%</td>
</tr>
<tr>
<td>PARAMOUNT, CITY OF</td>
<td>189,473,291</td>
<td>1.74%</td>
</tr>
<tr>
<td>MANHATTAN BEACH, CITY OF</td>
<td>159,270,692</td>
<td>1.47%</td>
</tr>
<tr>
<td>CALABASAS, CITY OF</td>
<td>138,354,725</td>
<td>1.27%</td>
</tr>
<tr>
<td>CLAREMONT, CITY OF</td>
<td>136,417,680</td>
<td>1.25%</td>
</tr>
<tr>
<td>MOORPARK, CITY OF</td>
<td>126,504,416</td>
<td>1.16%</td>
</tr>
<tr>
<td>MALIBU, CITY OF</td>
<td>119,814,458</td>
<td>1.10%</td>
</tr>
<tr>
<td>AGOURA HILLS, CITY OF</td>
<td>104,209,613</td>
<td>0.96%</td>
</tr>
<tr>
<td>TEMPLE CITY, CITY OF</td>
<td>102,408,739</td>
<td>0.94%</td>
</tr>
<tr>
<td>SOUTH PASADENA, CITY OF</td>
<td>90,490,160</td>
<td>0.83%</td>
</tr>
<tr>
<td>ROLLING HILLS ESTATES, CITY OF</td>
<td>49,000,604</td>
<td>0.45%</td>
</tr>
<tr>
<td>SIERRA MADRE, CITY OF</td>
<td>42,729,680</td>
<td>0.39%</td>
</tr>
<tr>
<td>HAWAIIAN GARDENS, CITY OF</td>
<td>36,704,868</td>
<td>0.34%</td>
</tr>
<tr>
<td>OJAI, CITY OF</td>
<td>28,281,495</td>
<td>0.26%</td>
</tr>
<tr>
<td>WESTLAKE VILLAGE, CITY OF</td>
<td>2,717,307</td>
<td>0.02%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>10,871,487,126</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Note: CPA served customers in Westlake Village for one month in the reporting period, beginning in June 2020.
Clean Power Alliance - Residential Customer Status Report - As of September 22, 2020

<table>
<thead>
<tr>
<th>CPA Cities &amp; Counties</th>
<th>Default Option</th>
<th>Eligible Accounts</th>
<th>Opt Up %</th>
<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGOURA HILLS</td>
<td>Lean Power</td>
<td>7,579</td>
<td>0.44%</td>
<td>0.24%</td>
<td>0.03%</td>
<td>7.53%</td>
</tr>
<tr>
<td>ALHAMBRA</td>
<td>Clean Power</td>
<td>31,388</td>
<td>0.15%</td>
<td>0.01%</td>
<td>1.37%</td>
<td>3.39%</td>
</tr>
<tr>
<td>ARCADIA</td>
<td>Lean Power</td>
<td>20,310</td>
<td>0.13%</td>
<td>0.09%</td>
<td>0.02%</td>
<td>3.39%</td>
</tr>
<tr>
<td>BEVERLY HILLS</td>
<td>Clean Power</td>
<td>15,429</td>
<td>0.23%</td>
<td>0.03%</td>
<td>1.67%</td>
<td>2.25%</td>
</tr>
<tr>
<td>CALABASAS</td>
<td>Lean Power</td>
<td>9,382</td>
<td>0.19%</td>
<td>0.15%</td>
<td>0.03%</td>
<td>3.87%</td>
</tr>
<tr>
<td>CAMARILLO</td>
<td>Lean Power</td>
<td>27,308</td>
<td>0.42%</td>
<td>0.28%</td>
<td>0.06%</td>
<td>9.12%</td>
</tr>
<tr>
<td>CARSON</td>
<td>Clean Power</td>
<td>26,153</td>
<td>0.09%</td>
<td>0.01%</td>
<td>1.22%</td>
<td>3.34%</td>
</tr>
<tr>
<td>CLAREMONT</td>
<td>Clean Power</td>
<td>12,423</td>
<td>0.60%</td>
<td>0.02%</td>
<td>2.19%</td>
<td>7.78%</td>
</tr>
<tr>
<td>CULVER CITY</td>
<td>100% Green Power</td>
<td>17,183</td>
<td>0.02%</td>
<td>1.34%</td>
<td>4.27%</td>
<td>4.39%</td>
</tr>
<tr>
<td>DOWNEY</td>
<td>Clean Power</td>
<td>34,758</td>
<td>0.07%</td>
<td>0.00%</td>
<td>1.40%</td>
<td>4.01%</td>
</tr>
<tr>
<td>HAWAIIAN GARDENS</td>
<td>Clean Power</td>
<td>3,285</td>
<td>0.03%</td>
<td>0.00%</td>
<td>1.19%</td>
<td>2.71%</td>
</tr>
<tr>
<td>HAWTHORNE</td>
<td>Lean Power</td>
<td>25,816</td>
<td>0.13%</td>
<td>0.04%</td>
<td>0.02%</td>
<td>2.07%</td>
</tr>
<tr>
<td>LOS ANGELES COUNTY</td>
<td>Clean Power</td>
<td>293,370</td>
<td>0.15%</td>
<td>0.01%</td>
<td>1.61%</td>
<td>4.07%</td>
</tr>
<tr>
<td>MALIBU</td>
<td>Clean Power</td>
<td>6,053</td>
<td>0.28%</td>
<td>0.28%</td>
<td>2.40%</td>
<td>3.85%</td>
</tr>
<tr>
<td>MANHATTAN BEACH</td>
<td>Clean Power</td>
<td>14,514</td>
<td>0.65%</td>
<td>0.01%</td>
<td>2.43%</td>
<td>3.47%</td>
</tr>
<tr>
<td>MOORPARK</td>
<td>Clean Power</td>
<td>11,838</td>
<td>0.32%</td>
<td>0.01%</td>
<td>3.16%</td>
<td>14.65%</td>
</tr>
<tr>
<td>OJAI</td>
<td>100% Green Power</td>
<td>3,239</td>
<td>0.09%</td>
<td>1.14%</td>
<td>5.37%</td>
<td>9.45%</td>
</tr>
<tr>
<td>OXNARD</td>
<td>100% Green Power</td>
<td>52,825</td>
<td>0.01%</td>
<td>0.51%</td>
<td>2.94%</td>
<td>7.04%</td>
</tr>
<tr>
<td>PARAMOUNT</td>
<td>Lean Power</td>
<td>13,324</td>
<td>0.05%</td>
<td>0.02%</td>
<td>0.02%</td>
<td>2.18%</td>
</tr>
<tr>
<td>REDONDO BEACH</td>
<td>Clean Power</td>
<td>30,577</td>
<td>0.40%</td>
<td>0.02%</td>
<td>2.05%</td>
<td>3.21%</td>
</tr>
<tr>
<td>ROLLING HILLS ESTATES</td>
<td>100% Green Power</td>
<td>3,094</td>
<td>0.03%</td>
<td>2.07%</td>
<td>7.76%</td>
<td>6.63%</td>
</tr>
<tr>
<td>SANTA MONICA</td>
<td>100% Green Power</td>
<td>49,742</td>
<td>0.02%</td>
<td>0.75%</td>
<td>3.55%</td>
<td>6.15%</td>
</tr>
<tr>
<td>SIERRA MADRE</td>
<td>Clean Power</td>
<td>4,946</td>
<td>0.75%</td>
<td>0.51%</td>
<td>3.74%</td>
<td>5.50%</td>
</tr>
<tr>
<td>SIMI VALLEY</td>
<td>Lean Power</td>
<td>43,223</td>
<td>0.17%</td>
<td>0.15%</td>
<td>0.02%</td>
<td>10.24%</td>
</tr>
<tr>
<td>SOUTH PASADENA</td>
<td>100% Green Power</td>
<td>11,118</td>
<td>0.01%</td>
<td>0.71%</td>
<td>3.76%</td>
<td>4.43%</td>
</tr>
<tr>
<td>TEMPLE CITY</td>
<td>Lean Power</td>
<td>11,971</td>
<td>0.16%</td>
<td>0.07%</td>
<td>0.01%</td>
<td>3.49%</td>
</tr>
<tr>
<td>THOUSAND OAKS</td>
<td>100% Green Power</td>
<td>47,545</td>
<td>0.04%</td>
<td>1.78%</td>
<td>7.64%</td>
<td>17.53%</td>
</tr>
<tr>
<td>VENTURA</td>
<td>100% Green Power</td>
<td>42,096</td>
<td>0.02%</td>
<td>1.12%</td>
<td>4.39%</td>
<td>10.88%</td>
</tr>
<tr>
<td>VENTURA COUNTY</td>
<td>100% Green Power</td>
<td>32,430</td>
<td>0.03%</td>
<td>1.05%</td>
<td>5.42%</td>
<td>12.76%</td>
</tr>
<tr>
<td>WEST HOLLYWOOD</td>
<td>100% Green Power</td>
<td>24,075</td>
<td>0.02%</td>
<td>0.52%</td>
<td>2.40%</td>
<td>2.77%</td>
</tr>
<tr>
<td>WESTLAKE VILLAGE</td>
<td>Lean Power</td>
<td>3,256</td>
<td>0.31%</td>
<td>0.12%</td>
<td>0.00%</td>
<td>9.83%</td>
</tr>
<tr>
<td>WHITTIER</td>
<td>Clean Power</td>
<td>29,159</td>
<td>0.17%</td>
<td>0.01%</td>
<td>1.77%</td>
<td>5.19%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>959,409</strong></td>
<td><strong>0.15%</strong></td>
<td><strong>0.33%</strong></td>
<td><strong>2.24%</strong></td>
<td><strong>6.07%</strong></td>
</tr>
</tbody>
</table>

Opt Percentage by Default Option

<table>
<thead>
<tr>
<th>Default Option</th>
<th>Eligible Accounts</th>
<th>Opt Up %</th>
<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Green Power</td>
<td>283,347</td>
<td>0.02%</td>
<td>1.00%</td>
<td>4.48%</td>
<td>9.27%</td>
</tr>
<tr>
<td>Clean Power Power</td>
<td>513,893</td>
<td>0.20%</td>
<td>0.02%</td>
<td>1.70%</td>
<td>4.26%</td>
</tr>
<tr>
<td>Lean Power</td>
<td>162,169</td>
<td>0.21%</td>
<td>0.13%</td>
<td>0.03%</td>
<td>6.23%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>959,409</strong></td>
<td><strong>0.15%</strong></td>
<td><strong>0.33%</strong></td>
<td><strong>2.24%</strong></td>
<td><strong>6.07%</strong></td>
</tr>
</tbody>
</table>
### Clean Power Alliance - Non-Residential Customer Status Report - As of September 22, 2020

<table>
<thead>
<tr>
<th>CPA Cities &amp; Counties</th>
<th>Default Option</th>
<th>Eligible Accounts</th>
<th>Opt Up %</th>
<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGOURA HILLS</td>
<td>Lean Power</td>
<td>1,573</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.25%</td>
<td>7.12%</td>
</tr>
<tr>
<td>ALHAMBRA</td>
<td>Clean Power</td>
<td>4,822</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.83%</td>
<td>7.67%</td>
</tr>
<tr>
<td>ARCADIA</td>
<td>Lean Power</td>
<td>3,583</td>
<td>0.00%</td>
<td>0.20%</td>
<td>0.00%</td>
<td>3.80%</td>
</tr>
<tr>
<td>BEVERLY HILLS</td>
<td>Clean Power</td>
<td>4,225</td>
<td>0.07%</td>
<td>0.00%</td>
<td>0.78%</td>
<td>2.82%</td>
</tr>
<tr>
<td>CALABASAS</td>
<td>Lean Power</td>
<td>1,264</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>8.70%</td>
</tr>
<tr>
<td>CAMARILLO</td>
<td>Lean Power</td>
<td>4,828</td>
<td>1.37%</td>
<td>0.21%</td>
<td>0.00%</td>
<td>9.40%</td>
</tr>
<tr>
<td>CARSON</td>
<td>Clean Power</td>
<td>4,682</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.81%</td>
<td>7.13%</td>
</tr>
<tr>
<td>CLAREMONT</td>
<td>Clean Power</td>
<td>1,594</td>
<td>0.06%</td>
<td>0.00%</td>
<td>1.07%</td>
<td>5.96%</td>
</tr>
<tr>
<td>CULVER CITY</td>
<td>100% Green Power</td>
<td>3,474</td>
<td>0.00%</td>
<td>0.72%</td>
<td>2.04%</td>
<td>5.18%</td>
</tr>
<tr>
<td>DOWNNEY</td>
<td>Clean Power</td>
<td>4,645</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.88%</td>
<td>6.09%</td>
</tr>
<tr>
<td>HAWAIIAN GARDENS</td>
<td>Clean Power</td>
<td>613</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.49%</td>
<td>1.31%</td>
</tr>
<tr>
<td>HAWTHORNE</td>
<td>Lean Power</td>
<td>3,950</td>
<td>0.00%</td>
<td>0.03%</td>
<td>0.05%</td>
<td>3.54%</td>
</tr>
<tr>
<td>LOS ANGELES COUNTY</td>
<td>Clean Power</td>
<td>29,297</td>
<td>0.03%</td>
<td>0.01%</td>
<td>1.03%</td>
<td>4.27%</td>
</tr>
<tr>
<td>MALIBU</td>
<td>Clean Power</td>
<td>1,446</td>
<td>3.87%</td>
<td>0.14%</td>
<td>0.55%</td>
<td>5.19%</td>
</tr>
<tr>
<td>MANHATTAN BEACH</td>
<td>Clean Power</td>
<td>1,932</td>
<td>5.02%</td>
<td>0.00%</td>
<td>1.14%</td>
<td>4.71%</td>
</tr>
<tr>
<td>MOORPARK</td>
<td>Clean Power</td>
<td>1,796</td>
<td>1.11%</td>
<td>0.00%</td>
<td>0.95%</td>
<td>8.46%</td>
</tr>
<tr>
<td>OJAI</td>
<td>100% Green Power</td>
<td>786</td>
<td>0.00%</td>
<td>1.78%</td>
<td>5.85%</td>
<td>8.40%</td>
</tr>
<tr>
<td>OXNARD</td>
<td>100% Green Power</td>
<td>8,028</td>
<td>0.09%</td>
<td>0.32%</td>
<td>10.45%</td>
<td>10.53%</td>
</tr>
<tr>
<td>PARAMOUNT</td>
<td>Lean Power</td>
<td>3,057</td>
<td>0.07%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>5.07%</td>
</tr>
<tr>
<td>REDONDO BEACH</td>
<td>Clean Power</td>
<td>4,774</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.98%</td>
<td>3.64%</td>
</tr>
<tr>
<td>ROLLING HILLS ESTATES</td>
<td>Lean Power</td>
<td>558</td>
<td>4.84%</td>
<td>0.18%</td>
<td>0.18%</td>
<td>7.71%</td>
</tr>
<tr>
<td>SANTA MONICA</td>
<td>100% Green Power</td>
<td>8,769</td>
<td>0.18%</td>
<td>0.75%</td>
<td>3.81%</td>
<td>7.20%</td>
</tr>
<tr>
<td>SIERRA MADRE</td>
<td>Clean Power</td>
<td>497</td>
<td>0.00%</td>
<td>5.63%</td>
<td>2.82%</td>
<td>3.42%</td>
</tr>
<tr>
<td>SIMI VALLEY</td>
<td>Lean Power</td>
<td>5,638</td>
<td>0.21%</td>
<td>0.04%</td>
<td>0.04%</td>
<td>7.40%</td>
</tr>
<tr>
<td>SOUTH PASADENA</td>
<td>Clean Power</td>
<td>1,429</td>
<td>7.35%</td>
<td>0.00%</td>
<td>1.40%</td>
<td>2.59%</td>
</tr>
<tr>
<td>TEMPLE CITY</td>
<td>Lean Power</td>
<td>1,367</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>1.46%</td>
</tr>
<tr>
<td>THOUSAND OAKS</td>
<td>100% Green Power</td>
<td>7,053</td>
<td>0.07%</td>
<td>0.21%</td>
<td>4.37%</td>
<td>16.19%</td>
</tr>
<tr>
<td>VENTURA</td>
<td>100% Green Power</td>
<td>8,049</td>
<td>0.00%</td>
<td>1.88%</td>
<td>5.75%</td>
<td>11.60%</td>
</tr>
<tr>
<td>VENTURA COUNTY</td>
<td>100% Green Power</td>
<td>7,069</td>
<td>0.08%</td>
<td>1.54%</td>
<td>4.16%</td>
<td>21.16%</td>
</tr>
<tr>
<td>WEST HOLLYWOOD</td>
<td>100% Green Power</td>
<td>3,998</td>
<td>0.00%</td>
<td>0.28%</td>
<td>2.05%</td>
<td>3.73%</td>
</tr>
<tr>
<td>WESTLAKE VILLAGE</td>
<td>Lean Power</td>
<td>1,088</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>9.74%</td>
</tr>
<tr>
<td>WHITTIER</td>
<td>Clean Power</td>
<td>3,929</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.84%</td>
<td>3.33%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>139,813</strong></td>
<td><strong>0.31%</strong></td>
<td><strong>0.34%</strong></td>
<td><strong>2.20%</strong></td>
<td><strong>7.35%</strong></td>
</tr>
</tbody>
</table>

### Opt Percentage by Default Option

<table>
<thead>
<tr>
<th>Default Option</th>
<th>Eligible Accounts</th>
<th>Opt Up %</th>
<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Green Power</td>
<td>47,226</td>
<td>0.07%</td>
<td>0.88%</td>
<td>5.16%</td>
<td>11.53%</td>
</tr>
<tr>
<td>Clean Power Power</td>
<td>65,681</td>
<td>0.44%</td>
<td>0.05%</td>
<td>0.97%</td>
<td>4.78%</td>
</tr>
<tr>
<td>Lean Power</td>
<td>26,906</td>
<td>0.40%</td>
<td>0.08%</td>
<td>0.03%</td>
<td>6.29%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>139,813</strong></td>
<td><strong>0.31%</strong></td>
<td><strong>0.34%</strong></td>
<td><strong>2.20%</strong></td>
<td><strong>7.35%</strong></td>
</tr>
</tbody>
</table>
## Clean Power Alliance

**Non-energy contracts executed under Executive Director authority**

**Rolling 12 months -- Open contracts shown in Bold**

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Purpose</th>
<th>Month</th>
<th>NTE Amount</th>
<th>Status</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crown Castle Fiber LLC</td>
<td>New Office Dedicated Internet Access Service</td>
<td>September 2020</td>
<td>$18,600</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>NextLevel Internet, Inc.</td>
<td>New Office High Speed Internet Service</td>
<td>September 2020</td>
<td>$6,936</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Windstream Services, LLC</td>
<td>New Office Telephone Service</td>
<td>September 2020</td>
<td>$14,095</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Zero Outages</td>
<td>New Office Security, Firewall, &amp; Wi-Fi Service</td>
<td>September 2020</td>
<td>$7,608</td>
<td>Active</td>
<td>Signed under expanded authority of up to $500,000 for office relocation design, equipment and construction expenses granted by the Board of Directors on March 25, 2020</td>
</tr>
<tr>
<td>Westfall Commercial Interiors</td>
<td>Furniture for New Office</td>
<td>September 2020</td>
<td>$296,558</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Abbot, Stringham and Lynch</td>
<td>2019 CEC Power Source Disclosure Audit</td>
<td>September 2020</td>
<td>$13,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Elite Edge Consulting</td>
<td>Accounting system support and implementation</td>
<td>September 2020</td>
<td>$112,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Gold Coast Transit District</td>
<td>On-Bus Advertising in Oxnard &amp; Ventura</td>
<td>August 2020</td>
<td>$600</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Baker Tilly</td>
<td>FY 2019/20 Financial Audit</td>
<td>August 2020</td>
<td>$28,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Burke, Williams, Sorenson, LLP</td>
<td>Legal Services Agreement (Brown Act, public entity governance issues and other legal services)</td>
<td>July 2020</td>
<td>$100,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Hall Energy Law PC</td>
<td>Energy Procurement Counsel</td>
<td>July 2020</td>
<td>$125,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>The Harmon Press</td>
<td>Professional Printing Services</td>
<td>July 2020</td>
<td>$40,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>InterEthnica</td>
<td>Written Translation Services, Typesetting, and Graphic Design in Spanish, Chinese, and Korean</td>
<td>July 2020</td>
<td>$10,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>West Coast Mailers</td>
<td>Bulk Mailing Services</td>
<td>July 2020</td>
<td>$20,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Sara Daleiden Consulting</td>
<td>CPA Staff Retreat and Strategic Planning Facilitation</td>
<td>July 2020</td>
<td>$10,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Snowflake Inc.</td>
<td>Engineering Support Services for Load Forecasting Analysis</td>
<td>July 2020</td>
<td>$15,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>OUTFRONTmedia</td>
<td>Advertiser Agreement for Los Angeles transit shelter ads in San Gabriel Valley and unincorporated Los Angeles County re COVID-19 bill credit campaign</td>
<td>July 2020</td>
<td>$13,500</td>
<td>Completed</td>
<td>Ads ran from 7/20-8/16</td>
</tr>
<tr>
<td>OUTFRONTmedia</td>
<td>Advertising Non-Space Agreement related to production costs</td>
<td>July 2020</td>
<td>$990</td>
<td>Completed</td>
<td>Ads ran from 7/20-8/16</td>
</tr>
<tr>
<td>Vector Medial Holding Corporation</td>
<td>Advertising &amp; Production Agreement for Santa Monica &amp; Culver City Transit Bus Ads re COVID-19 bill credit campaign</td>
<td>July 2020</td>
<td>$2,200</td>
<td>Completed</td>
<td>Ads ran from 7/13-8/9</td>
</tr>
</tbody>
</table>
# Clean Power Alliance

Non-energy contracts executed under Executive Director authority

Rolling 12 months -- Open contracts shown in Bold

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Purpose</th>
<th>Month</th>
<th>NTE Amount</th>
<th>Status</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIM/Prime Construction/Pinnacle Communication Services</td>
<td>New Office Space Equipment and Installation: Audio Visual/Security Systems/Data and Communications Cabling</td>
<td>July 2020</td>
<td>$ 361,281</td>
<td>Active</td>
<td>Signed under expanded authority of up to $500,000 for office relocation design, equipment and construction expenses granted by the Board of Directors on March 25, 2020</td>
</tr>
<tr>
<td>801 South Grand Avenue (LA)</td>
<td>Storage Space Lease</td>
<td>July 2020</td>
<td>$ 1,980</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Adobe Inc.</td>
<td>AdobeSign Secure Electronic Signature Service</td>
<td>June 2020</td>
<td>$ 3,200</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>NewGen Strategies and Solutions, LLC</td>
<td>Regulatory Support for 2021 ERRA forecast proceedings</td>
<td>May 2020</td>
<td>$ 71,240</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>EZ Texting</td>
<td>Peak Management Pricing customer text messaging alerts</td>
<td>May 2020</td>
<td>$ 1,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Place and Page</td>
<td>Graphic Design Services</td>
<td>May 2020</td>
<td>$ 30,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>KnowledgeCity</td>
<td>Employee Training</td>
<td>May 2020</td>
<td>$ 3,745</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>SCS Engineers</td>
<td>CARB GHG Audit for 2019</td>
<td>May 2020</td>
<td>$ 4,500</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Davis Wright Tremaine, LLP</td>
<td>Legal Services Agreement (Regulatory Assistance)</td>
<td>April 2020</td>
<td>$ 4,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Snowflake Inc.</td>
<td>Cloud-Native Elastic Data Warehouse Service</td>
<td>April 2020</td>
<td>$ 36,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Amazon Web Services</td>
<td>Cloud-based Database Hosting</td>
<td>April 2020</td>
<td>$ 36,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Abbot, Stringham and Lynch</td>
<td>2020 Green-E Certification - 100% Green Power Product</td>
<td>April 2020</td>
<td>$ 14,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Pinnacle Communication Services</td>
<td>Security, A/V, &amp; Cabling Infrastructure Design Services</td>
<td>April 2020</td>
<td>$ 25,540</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>AccuWeather Enterprise Solutions</td>
<td>Professional Forecasting Weather Services</td>
<td>April 2020</td>
<td>$ 6,400</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>ARUP</td>
<td>Local Programs Strategic Plan</td>
<td>March 2020</td>
<td>$ 12,500</td>
<td>Closed</td>
<td>10% NTE of original Board-approved contract amount of $125k</td>
</tr>
<tr>
<td>ICE Options Analytics LLC</td>
<td>Trading Platform Subscription Service</td>
<td>March 2020</td>
<td>$ 19,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Bold New Directions, Inc.</td>
<td>Management Training</td>
<td>March 2020</td>
<td>$ 17,995</td>
<td>Active</td>
<td>Increased to $20,328 in May 2020</td>
</tr>
<tr>
<td>Greenberg Glusker</td>
<td>Legal Services Agreement (PPA Negotiations)</td>
<td>March 2020</td>
<td>$ 59,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Energy Research Cooperative</td>
<td>Data &amp; Systems Strategic Plan</td>
<td>February 2020</td>
<td>$ 120,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>Burke, Williams, Sorenson, LLP</td>
<td>Legal Services Agreement (Brown Act, public entity governance issues and other legal services)</td>
<td>January 2020</td>
<td>$ 25,000</td>
<td>Completed</td>
<td>Replaced by new FY 2020-21 Contract</td>
</tr>
<tr>
<td>Omni Government Relations &amp; Pinnacle Advocacy, LLC</td>
<td>Lobbying Services</td>
<td>December 2019</td>
<td>$ 108,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Cameron-Cole, LLC</td>
<td>3rd Party Independent GHG Verification Services</td>
<td>November 2019</td>
<td>$ 9,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>CLG Group</td>
<td>Executive Training</td>
<td>November 2019</td>
<td>$ 15,000</td>
<td>Active</td>
<td></td>
</tr>
</tbody>
</table>
## Clean Power Alliance

Non-energy contracts executed under Executive Director authority
Rolling 12 months -- Open contracts shown in Bold

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Purpose</th>
<th>Month</th>
<th>NTE Amount</th>
<th>Status</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elite Edge Consulting</td>
<td>Accounting system evaluation, selection, and</td>
<td>November</td>
<td>$100,000</td>
<td>Completed</td>
<td>Extended in April 2020 to 9/30/2020 &amp; NTE increased from 50K to 100K; Completed 8/31/2020</td>
</tr>
<tr>
<td></td>
<td>implementation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surowski Design + Development</td>
<td>Web Development Services</td>
<td>October</td>
<td>$12,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Inventure Recruitment</td>
<td>Ongoing Recruitment Services</td>
<td>October</td>
<td>$120,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>JLL</td>
<td>Real Estate Brokerage Services</td>
<td>October</td>
<td>NA</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Siemens</td>
<td>Integrated Resource Planning for 2020 CPUC IRP Compliance</td>
<td>October</td>
<td>$62,500</td>
<td>Active</td>
<td>25% cost share with 3 other CCAs</td>
</tr>
</tbody>
</table>

End of Document