

**REGULAR MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, September 2, 2021
2:00 p.m.**

SPECIAL NOTICE: 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 COVID-19, the Board of Directors will conduct this meeting remotely.

[Click here to view a Live Stream of the Meeting on YouTube](#)

*There may be a streaming delay of up to 60 seconds. This is a view-only live stream.

To Listen to the Meeting:

<https://us06web.zoom.us/j/89079275565>

or

Dial: (253) 215-8782 Meeting ID: 890 7927 5565

PUBLIC COMMENT: Members of the public may submit their comments by one of the following options:

- Email Public Comment: 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. Written public comments will be announced at the meeting and become part of the meeting record. Public comments received in writing will not be read aloud at the meeting.
- Provide Public Comment During the Meeting: Please notify staff via email at clerk@cleanpoweralliance.org at the beginning of the meeting but no later than immediately before the agenda item is called.
 - You will be asked for your name and phone number (or other identifying information) similar to filling out a speaker card so that you can be called on when it is your turn to speak.
 - You will be called upon during the comment section for the agenda item on which you wish to speak on. When it is your turn to speak, a staff member will unmute your phone or computer audio.
 - You will be able to speak to the Board for the allotted amount of time. Please be advised that all public comments must otherwise comply with our Public Comment Policy.
 - Once you have spoken, or the allotted time has run out, you will be muted during the meeting.

If unable to connect by Zoom or phone and you wish to make a comment, you may submit written comments during the meeting via email to: clerk@cleanpoweralliance.org.

While downloading the Zoom application may provide a better meeting experience, Zoom does not need to be installed on your computer to participate. After clicking the webinar link above, click “start from your browser.”

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 August 5, 2021 Special Board of Directors Meeting](#)
2. [Approve Printing and Mailing Services Contract with Mellady Direct Marketing for a Not-to-Exceed Amount of \\$1,000,000 \(Revised\)](#)
3. [Authorize the Executive Director to Execute Task Order No. 3 with Ascend Analytics for Mid-Term Reliability RFO Support Services](#)
4. [Receive and File Annual Electricity Usage by Jurisdiction](#)
5. [Receive and File Q2 Risk Management Team Report](#)
6. [Receive and File Q2 Communications Report](#)

REGULAR AGENDA

Action Item

7. Approve Power Purchase Agreement(s) and Authorize the Executive Director to Execute the Following Agreements:
 - A. 15-Year Renewable Power Purchase Agreement with Desert Quartzite, LLC
 - B. 15-Rear Renewable Power Purchase Agreement with Radiant BMT, LLC
8. Approve Agreement with AutoGrid Inc., for Demand Response Implementation Services
9. Adopt Resolution No. 21-09-018 Authorizing and Approving Entry into A Credit Agreement and Specified Related Agreements (“Agreements”) with JPMorgan Chase Bank, and Delegating Authority to CPA Authorized Representatives to Execute and Deliver the Agreements

MANAGEMENT REPORT

BOARD MEMBER COMMENTS

REPORT FROM THE CHAIR

ADJOURN – NEXT REGULAR MEETING DECEMBER 2, 2021

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.

MINUTES

SPECIAL MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, August 5, 2021, 2:00 p.m.

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

CALL TO ORDER & ROLL CALL

Chair Diana Mahmud called the meeting to order at 2:02 p.m. and Gabriela Monzon, Clerk of the Board, conducted roll call.

Roll Call				
1	Agoura Hills	Deborah Klein Lopez	Director	Remote
2	Alhambra			Absent
3	Arcadia	Sho Tay	Director	Remote
4	Beverly Hills	Julian Gold	Director	Remote
5	Calabasas	Michael McConville	Alternate	Remote
6	Camarillo	Susan Santangelo	Director	Remote
7	Carson	Cedric L. Hicks	Alternate	Remote
8	Claremont	Corey Calaycay	Director	Remote
9	Culver City	Daniel Lee	Director	Remote
10	Downey	Sean Ashton	Director	Remote
11	Hawaiian Gardens			Absent
12	Hawthorne	Alex Monteiro	Director	Remote
13	Los Angeles County	Sheila Kuehl	Vice Chair	Remote
14	Malibu	Mikke Pierson	Director	Remote
15	Manhattan Beach	Hildy Stern	Director	Remote
16	Moorpark	Janice Parvin	Director	Remote
17	Ojai			Absent
18	Oxnard			Absent
19	Paramount	Vilma Cuellar Stallings	Director	Remote
20	Redondo Beach	Christian Horvath	Director	Remote

21	Rolling Hills Estates	Steve Zuckerman	Director	Remote
22	Santa Monica	Gleam Davis	Director	Remote
23	Sierra Madre	Robert Parkhurst	Director	Remote
24	Simi Valley	Ruth Luevanos Samantha Argabrite	Director Alternate	Remote
25	South Pasadena	Diana Mahmud	Chair	Remote
26	Temple City	Fernando Vizcarra	Director	Remote
27	Thousand Oaks	Bob Engler	Director	Remote
28	City of Ventura			Absent
29	Ventura County	Linda Parks	Vice Chair	Remote
30	West Hollywood	Lindsey Horvath	Director	Remote
31	Westlake Village	Phillippe Eskandar	Alternate	Remote
32	Whittier	Vicki Smith	Alternate	Remote

All votes are unanimous unless otherwise stated.

GENERAL PUBLIC COMMENT

Jane Johnson provided public comment.

CONSENT AGENDA

1. Approve Minutes from July 1, 2021, Board of Directors Meeting

Motion: Director Parkhurst, Sierra Madre
Second: Director Zuckerman, Rolling Hills Estates
Vote: The consent agenda was approved by a roll call vote.

REGULAR AGENDA

2. A. Authorize the Executive Director to Execute a Funding Agreement for a \$30 Million Loan from Los Angeles County with the Terms and Conditions Specified in Attachment 1, or in a Substantially Similar Form, and B. Authorize the Executive Director to Execute the Amendment to the Credit Agreement with River City Bank with the Terms and Conditions Specified in Attachment 2, or in a Substantially Similar Form

Ted Bardacke, Executive Director, explained that the economic impacts of COVID-19 continue to challenge CPA finances. The state moratorium on disconnections, while necessary, was also unprecedented. CPA's \$29 million in past due charges is a lot for a young organization to absorb and while state relief is on its way, implementation will take longer than previously thought. The risk of extreme heat or other events is acute during the summer and staff believes it prudent to have as much liquidity as possible going into the summer. Staff therefore began discussions with Los Angeles County to secure short-term financing. Mr. Bardacke thanked Vice Chair Kuehl and Gary Gero, the County's Chief Sustainability Officer

for their support in securing a \$30 million loan, approved by the Board of Supervisors. A portion of the loan will be repayable at the end of February 2022, 30 days after customers and CPA must receive funds from the state's utility bill relief program, and with the remainder repayable at the end of June 2022 at a fixed interest rate. Mr. Bardacke noted that staff also recommends an amendment to the \$37 million credit agreement with River City Bank, allowing CPA to take on this additional debt.

Director Parkhurst thanked Vice Chair Kuehl for assisting in securing the loan and asked about the process which led to the decision to borrow from L.A County. Director Hicks inquired as to the Finance Committee's review of the staff recommendation and the urgency of the loan. Mr. Bardacke clarified that the county loan was the most expeditious option that would provide the additional liquidity cushion that staff believed was prudent to carry into the summer. Due to timing constraints, the Finance Committee was unable to provide input on the loan but has previously expressed support for increasing CPA's lines of credit and liquidity. Director Gold added that the Finance Committee supported an increase in CPA's line of credit and a bigger financial cushion can protect CPA in the short term.

Director Engler asked about accrued arrears and alternate options if negative economic impacts from COVID-19 continue. Director Argabrite asked about potential impacts should the item fail to get CPA Board-approval. Mr. Bardacke explained that CPA has several multiples of arrears on top of what it normally carries and that the loan has two safeguards; the \$10 million that should be paid back in February 2022 reflects approximately one-third to one-half of the amount of money expected to be paid back from the state bill relief funding that CPA will receive by January 31, 2022. The second payment is due at the end of the fiscal year when CPA has seen a full year impact of new rates as well as from payment plans for customers and the discontinuation of moratoriums. Staff continues conversations to increase CPA's private sector line of credit. Mr. Bardacke noted that not having larger liquidity can put an unacceptable strain on CPA's finances should extreme heat events occur.

Vice Chair Kuehl emphasized that the unanimous LA County Board of Supervisors approval of the loan indicated a great deal of confidence in CPA, including from the fact that CPA paid back its original start-up loan from the County. Vice Chair Parks agreed and thanked the LA County Board of Supervisors for their swift action to support CPA. Director Horvath, West Hollywood, noted that a larger liquidity allows CPA to focus on delivering clean energy to its customers.

Motion: Director Gold, Beverly Hills
Second: Vice Chair Kuehl, Los Angeles County
Vote: Item 2 was approved by a roll call vote.

3. Legislative and Regulatory Updates on Energy and Procurement

Gina Goodhill, Policy Director, and CC Song, Director of Regulatory Affairs, presented this item. Ms. Goodhill reviewed the status of SB 612, which will not move forward until at least January 2022. The bill was set to be heard in the

Assembly Utilities and Energy Committee, and despite diverse stakeholder support and a strong showing at the Senate, the Committee Chair pulled the bill. The author was later asked to take an additional amendment which would have amended the bill to mirror the proposal that the California Public Utilities Commission (CPUC) already adopted; it would have made the Resource Adequacy (RA) allocations to Community Choice Aggregations (CCAs) voluntary and based off of excess supply rather than a proportional share of what CCA customers already pay for through the Power Charge Indifference Adjustment (PCIA). Ms. Song added that the legislative session focused on four major themes: climate change; reliability; resiliency; and electrification. Ms. Goodhill reviewed legislative actions on climate change, including a focus on studies, planning, and analysis. Reliability has been the most active in the legislature, with the Governor's Office lifting permitting requirements to make it easier to get more resources on the grid. Conversely, there has not been as much legislative action on resiliency; bills which *are* moving forward, relate to ensuring facilities are able to maintain power during extreme weather events. In electrification, the legislature has placed emphasis on vehicle, rather than building, electrification; several bills provide new guidance, rules, and permitting for EV chargers. The state budget also focuses on vehicle electrification as well, including electrifying medium and heavy-duty vehicles and buses, which could provide funding to member agencies' transportation infrastructure.

Ms. Song discussed legislative themes in the context of regulatory activity. The Integrated Resource Planning (IRP) and Resource Adequacy (RA) proceedings at the CPUC are addressing climate change and reliability, with a particular focus in ensuring decarbonization goals while maintaining grid reliability in light of some natural gas resources facing retirement. The IRP proceeding directed Load Serving Entities (LSEs) to procure further megawatts of resources and CPA is required to procure a total of 679 MW and will launch a reliability RFO in 2021. With regard to the RA proceeding, a pending new RA framework will ensure LSEs have sufficient resources to meet their load at all hours of the day. The CPUC recently issues a proposed decision that approved various wildfire prevention spending measures; and a January 2020 decision required IOUs to develop microgrid tariffs to incentivize commercialization and development of microgrids. The CPUC also issued a decision that updated Public Safety Power Shutoff guidelines and directed IOUs to make deenergization information more accessible. Recently, the CPUC required CCAs to coordinate with IOUs on their Vehicle-to-Grid integration strategies and CPA is actively advocating to increase access to funding for CCA transportation electrification programs.

Ms. Goodhill noted that the state budget has been a major driver of policy in the 2021-22 legislative session; reliability is the top energy priority at both the legislature and the CPUC. Western Community Energy's bankruptcy grew interest from legislators in CCA finances. As the State moves closer to its goals, there is increasing interest from legislators and the Administration in spurring new clean energy technologies; but these activities will be dependent on the CPUCs new RA framework which is yet to be determined.

Director Horvath, West Hollywood, noted that the end of the legislative sessions presents a good opportunity for Council Members to reach out to their respective state legislatures to impress upon them the importance of acting on the

aforementioned bills, including SB 612; CPA staff can help Board members prepare for outreach. Director Zuckerman asked for a brief update on Net Energy Metering (NEM); Ms. Song noted that the NEM proceeding is ongoing at the CPUC and staff will provide an update when more information is solidified. In response to Chair Mahmud's questions relating to the CPUC's PCIA proceeding and procurement requirements for LSE's to replace resources from Diablo Canyon's retirement, Ms. Song explained that the CPUC has not issued a decision on rehearing of the PCIA proceeding; the rehearing decision will inform CalCCA and CPA's appeal strategy; appellate Courts regularly side with the regulatory agency. The appeal process is a resource intensive process, thus CalCCA will also need to assess whether they have the resources to pursue an appeal should the CPUC decline a rehearing. Lastly, Ms. Song noted that Diablo Canyon is a resource on the wider CAISO grid providing system reliability and all LSEs should step up to fill the void; CPA was already planning to conduct more procurement to meet its own demand; this requirement will allow CPA the opportunity to contribute to the state's effort to maintain a reliable electricity grid. Responding to Vice Chair Parks comments regarding the Morro Bay Power Plant, Natasha Keefer, Vice President, Power Supply, explained that repurposing of the power plant may yield five to six gigawatts; the potential use of offshore wind is being evaluated but the 10-year permitting process means the resources from the project will not come onto the grid prior to 2030. Chair Mahmud noted that City of South Pasadena has required new developments to provide adequate EV charging capability, but high costs make it challenging; additional funding and subsidies will be very beneficial to local municipalities.

MANAGEMENT REPORT

Mr. Bardacke reported that the first batch of funding from Calpine's commitment to donate 2% of its awarded contract value, has become available and marketing materials and an application will be shared with Board members and agency staff.

Mr. Bardacke also announced that the application period is also open for Ventura County's electric vehicle charging station infrastructure rebate program, with enhanced rebates for multi-family units.

BOARD MEMBER COMMENTS

Vice Chair Parks thanked Mr. Bardacke for leading CPA to securing funding for the electric vehicle charging program.

REPORT FROM THE CHAIR

Chair Mahmud congratulated Director Horvath, Redondo Beach, for his nomination by the General Counsels of Government (COG) to serve as a representative on the Los Angeles County Blue Ribbon Committee on Homelessness and expressed gratitude for Board members who serve in leadership roles throughout L.A. and Ventura Counties. Chair Mahmud also emphasized that unique circumstances contributed to the bankruptcy of Western Community Energy, with those circumstances being very different from those present at CPA.

ADJOURN

Chair Mahmud adjourned the meeting at 3:18 p.m.



REVISED: Attachment 1

Staff Report – Agenda Item 2

To: Board of Directors

From: Monique Edwards-Greer, Vice President, Technology, Data, and People

Approved By: Ted Bardacke, Executive Director

Subject: Approve Printing and Mailing Services Contract with Mellady Direct Marketing

Date: September 2, 2021

RECOMMENDATION

Approve contract for printing and mailing services with Mellady Direct Marketing (“Print and Mail Agreement with Mellady Direct Marketing”) with a NTE of \$1,000,000.

BACKGROUND

Calpine Energy Solutions, LLC has handled print and mail coordination for required mailers on CPA’s behalf on a pass-through basis. The Amended Billing and Data Manager Agreement with Calpine Energy Solutions, approved by the Board on April 1, 2021, required CPA to establish direct relationships with its own print and mailing vendor(s) by September 1, 2021. CPA sends over 800,000 pieces of printed mail annually, and many more during customer enrollment periods.

DISCUSSION

In June 2021, staff undertook a request for proposal (RFP) process to identify vendors to provide print and mailing services. Six vendors replied to the solicitation and following interviews, staff is recommending that Mellady Direct Marketing be selected. Headquartered in Los Angeles County, Mellady Direct Marketing has three decades of experience with municipal, business, and non-profit noticing, including Los Angeles Metro, Los Angeles County Department of Consumer and Business Affairs, the City of

Santa Clarita, and Waste Management. Mellady Direct Marketing was 13% less costly than the average total cost of their competitors in the RFP process.

The recommended action approves the scope and authorizes the contract with Mellady Direct Marketing effective September 3, 2021, with an option to renew the Agreement for successive one (1) year terms for a maximum of two (2) years to perform the following print and mail services for CPA. The primary mailings to be included in this contract include:

Move-in Mailers:

CPA sends two mailed notices to every new customer in our service area. CPA has a different move-in notice for each of the three levels of service. The weekly amount is approximately 5,000 notices.

Compliance Mailers:

Twice a year, CPA sends compliance notices to all customers about our energy content and rates (the Joint Rate Comparison Mailer and the Power Content Label). CPA intends to email these notices to as many customers as possible this year and then send mailed notices to the remainder, approximately 500,000 notices.

Other Notices:

CPA expects to send approximately 30,000 notices to inform customers of a default change and approximately 50,000 notices to inform Net Energy Metering customers about the annual true up.

Enrollment Notices:

In the future, CPA may enroll new cities or counties. During periods of enrollment, all eligible electricity customers receive four notices. The number of eligible customers depends on the city or county. Ineligible program letters may also need to be sent; quantities will vary.

Other Outreach and Program Marketing:

CPA also expects to conduct other forms of customer outreach and marketing that require the assistance of a printing and mailing service provider, such as CPA's Annual Impact Report and marketing collateral for programs.

FISCAL IMPACT

Funds for printing and mailing services are included in the Customer Notices and Communications line items of the Board approved FY 2021/2022 Budget.

ATTACHMENT

1. [Print and Mail Agreement with Mellady Direct Marketing](#) (Revised - Exhibit C)

Clean Power Alliance of Southern California

This Professional Services Agreement (this “Agreement”), dated and effective as of September 3, 2021 (the “Effective Date”), is made by and between:

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (“CPA”), and

MELLADY DIRECT MARKETING (“Contractor”).

CPA and Contractor are sometimes collectively referred to herein as the “Parties” and each individually as a “Party.” In consideration of the terms of this Agreement, and for other good and valuable consideration, the Parties make the following acknowledgments and agreements:

RECITALS

WHEREAS, CPA may contract with a provider to provide printing and mailing services for CPA.;

WHEREAS, CPA conducted a Request for Proposal (“RFP”) and CPA selected Contractor because Contractor has the expertise and experience to provide the specified services to CPA and offered CPA the Best Value;

WHEREAS, Contractor desires to provide these specified services to CPA;

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions upon which Contractor shall provide services to the CPA;

NOW, THEREFORE, it is agreed based on the consideration set forth below by the Parties to this Agreement as follows:

AGREEMENT

1. Definitions

- a. The definition of “Confidential Information” is set forth in paragraph 10.b. of this Agreement.
- b. “CPA Data” shall mean all data gathered or created by Contractor in the performance of the Services pursuant to this Agreement, including any customer or customer-related data.
- c. “CPA Information” shall mean all confidential, proprietary, or sensitive information provided by CPA to Contractor in connection with this Agreement.
- d. “CPA Materials” shall mean all finished or unfinished content, writing and design of materials but not limited to messaging, design, personalization, or other materials, reports, plans, studies, documents and other writings prepared by Contractor, its officers, employees and agents for CPA for the performance of, the purpose of, or in the course of implementing this Agreement.

- e. “CPA Product” includes collectively CPA Data, CPA Information, and CPA Materials.
- f. “Services” shall mean the scope of work Contractor provides to CPA as specified in Exhibit A.

2. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A – Scope of Work
Exhibit B – RESERVED
Exhibit C – Compensation
Exhibit D – Sample Order Form

Should a conflict arise between language in the body of this Agreement and any exhibit or attachment to this Agreement, the language in the body of this Agreement controls, followed by Exhibits A, B, C, and D in that order.

3. Services to be Performed by Contractor.

In consideration of the payments set forth in this Agreement and in Exhibit C, Contractor shall perform services for CPA in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibits A, B and D, including each Order Form submitted by CPA to Contractor (“Services”). Contractor further agrees to perform the Services in accordance with (i) all applicable industry practices (ii) instructions from CPA, (iii) all applicable laws (iv) the terms of this Agreement and, (v) CPA’s policies and protocols a link to the policies are available here: <https://cleanpoweralliance.org/key-documents/> including but not limited to policies and protocols relating to customer data and privacy, as those policies and protocols may be amended by CPA from time to time. Contractor shall execute any required acknowledgements of such policies and protocols as those policies and protocols are amended from time to time.

For each order, CPA will submit to Contractor a completed Order Form using the sample in Exhibit D. CPA will also specify the printing and/or mailing deadlines. Contractor shall sign and date the Order Form and return it to CPA. By signing the Order Form, Contractor acknowledges receipt of Order Form and agrees to comply with the specifications and requirements contained therein.

4. Compensation

CPA agrees to compensate Contractor as specified in Exhibit C:

- a. In consideration of the Services provided by Contractor in accordance with all terms, conditions and specifications set forth in this Agreement and Exhibits A and D, CPA shall make payment to Contractor based on the total amount specified on each Order Form provided that any individual fees shall not exceed the fees specified in Exhibit C.
- b. Unless otherwise indicated in Exhibit C, Contractor shall invoice CPA monthly to accountspayable@cleanpoweralliance.org for all compensation related to Services performed during the previous month provided that Contractor shall

not be entitled to any amount that was not approved by CPA. Payments shall be due within fifteen (15) calendar days after the date the invoice is submitted to CPA at the specified email address. All payments must be made in U.S. dollars.

5. Term

Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be one (1) year from the Effective Date (“Initial Term”). At the end of the Initial Term, the Parties may renew this Agreement for successive one (1) year terms for a maximum of two years (each, a “Renewal Term”), unless either Party provides ninety (90) days prior written notice of its intent not to renew the term of the Agreement (“Renewal Notice”).

6. Termination

- a. Termination for Convenience. CPA may terminate the Agreement in accordance with this paragraph in whole, or from time to time in part, whenever CPA determines that termination is in CPA’s best interests. A termination for convenience, in part or in whole, shall take effect by CPA delivering to Contractor, at least thirty (30) calendar days prior to the effective date of the termination or prior to a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.

If the termination for convenience is partial, Contractor may submit to CPA a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. CPA may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of CPA and Contractor to agree upon amount or amounts to be paid to Contractor for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit CPA’s rights and remedies at law.

- b. Termination for Default. If Contractor fails to provide in any manner the Services required under this Agreement, otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation or law which applies to its performance herein and such default continues uncured for thirty (30) calendar days after written notice is given to Contractor, CPA may terminate this Agreement by giving five (5) business days’ written notice. If Contractor requires more than thirty (30) calendar days to cure, then CPA may, at its sole discretion, authorize additional time as may reasonably be required to effect such cure provided that Contractor diligently and continuously pursues such cure.
- c. Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing Services in its entirety or if a termination to a part of the Agreement, cease providing the Services that have been terminated; (ii) any and all payment obligations of CPA under this Agreement will become due immediately except any equitable adjustment pursuant to this paragraph 6(a); (iii) promptly transfer title and

deliver to CPA all CPA Product or any work in progress pursuant to this Agreement; and (iv) each Party will promptly either return or destroy (as directed by the other Party) all Confidential Information of the other Party in its possession as well as any other materials or information of the other Party in its possession.

Upon such expiration or termination, and upon request of CPA, Contractor shall reasonably cooperate with CPA to ensure a prompt and efficient transfer of all data, documents and other materials to CPA in a manner such as to minimize the impact of expiration or termination on CPA's customers.

7. Contract Materials

CPA owns all right, title and interest in and to all CPA Materials and CPA Data. Upon the expiration of this Agreement, or in the event of termination, CPA Materials and all CPA Information, in whatever form and in any state of completion, shall remain the property of CPA and shall be promptly returned to CPA. Upon termination, Contractor may make and retain a copy of such Contract Materials if required by law or pursuant to the Contractor's reasonable document retention or destruction policies.

8. Payments of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required for it to provide the Services to be performed under this Agreement at Contractor's own expense prior to commencement of the Services.

9. No Recourse against Constituent Members

CPA 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 the Joint Powers Agreement and is a public entity separate from its constitute members. CPA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CPA's constituent members in connection with this Agreement.

10. Confidential Information.

- a. Duty to Maintain Confidentiality. Contractor agrees that Contractor will hold all Confidential Information in confidence, and will not divulge, disclose, or directly or indirectly use, copy, digest, or summarize, any Confidential Information unless necessary to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable in which case, any disclosure shall be subject to this paragraph 10.c. and d., below
- b. Definition of "Confidential Information". The following constitutes "Confidential Information," whether oral or written: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information, in whatever form, that CPA shares with Contractor in the course and scope of

this Agreement, or (c) information that either Contractor stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other.

Confidential Information shall not include: (1) information that is generally available to the public or in the public domain at the time of disclosure; (2) information that becomes publicly known other than through any breach of this Agreement by Contractor or its Representatives; (3) information which is subsequently lawfully and in good faith obtained by Contractor or its Representatives from a third party, as shown by documentation sufficient to establish the third party as the source of the Confidential Information; provided that the disclosure of such information by such third party is not known by Contractor or its Representatives to be in breach of a confidentiality agreement or other similar obligation of confidentiality; (4) information that Contractor or its Representatives develop independently without use of or reference to Confidential Information provided by Contractor; or (5) information that is approved for release in writing by Contractor.

- c. California Public Records Act. The Parties acknowledge and agree that the Agreement including but not limited to any communication or information exchanged between the Parties, any deliverable, or work product 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.
- d. Third Party Request for Confidential Information. Upon request or demand of any third person or entity not a Party hereto pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), CPA will as soon as practical notify Contractor in writing via email that such request has been made. CPA will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release to the third party of the Confidential Information designated by Contractor. If Contractor takes no such action after receiving the foregoing notice from CPA, CPA 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 Contractor does take or attempt to take such action, Contractor agrees to indemnify and hold harmless CPA, its officers, directors, employees and agents (“CPA Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of CPA Indemnified Parties for Contractor’s attempt to prevent disclosure or CPA’s refusal to disclose any Confidential Information.

11. Insurance

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to CPA within 10 business days after the Agreement is fully executed. The general liability policy

shall be endorsed naming Clean Power Alliance of Southern California and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to CPA prior to commencement of work and maintained throughout the Term and any Renewal Term. Each certificate shall provide for thirty (30) days advance written notice to CPA of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph (d) below which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligation under paragraph 12 of this Agreement to indemnify, defend, and hold CPA harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. CPA agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the Agreement. In addition to any other available remedies, CPA may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

a. General Liability

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million (\$1,000,000.00) with a two million dollar (\$2,000,000.00) aggregate limit. CPA shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page.

b. Auto Liability

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

c. Workers' Compensation

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to CPA prior to commencement of work.

d. Printer Liability Insurance

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-

renewed, and not replaced with another claims made policy form with a “retroactive date” prior to the Agreement effective date, the Contractor must purchase “extended reporting” coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000.00 per incident. If the deductible or self-insured retention amount exceeds \$100,000.00, CPA may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund or Contractor’s general insurance reserves are adequate to provide the necessary coverage and CPA may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

12. Indemnification

Contractor agrees to indemnify, defend, and hold harmless CPA, its employees, officers, and agents, from and against, and shall assume full responsibility for payment of all wages, state or federal payroll, social security, income or self-employment taxes, with respect to Contractor’s performance of this Agreement. Contractor further agrees to indemnify, and hold harmless CPA from and against any and all third- party claims, liabilities, penalties, forfeitures, suits, costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney’s fees), which CPA may hereafter incur, become responsible for, or pay out, as a result of death or bodily injuries to any person, destruction or physical damage to tangible property, or any violation of governmental laws, regulations or orders, to the extent caused by Contractor’s negligent acts, errors or omissions, or the negligent acts, errors or omissions of Contractor’s employees, agents, or subcontractors while in the performance of the terms and conditions of the Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of CPA, elected and appointed officers, employees, agents and volunteers.

13. Independent Contractor

- a. Contractor acknowledges that Contractor, its officers, employees, or agents will not be deemed to be an employee of CPA for any purpose whatsoever, including, but not limited to: (i) eligibility for inclusion in any retirement or pension plan that may be provided to employees of Contractor; (ii) sick pay; (iii) paid non-working holidays; (iv) paid vacations or personal leave days; (v) participation in any plan or program offering life, accident, or health insurance for employees of Contractor; (vi) participation in any medical reimbursement plan; or (vii) any other fringe benefit plan that may be provided for employees of Contractor.
- b. Contractor declares that Contractor will comply with all federal, state, and local laws regarding registrations, authorizations, reports, business permits, and licenses that may be required to carry out the work to be performed under this Agreement. Contractor agrees to provide CPA with copies of any registrations

or filings made in connection with the work to be performed under this Agreement.

14. Compliance with Applicable Laws

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions affecting Services covered by this Agreement.

15. Nondiscriminatory Employment

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age, protected veteran status, or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

16. Work Product.

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of CPA upon payment to Contractor for such work. CPA shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at CPA's expense, provide such reports, plans, studies, documents and writings to CPA or any party CPA may designate, upon written request. Contractor may keep file reference copies of all documents prepared for CPA.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when **both**: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of CPA, to:

Name/Title: Theodore Bardacke, Executive Director
Address: 801 S. Grand Ave., Suite 400
Los Angeles, CA 90017
Telephone: (213) 269-5890
Email: tbardacke@cleanpoweralliance.org

With a copy, which shall not serve as notice as required or specified herein, to:

Name/Title: CONTRACTING
Address: 801 S. Grand Ave., Suite 400
Los Angeles, CA 90017
Telephone: (213) 269-5890

Email: contracting@cleanpoweralliance.org

In the case of Contractor, to:

Name/Title: Jill Mellady, President

Address: 29035 The Old Road
Valencia, CA 91355

Telephone: 661.298.9190

Email: jill@melladydirect.com

18. Assignment

Neither this Agreement nor any of the Parties' rights or obligations hereunder may be transferred or assigned without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

19. Subcontracting

Contractor may not subcontract Services to be performed under this Agreement without the prior written consent of CPA. If the CPA's written consent to a subcontract is not obtained, Contractor acknowledges and agrees that CPA will not be responsible for any fees or expenses claimed by such subcontractor.

20. Retention of Records and Audit Provision

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. CPA shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Agreement period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at CPA's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from CPA. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by CPA based on undisputed audit findings. Contractor may also be subject to audit requirements specified in Government Code Section 8546.7.

21. Conflict of Interest

- a. No CPA employee whose position with the CPA enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the CPA's approval, or ongoing evaluation, of such work, or in

any way attempt to unlawfully influence the CPA's approval or ongoing evaluation of such work.

- b. The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to CPA. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this paragraph shall be a material breach of this Agreement.

22. Publicity

Contractor shall not issue a press release or any public statement regarding the Agreement, Services contemplated by this Agreement, or any other related transaction unless CPA has agreed in writing the contents of any such public statement.

23. Governing Law, Jurisdiction, and Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

24. Amendments

None of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by the Parties.

25. Severability

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provisions, will continue in full force and effect and will in no way be impaired or invalidated.

26. Complete Agreement

This Agreement constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

27. Counterparts

This Agreement may be executed in one or more counterparts, including facsimile(s), emails, or electronic signatures, each of which shall be deemed an original and all of which together will constitute one and the same instrument.

28. Electronic Signature

This Agreement may be executed by electronic signature(s) and transmitted either by facsimile or in a portable document format (“pdf”) version by email and such electronic signature(s) shall be deemed as original for purposes of this Agreement and shall have the same force and effect as a manually executed original.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

Mellady Direct Marketing

Clean Power Alliance of Southern California

By: Jill Mellady

Title: President

By: Theodore Bardacke

Title: Executive Director

Exhibit A – Scope of Services

PROJECT TASKS AND DELIVERABLES: Contractor shall provide, at the direction of CPA and as specified in a completed Order Form (a sample Order Form is provided in Exhibit D), print and mailings services that include, but are not limited to, the following:

Task #1: Printing Services

Under the direction of CPA staff, Contractor shall provide printing services, including, but not limited to, the following:

- a. Printing up to 200,000 pieces per weekly batch.
- b. Printing in formats including letters, postcards, bifold, or others, as directed by CPA.
- c. Sourcing and printing on a percentage recycled paper, as directed by CPA.

Deliverables for Task #1 and timeframe:

- a. Printing must be completed within the time specified in the Order Form (**Exhibit D**).
- b. Contractor shall submit a proof of each notice to CPA within 3 business days, if not sooner, for CPA approval.

Task #2: Mailing Services

Under the direction of CPA staff, Contractor shall provide mailing services, including, but not limited to, the following:

- a. Reviewing and providing a report of National Change of Address.
- b. Mailing notices, either via bulk and standard mailing, as directed by CPA or as revised from time to time.
- c. Agreeing to comply with confidentiality obligations, including those specified in CPA's policies and in paragraph 10, Confidential Information, of this Agreement for handling sensitive customer data, sign acknowledgments of CPA's privacy and confidentiality policies, renew such acknowledgments, if amended from time to time.
- d. Must be able to either use CPA's mailing permit for Business Mail Entry Unit 7001 S Central Ave RM 210, Los Angeles CA 90052-9614 or use Proposer's mailing permit that lists an area in CPA's service territory on the indicia. CPA does not allow the use of an indicia without a city or county listed or an indicia that lists a city or county outside of CPA's service territory.

Deliverables for Task #2 and timeframe:

- a. Report of National Change of Address must be provided upon request.
- b. Confirmation that the notices have been mailed must be sent to CPA within 1 business day of the mailing.
- c. Acknowledgments must be executed at the time of contract execution.

- d. Mailing all move-in mailers within one week of receipt of the weekly mailing lists provided by CPA or its designee.

Task #3: Tracking and Reporting of Progress and Costs

Under the direction of CPA staff, Contractor shall provide tracking and reporting of progress and costs, including, but not limited to, the following:

- a. Tracking and reporting on progress of projects from initial proof through delivery to post office.
- b. Tracking and reporting on printing costs and postage monthly with itemized breakdown.

Deliverables for Task #3 and timeframe:

- a. Report of progress of projects must be provided within 1 business day of request.
- b. Report on printing costs and postage must be provided on a monthly basis.

Task #4: Ad Hoc Printing and Mailing of Program Collateral

Under the direction of CPA staff, Contractor shall provide additional ad hoc printing and mailing of program collateral, including, but not limited to, the following:

- a. Printing and mailing of other notices, including but not limited to CPA program collateral.

Deliverables for Task #4 and timeframe:

- a. Report of progress of projects must be provided within 1 business day of request.
- b. Contractor will be expected to submit a proof of each notice to CPA within 3 business days, if not sooner.

The individual projects will be authorized through a separate order form prepared by CPA, based on its discretion, prior to the start of work (see **Exhibit D**). The order form will include the deadline for which such services must be completed and the compensation for such services.

REVISED

Exhibit C – Compensation

Mellady Pricing Form

Project	Format	Paper	Qty	Print Cost	Mail Cost
1	6 x 10.5 Postcard, 4/4, printed addresses, Print 30,000 and mail approx 5,000/wk to new move-in customers	30% Recycled 100lb Silk Cvr	30,000	\$1,925	\$2,325 (\$387.50 for each mailing of 5,000)
		30% Recycled 130lb Silk Cvr		\$2,405	
		10% Recycled 100lb Silk Cvr		\$1,693	
		10% Recycled 130lb Silk Cvr		\$2,185	
		100% Recycled 100 or 130lb Silk Cvr		n/a	n/a
2	8.5 x 11 Letter, 4/0, #10 Envelope with printed addresses	30% Recycled 24-60lb	50,000	\$6,036	\$3,995
		10% Recycled 24-60lb		\$5,613	
		100% Recycled 24-60lb		\$7,154	
3	6 x 10.5 Postcard, 4/4, Print Addresses, Print 500,000 within one month	30% Recycled 100lb Silk	500,000	\$29,485	\$10,405
		30% Recycled 130lb Silk		\$36,943	
		10% Recycled 100lb Silk		\$25,881	
		10% Recycled 130lb Silk		\$32,070	
		100% Recycled 100 or 130lb		n/a	n/a
4	6 x 10.5 Postcard, 4/4, Print Addresses	30% Recycled 100lb Silk	60,000	\$3,711	\$2,045
		30% Recycled 130lb Silk		\$4,392	
		10% Recycled 100lb Silk		\$3,261	
		10% Recycled 130lb Silk		\$4,033	
		100% Recycled 100 or 130lb		n/a	n/a
5	NCOA		1		\$195

Mellady Unit Price List

Product/Service	Description	Quantity (+/-10%)	Price Per Unit
Printing 6 x 10.5 Postcard 4/4, printed addresses	30% Recycled 100lb Silk Cvr	30,000	\$.064
		60,000	\$.0618
	30% Recycled 130lb Silk Cvr	30,000	\$.080
		60,000	\$.0732
	10% Recycled 100lb Silk Cvr	30,000	\$.056
		60,000	\$.0544
10% Recycled 130lb Silk Cvr	30,000	\$.0728	
	60,000	\$.0672	
Mailing	6 x 10.5 Postcard 4/4, printed addresses	30,000	\$.078
		60,000	\$.061
Printing 8.5 x 11 Letter, 4/0, #10 Envelope with printed addresses	30% Recycled 24-60lb	50,000	\$.121
		100,000	\$.114
	10% Recycled 24-60lb	50,000	\$.112
		100,000	\$.1064
	100% Recycled 24-60lb	50,000	\$.143
		100,000	\$.1363
Mailing	8.5 x 11 Letter, 4/0, #10 Envelope with printed addresses	50,000	\$.080
		100,000	\$.0745
Printing 6 x 10.5 Postcard, 4/4, Print Addresses	30% Recycled 100lb Silk Cvr	500,000	\$.059
		1,000,000	\$.0565
	30% Recycled 130lb Silk Cvr	500,000	\$.0739
		1,000,000	\$.0713
	10% Recycled 100lb Silk Cvr	500,000	\$.0517
		1,000,000	\$.0495
10% Recycled 130lb Silk Cvr	500,000	\$.0641	
	1,000,000	\$.0617	
Mailing	6 x 10.5 Postcard, 4/4, Print Addresses	500,000	\$.0208
		1,000,000	\$.0184
Printing 6 x 10.5 Postcard, 4/4	30% Recycled 100lb Silk Cvr	60,000	\$.0618
		120,000	\$.0594
	30% Recycled 130lb Silk Cvr	60,000	\$.0732
		120,000	\$.07076
	10% Recycled 100lb Silk Cvr	60,000	\$.0544
		120,000	\$.052
10% Recycled 130lb Silk Cvr	60,000	\$.0672	
	120,000	\$.0647	
Mailing	6 x 10.5 Postcard, 4/4	60,000	\$.034
		120,000	\$.0305

The Parties acknowledge that the cost of paper may fluctuate due to unforeseen changes in the supply chain. Contractor shall notify CPA of any increase to the cost of paper exceeding 5%, and the increase shall be reviewed and approved in advance by CPA before any Order Form is approved. Any increase to the cost of paper shall be at-cost only, with no markup. In no event shall the increase to the cost of paper exceed 50% of the cost of the paper as of the Effective Date.

The Total Maximum Amount that CPA shall pay Contractor for all Services to be provided under this Professional Services Agreement shall not exceed One Million Dollars (\$1,000,000) ("Not-to-Exceed" or "NTE").

Contractor shall satisfactorily perform and complete, in the judgement of CPA, all required Services in accordance with Exhibit A and each Order Form submitted to Contractor notwithstanding the fact that total payment from CPA shall not exceed the NTE.

Exhibit D – Order Form



Clean Power Alliance
801 S. Grand Ave., Suite 400
Los Angeles, CA 90017

Order form

Date Ordered:
Printing Deadline:
Mailing Deadline:

Item #	Format	Paper	Quantity	Printing Cost	Mailing Cost
Total					

CPA

By signing below, Contractor acknowledges receipt of the Order Form and agrees to provide the Services as specified in this Order Form.

Name: _____

Name: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

Staff Report – Agenda Item 3

To: Board of Directors

From: Natasha Keefer, Vice President, Power Supply

Approved by: Ted Bardacke, Executive Director

Subject: Task Order with Ascend Analytics for Mid-Term Reliability RFO Support Services

Date: September 2, 2021

RECOMMENDATION

Authorize the Executive Director to execute Task Order No. 3 with Ascend Analytics for Mid-Term Reliability RFO support services for a not-to-exceed amount of \$152,500.

BACKGROUND

CPA will be launching a solicitation for long-term renewable energy and energy storage contracts (“2021 Mid-Term Reliability RFO”) in September 2021 to comply with the California Public Utilities Commission (CPUC) recent procurement order for all load-serving entities to procure new, reliability capacity, including long-duration storage and renewable energy than is not weather-dependent.¹ The solicitation process is estimated to be completed over a nine-month timeframe. Based on the responses received from previous RFOs and the project eligibility requirements from the CPUC order, CPA is anticipating a robust response to the 2021 Mid-Term Reliability RFO from a diverse set of projects proposing highly complex offer structures.

In support of CPA’s 2021 Mid-Term Reliability RFO, staff issued a Task Order Solicitation under its Request for Qualifications (“RFQ”) process for Mid-Term Reliability RFO Support Services. The purpose of the Task Order Solicitation was to acquire consulting

¹ On June 24, 2021, the CPUC issued its Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026), [D.21-06-035](#), which orders load serving entities, including CPA, to procure 11,500 MW of new capacity statewide to replace the capacity retiring from the Diablo Canyon Power Plant as well as several once-through-cooling (OTC) thermal power plants.

services for up to four tasks: (1) support RFO solicitation design and offer selection criteria, (2) RFO administration, including a dedicated website and offer intake and validation, (3) assistance with valuing long-term energy proposals submitted in response to the RFO, and (4) ongoing valuation support.

Selection Process

The Task Order Solicitation was sent to 42 potential bidders from CPA's pre-qualified provider list. One vendor, Ascend Analytics, responded with a proposal.

In reviewing the proposal, CPA considered cost and experience of the vendor on similar tasks and selected Ascend Analytics. Ascend Analytics is a specialized energy consulting firm with broad experience in the valuation of energy resources, including energy storage. Ascend Analytics' proposal includes a customized intake process for project submittal and a robust analytics engine for project evaluation. Ascend Analytics previously provided long-term RFO support services to CPA in the 2019 Clean Energy RFO and 2020 Clean Energy RFO.

FISCAL IMPACT

At a fixed fee of \$152,500 for Tasks 1-4, the Ascend proposal is within CPA's budgeted cost for these services. Expenditures associated with the proposed Task Order are included in the Board approved FY2021/22 Budget.

ATTACHMENT

1. [Ascend Analytics Task Order No. 3](#)

EXHIBIT C1
MASTER AGREEMENT TASK ORDER
(FIXED PRICE PER DELIVERABLE BASIS)

ASCEND ANALYTICS LLC
 ("CONTRACTOR")

Ascend Task Order No. 3 CPA Master Agreement No. 2018-07-30

Project Title: Support Services for 2021 Mid-Term Reliability RFO

Period of Performance: September 03, 2021, through September 30, 2022

CPA Project Director: Theodore Bardacke

CPA Task Order Manager: Natasha Keefer

I. GENERAL

Contractor shall satisfactorily perform all the tasks and provide all the deliverables detailed in the Task Order attached hereto as Exhibit C1-A, on a fixed price per deliverable basis, in compliance with the terms and conditions of Contractor's Master Agreement.

II. PERSONNEL

Contractor shall provide the below-listed personnel:

Skill Category: Analyst & Senior Analyst

Name: David Millar

Name: Brent Nelson

Name: Anthony Boukarim

Name: Valerie Katz

III. PAYMENT

A. The Total Maximum Amount that CPA shall pay Contractor for all deliverables to be provided under this Task Order is shown below:

Deliverable	Maximum Amount
<u>Pre-RFO Activities (Task Order Deliverable 1)</u>	<u>\$ 25,000.00</u>
<u>RFO Administration (Task Order Deliverable 2)</u>	<u>\$ 37,500.00</u>
<u>RFO Evaluation (Task Order Deliverable 3)</u>	<u>\$ 75,000.00</u>
<u>Optional Additional RFO Valuation and Negotiation Support (Task Order Deliverable 4)</u>	<u>\$ 15,000.00</u>
Total Maximum Amount	<u>\$ 152,500.00</u>

B. Contractor shall satisfactorily provide and complete all required deliverables in accordance with Statement of Work notwithstanding the fact that total payment from CPA for all deliverables shall not exceed the Total Maximum Amount in III.A, above.

C. Contractor shall submit all invoices under this Task Order to:

Clean Power Alliance
Attn: Accounts Payable
801 S. Grand Ave, Ste. 400
Los Angeles, CA 90017
Email: accountspayable@cleanpoweralliance.org

IV. SERVICES

In accordance with Master Agreement Section 2, Contractor may not be paid for any task, deliverable, service, or other work that is not specified in this Task Order, and/or that utilizes personnel not specified in this Task Order, and/or that exceeds the Total Maximum Amount of this Task Order, and/or that goes beyond the expiration date of this Task Order.

ALL TERMS OF THE MASTER AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT. THE TERMS OF THE MASTER AGREEMENT SHALL GOVERN AND TAKE PRECEDENCE OVER ANY CONFLICTING TERMS AND/OR CONDITIONS IN THIS TASK ORDER. NEITHER THE RATES NOR ANY OTHER SPECIFICATIONS IN THIS TASK ORDER ARE VALID OR BINDING IF THEY DO NOT COMPLY WITH THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT.

Contractor's signature on this Task Order document confirms Contractor's awareness of the terms and conditions of the Master Agreement and specifically with the provisions of Section 2 of the Master Agreement, which establish that Contractor shall not be entitled to any compensation whatsoever for any task, deliverable, service, or other work:

- A. That is not specified in this Task Order, and/or
- B. That utilizes personnel not specified in this Task Order, and/or
- C. That exceeds the Total Maximum Amount of this Task Order, and/or
- D. That goes beyond the expiration date of this Task Order.

REGARDLESS OF ANY ORAL PROMISE MADE TO CONTRACTOR BY ANY CLEAN POWER ALLIANCE PERSONNEL WHATSOEVER.

CONTRACTOR		CLEAN POWER ALLIANCE	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____

EXHIBIT C1-A

ASCEND TASK ORDER DESCRIPTION

Long-Term RFO Support Services for 2021 Mid-Term Reliability RFO Task Order

Summary

Contractor shall provide support for the Clean Power Alliance of Southern California (“CPA”) 2021 solicitation for long-term clean energy and storage contracts, including solicitation design, Requests For Offer (“RFO”) administration, and offer evaluation and selection.

CPA TASK ORDER – Scope of Work

- 1. In advance of the launch of the RFO, support solicitation design and offer selection criteria**
 - a. Support CPA’s development of the solicitation scope and process design, including refinement of scope of work and schedule
 - b. The RFO selection criteria will incorporate the following quantitative and qualitative factors:
 - Energy, Ancillary Services, and Resource Adequacy value
 - Development risk
 - Environmental stewardship
 - Workforce Development
 - Benefits to Disadvantaged Communities
 - Project Location
 - c. Develop a contact list of a competitive pool of providers and release an RFO pre-launch notification to these providers

Task 1 deliverables: Final solicitation process and schedule; framework for offer qualification and selection criteria, pre-launch notification

- 2. Administration of requests for offers of renewable energy projects**
 - a. Provide input on CPA’s requested products [Note: form power purchase agreements (“PPAs”) will be provided by CPA]
 - b. Prepare solicitation materials and a comprehensive solicitation protocol to be issued to potential providers [Note: solicitation materials are anticipated to be similar to those used in CPA’s 2020 Clean Energy RFO]
 - c. Provide a submission platform that accommodates a high volume of bidders, with multiple, differentiated offers from each bidder
 - d. Manage Q&A process to ensure conforming proposals are provided, including all communication with bidders
 - e. Project manage the solicitation process to ensure key dates are met

Task 2 deliverables: Written solicitation protocol; host website for receipt of offers; miscellaneous RFO administration services

- 3. Proposal evaluation and portfolio assessment**
 - a. Conduct initial QA/QC of offers and notify bidders of errors needing correction.

- b. Build a valuation model to perform financial analysis of individual projects and portfolios of projects to assess value and assist CPA with constructing the optimal portfolio of projects for CPA¹.
- c. Longlist Summary: Analyze project developers, project characteristics, and offer details to present offers as an initial comprehensive list of qualified and conforming project offers. The longlist deliverable will include a comprehensive Excel spreadsheet summarizing all offers with key descriptive information for each offer. The deliverable will also include a summary of RFO metrics and trends to be presented to CPA's Board of Directors Energy Committee.
- d. Valuation Ranking: perform advanced analytics on all conforming offers. Present results as a comprehensive Excel spreadsheet summarizing all conforming offers with key descriptive information and selection criteria ranking for each offer while highlighting the most attractive projects to procure. To facilitate CPA's selection process by the RFO review team² and subsequent presentation to the Energy Committee, the valuation ranking should be provided to CPA in comprehensive and easy to understand summary report along with summary of RFO metrics and trends.

Task 3 deliverables: Evaluation of all submitted offers and analysis of selected CPA portfolio and valuation ranking deliverables as described above

4. Ongoing valuation support for offer variations

- a. Valuation of individual offer variants for approximately 10 offers that may have variations to standard RFO protocol terms. For example, variations on project sizing or term length.

Task 4 deliverables: Evaluation of one-off non-conforming offer variants as compared to both the original offer and the broader longlist valuation.

PROJECT SCHEDULE AND COORDINATION

Each task listed above will be undertaken in close coordination with CPA staff. The consultant will discuss initial findings or approaches for each task with CPA staff before developing final work products to avoid rework. Staff will provide timely feedback and input in developing the work product.

The key events for CPA's 2021 Mid-Term Reliability RFO are listed below and are subject to change. Note: rows shaded in grey are milestones related to CPA's Board of Director's meeting schedule.

¹ Unless otherwise agreed by CPA in writing prior to the start of work under this Task Order, all models shall be produced in Excel and provided to CPA in unlocked formats.

² The review team will include CPA's senior management and 1-3 members of CPA's Board of Directors

Key Event Dates (2021-2022)	Action
September 2	CPA Board Meeting - Board approves Mid-Term Reliability RFO Services Task Order
September 6	Task Order kick-off with consultant
September 17	Complete Task 1a: Solicitation design
September 24	Complete Task 1b and 1c: Complete selection criteria framework and release solicitation pre-launch notice Complete Task 2a and 2b: Finalize form PPA and complete solicitation protocol
September 29	Complete Task 2c: Launch RFO
October 7	Complete Task 2d: Conduct RFO Webinar
October 13	Close Q&A bidder submission window
October 21	Complete Task 2e: Post Q&A responses
November 10	Offers Due
November 19	Task 3c: Longlist Summary for Energy Committee (may not include fully QA/QC'ed data)
November 22	Task 3a: Complete QA/QC of RFO responses
November 24	CPA Energy Committee – Review RFO Longlist trends
December 2021	Complete 3c: Perform individual contract and portfolio analysis and 3d Valuation Ranking
January 2022	Shortlist selection recommendation by CPA's RFO review team
January 26	CPA Energy Committee – Approve shortlist
February 3	CPA Board meeting – update Board on shortlist selection
February 9	Exclusivity Agreements due
February - April	Task 4: Ongoing valuation support as needed through PPA negotiations
April 7 ³	CPA Board meeting - Approve negotiated PPAs

³ April 7th is the target date for PPA approvals. PPA negotiations may extend through the Summer of 2022.

EXHIBIT D

**FORMS REQUIRED FOR EACH TASK ORDER
BEFORE WORK BEGINS**

- D1 CERTIFICATION OF EMPLOYEE STATUS
- D2 CERTIFICATION OF NO CONFLICT OF INTEREST
- D3 CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT
- D4 CONTRACTOR/SUBCONTRACTOR EMPLOYEE ACKNOWLEDGEMENT AND
CONFIDENTIALITY AGREEMENT
- D5 CAMPAIGN CONTRIBUTIONS DISCLOSURE FORM
- D6 CALIFORNIA PUBLIC RECORDS ACT ACKNOWLEDGEMENT AND AGREEMENT

**EXHIBIT D1
CERTIFICATION OF EMPLOYEE STATUS**

CONTRACTOR NAME: ASCEND ANALYTICS LLC

Ascend Task Order No. 3

CPA Master Agreement No.: 2018-07-30

I CERTIFY THAT: (1) I am an Authorized Official of Contractor; (2) the individual(s) named below is(are) Contractor's employee(s) or subcontractor; (3) applicable state and federal income tax, FICA, unemployment insurance premiums, and workers' compensation insurance premiums, in the correct amounts required by state and federal law, will be withheld as appropriate, and paid by Contractor for the individual(s) named below or for its subcontractor (if applicable) for the entire time period covered by the attached Task Order. The Contractor shall be solely responsible for any and all payments to its employees or subcontractor

EMPLOYEES/SUBCOTRACTOR

1. _____
2. _____
3. _____
4. _____

I declare under penalty of perjury that the foregoing is true and correct.

Signature of Authorized Official

Printed Name of Authorized Official

Title of Authorized Official

Date

**EXHIBIT D2
CERTIFICATION OF NO CONFLICT OF INTEREST**

CONTRACTOR NAME: ASCEND ANALYTICS LLC

Ascend Task Order No. 3

CPA Master Agreement No. 2018-07-30

The Clean Power Alliance will not contract with, and shall reject any response to the Pre-Qualification RFQ submitted by, the persons or entities specified below, unless the Executive Director finds that special circumstances exist which justify the approval of such contract:

1. Employees of CPA or staff of any of the members or members of the Board of CPA.
2. Profit-making firms or businesses in which its employees may have participated in the preparation of the bid or proposal of the Task Order.

Contractor hereby declares and certifies that no Contractor personnel, nor any other person acting on Contractor's behalf, including any subcontractors, who prepared and/or participated in the preparation of the bid or proposal submitted for the Task Order specified above, has a conflict that would prevent them from completing the Task Order.

I declare under penalty of perjury that the foregoing is true and correct.

Signature of Authorized Official

Printed Name of Authorized Official

Title of Authorized Official

Date

**EXHIBIT D3
CONTRACTOR ACKNOWLEDGEMENT AND CONFIDENTIALITY AGREEMENT**

Contractor Name: Ascend Analytics LLC

Ascend Task Order No. 3 CPA Master Agreement No. 2018-07-30

GENERAL INFORMATION:

The Contractor referenced above has entered into a Master Agreement with the Clean Power Alliance to provide certain services to CPA. Contractor is required to sign this Contractor Acknowledgement and Confidentiality Agreement.

CONTRACTOR ACKNOWLEDGEMENT:

Contractor understands and agrees that the Contractor employees, consultants, outsourced vendors, subcontractors, and independent contractors (Contractor's Staff) that will provide services in the above referenced agreement are Contractor's sole responsibility. Contractor understands and agrees that Contractor's Staff must rely exclusively upon Contractor for payment of salary and any and all other benefits payable by virtue of Contractor's Staff's performance of work under the above-referenced Master Agreement.

Contractor understands and agrees that Contractor's Staff are not employees of CPA for any purpose whatsoever and that Contractor's Staff do not have and will not acquire any rights or benefits of any kind from CPA by virtue of my performance of work under the above-referenced Master Agreement. Contractor understands and agrees that Contractor's Staff will not acquire any rights or benefits from CPA pursuant to any agreement between any person or entity and CPA.

CONFIDENTIALITY AGREEMENT:

Contractor and Contractor's Staff may be involved with work pertaining to services provided by the CPA and, if so, Contractor and Contractor's Staff may have access to confidential data and information pertaining to persons and/or entities receiving services from CPA. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with CPA, including advanced meter infrastructure data or similarly sensitive or confidential information. In addition, Contractor and Contractor's Staff may also have access to proprietary information supplied by other vendors doing business with CPA. CPA has a legal obligation to protect all such confidential data and information in its possession, especially advanced meter data, or similar sensitive or confidential data and information. Contractor and Contractor's Staff understand that if they are involved in CPA work, CPA must ensure that Contractor and Contractor's Staff will protect the confidentiality of such data and information. Consequently, Contractor must sign this Confidentiality Agreement as a condition of work to be provided by Contractor's Staff for CPA.

Contractor and Contractor's Staff hereby agrees that they will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced Master Agreement between Contractor and the CPA. Contractor and Contractor's Staff agree to forward all requests for the release of any data or information received to CPA Project Director.

Contractor and Contractor's Staff agree to keep confidential all records and all data and information pertaining to persons and/or entities receiving services from CPA, Contractor proprietary information and all other original materials produced, created, or provided to Contractor and Contractor's Staff under the above-referenced Master Agreement. Contractor and Contractor's Staff agree to protect these confidential materials against disclosure to other than Contractor or CPA employees who have a need to know the information. Contractor and Contractor's Staff agree that if proprietary information supplied by other CPA vendors is provided during this employment, Contractor and Contractor's Staff shall keep such information confidential.

Contractor and Contractor's Staff agree to report any and all violations of this agreement by Contractor and Contractor's Staff and/or by any other person of whom Contractor and Contractor's Staff become aware.

Contractor and Contractor's Staff acknowledge that violation of this Confidentiality and Acknowledgement Agreement may subject Contractor and Contractor's Staff to civil and/or criminal action and that CPA may seek all possible legal redress.

SIGNATURE: _____ DATE: _____ / _____ / _____

PRINTED NAME: _____ TITLE _____

**EXHIBIT D4
CONTRACTOR NON-EMPLOYEE ACKNOWLEDGEMENT AND
CONFIDENTIALITY AGREEMENT**

Contractor Name: Ascend Analytics LLC

Employee/Subcontractor Name:

Ascend Task Order No. 3

CPA Master Agreement No. 2018-07-30

GENERAL INFORMATION:

The Contractor referenced above has entered into a Master Agreement with the CPA to provide certain services to CPA. CPA requires your signature on this Contractor Non-Employee Acknowledgement and Confidentiality Agreement.

NON-EMPLOYEE ACKNOWLEDGEMENT:

I understand and agree that the Contractor referenced above has exclusive control for purposes of the above-referenced Master Agreement. I understand and agree that I must rely exclusively upon the Contractor referenced above for payment of salary and any and all other benefits payable to me or on my behalf by virtue of my performance of work under the above-referenced Master Agreement.

I understand and agree that I am not an employee of the CPA for any purpose whatsoever and that I do not have and will not acquire any rights or benefits of any kind from CPA by virtue of my performance of work under the above-referenced Master Agreement. I understand and agree that I do not have and will not acquire any rights or benefits from CPA pursuant to any agreement between any person or entity and CPA.

I understand and agree that I may be required to undergo a background and security investigation(s). I understand and agree that my continued performance of work under the above-referenced Master Agreement is contingent upon my passing, to the satisfaction of CPA, any and all such investigations. I understand and agree that my failure to pass, to the satisfaction of CPA, any such investigation shall result in my immediate release from performance under this and/or any future agreements with the CPA.

CONFIDENTIALITY AGREEMENT:

I may be involved with work pertaining to services provided by CPA and, if so, I may have access to confidential data and information pertaining to persons and/or entities receiving services from CPA, including advanced meter infrastructure data and similarly sensitive information. In addition, I may also have access to proprietary information supplied by other vendors doing business with CPA. The County has a legal obligation to protect all such confidential data and information in its possession, especially advanced meter infrastructure data or similarly sensitive confidential data and information. I understand that if I am involved in CPA work, CPA must ensure that I, too, will protect the confidentiality of such data and information. Consequently, I understand that I must sign this agreement as a condition of my work to be provided by the above-referenced Contractor for CPA. I have read this agreement and have taken due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person any data or information obtained while performing work pursuant to the above-referenced Master Agreement between the above-referenced Contractor and CPA. I agree to forward all requests for the release of any data or information received by me to the above-referenced Contractor.

I agree to keep confidential all data and information pertaining to persons and/or entities receiving services from CPA, Contractor proprietary information, and all other original materials produced, created, or provided to or by me under the above-referenced Master Agreement. I agree to protect these confidential materials against disclosure to other than the above-referenced Contractor or CPA employees who have a need to know the information. I agree that if proprietary information supplied by other CPA vendors is provided to me, I shall keep such information confidential.

I agree to report to the above-referenced Contractor any and all violations of this agreement by myself and/or by any other person of whom I become aware. I agree to return all confidential materials to the above-referenced Contractor upon completion of this Master Agreement or termination of my services hereunder, whichever occurs first.

SIGNATURE: _____

DATE: ____ / ____ / ____

PRINTED NAME: _____

POSITION: _____

**EXHIBIT D5
CAMPAIGN CONTRIBUTIONS DISCLOSURE FORM**

Government Code Section 84308

In accordance with California law, bidders and contracting parties are required to disclose, at the time a proposal is submitted or pre-qualified provider receives a Task Order solicitation, information relating to any campaign contributions made to Clean Power Alliance of Southern California's (CPA) Regular or Alternate Directors, including: the name of the party making the contribution (which includes any parent, subsidiary or otherwise related business entity, as defined below), the amount of the contribution, and the date the contribution was made. 2 Cal. Code of Regs. (C.C.R.) §18438.8(b).

California law prohibits a party, participant, or an agent, from making campaign contributions to a CPA Director of more than \$250 while their contract is pending before the CPA Board; and ***further prohibits a campaign contribution from being made for three (3) months following the date of the final decision by the CPA Board.*** Gov't Code §84308(d).

For purposes of reaching the \$250 limit, the campaign contributions of the bidder or contractor plus contributions by its parents, affiliates, and related companies of the contractor or bidder are added together. 2 C.C.R. §18438.5.

In addition, a CPA Director must abstain from voting on a contract or permit if they have received a campaign contribution from a party or participant to the proceeding, or agent, totaling more than \$250 in the 12-month period prior to the consideration of the item by the CPA Board. Gov't Code §84308(c).

The names of the Regular and Alternate Directors and their member agency is attached hereto as Attachment 1.

* * * * *

Every bidder or contractor must disclose as follows:

Section 1

Bidder/Contractor (Legal Name) Ascend Analytics LLC.

List any parent, subsidiaries, or otherwise affiliated business entities of Contractor (See definitions in 2 C.C.R.. §18703.1(d)):

*Attach additional pages, if necessary

Section 2

Has Contractor or Bidder (identified in Section I) and/or any parent, subsidiary, or affiliated company, or agent thereof, made a campaign contribution(s) totaling \$250 or more in the aggregate to a Director of CPA’s Board in the 12 months preceding the date of execution of this disclosure?

Yes

No

If YES, proceed to Section 3 and complete. Then, sign and date under Section 4.

If NO, proceed to Section 4.

Section 3

Regular/Alternate Director	Amount of Contribution	Date of Contribution

*Attach additional pages, if necessary

Section 4

I, _____, [print name] am authorized to sign this disclosure on behalf of the Contractor/Bidder identified in Section 1. I acknowledge and understand Government Code Section 84308 requirements. I declare the foregoing disclosures to be true and correct.

TITLE: _____

SIGNATURE: _____

DISCLOSURE DATE: _____

**Exhibit D5 - Attachment 1
REGULAR DIRECTORS**

County/City	Regular Directors	Title
Agoura Hills	Deborah Klein Lopez	Councilmember
Alhambra	Jeff Maloney	Councilmember
Arcadia	Sho Tay	Councilmember
Beverly Hills	Julian Gold	Councilmember
Calabasas	Mary Sue Maurer	Mayor Pro Tem
Camarillo	Susan Santangelo	Councilmember
Carson	Jawane Hilton	Councilmember
Claremont	Corey Calaycay	Mayor
Culver City	Daniel Lee	Vice Mayor
Downey	Sean Ashton	Councilmember
Hawaiian Gardens	Myra Maravilla	Councilmember
Hawthorne	Alex Monteiro	Councilmember
Los Angeles County	Sheila Kuehl	Supervisor District 3
Malibu	Mikke Pierson	Mayor
Manhattan Beach	Hildy Stern	Mayor Pro Tem
Moorpark	Janice Parvin	Mayor
Ojai	Betsy Stix	Mayor
Oxnard	Bert Perello	Councilmember
Paramount	Vilma Cuellar Stallings	Councilmember
Redondo Beach	Christian Horvath	Councilmember
Rolling Hills Estates	Steve Zuckerman	Councilmember
Santa Monica	Gleam Davis	Councilmember

Sierra Madre	Robert Parkhurst	Councilmember
Simi Valley	Ruth Luevanos	Councilmember
South Pasadena	Diana Mahmud	Councilmember
Temple City	Fernando Vizcarra	Councilmember
Thousand Oaks	Bob Engler	Councilmember
Ventura City	Sofia Rubalcava	Mayor
Ventura County	Linda Parks	Supervisor District 2
West Hollywood	Lindsey Horvath	Mayor
Westlake Village	Kelly Honig	Mayor pro Tem
Whittier	Fernando Dutra	Councilmember

ALTERNATE DIRECTOR(S)

County/City	Alternate Director(s)	Title
Agoura Hills	Linda Northrup	Mayor
Agoura Hills	Louis Celaya	Deputy City Manager
Alhambra	Martin Ray	Director of Utilities
Alhambra	Katherine Lee	Mayor
Arcadia	Dominic Lazzaretto	City Manager
Arcadia	Tom Tait	Public Works Director
Beverly Hills	Robert Wunderlich	Councilmember
Calabasas	David Shapiro	Mayor
Calabasas	Michael McConville	Sr. Mgmt Analyst
Camarillo	Shawn Mulchay	Mayor
Camarillo	Tony Trembley	Councilmember
Carson	Cedric L. Hicks Sr.	Mayor Pro Tem

Carson	Reata Kulcsar	Staff
Claremont	Jennifer Stark	Mayor
Culver City	Joe Susca	Sr. Mgmt Analyst
Culver City	Yasmine-Imani McMorrin	Councilmember
Downey	Catherine Alvarez	Councilmember
Downey	Mario Trujillo	Councilmember
Hawaiian Gardens	Ramie L. Torres	Administrative Technician
Hawthorne	Akbar Farokhi	Public Works Manager
Hawthorne	Frank Feng	Financial Analyst
Los Angeles County	Gary Gero	Chief Sustain Offier
Los Angeles County	Holly Mitchell	Supervisor District 2
Malibu	Christine Shen	Envir Sustain Analyst
Malibu	Steve Uhring	Councilmember
Manhattan Beach	Dana Murray	Envir Manager
Manhattan Beach	Richard Montgomery	Councilmember
Moorpark	Jessica Sandifer	Community Svc Mgr
Ojai	Michelle Ellison	Public
Ojai	William Weirick	MPT
Oxnard	Kathleen Mallory	Environmental Services Manager
Oxnard	Vianey Lopez	Councilmember
Paramount	Adriana Figueroa	Public Works Director
Paramount	Isabel Aguayo	Councilmember
Redondo Beach	Ted Semaan	Public Works Dir
Rolling Hills Estates	Debby Stegura	Councilmember
Rolling Hills Estates	Jeannie Naughton	Senior Planner
Santa Monica	Pam O'Connor	Public

Sierra Madre	Vacant	Vacant
Sierra Madre	James Carlson	Management Analyst
Simi Valley	Keith Mashburn	Mayor
Simi Valley	Samantha Argabrite	Deputy City Manager/Public Information Officer
South Pasadena	Kim Hughes	Public
South Pasadena	Michael Cacciotti	Mayor Pro Tem
Temple City	Tom Chavez	Mayor Pro Tem
Temple City	William Man	Councilmember
Thousand Oaks	Cliff Finley	Public Works Director
Thousand Oaks	Helen Cox	Sustainability Division Manager
Ventura City	Joe Yahner	Division Manager, Environmental Sustainability
Ventura City	Mike Johnson	Councilmember
Ventura County	Carmen Ramirez	Supervisor
West Hollywood	Lauren Meister	Councilmember
West Hollywood	Robyn Eason	Senior Planner
Westlake Village	Brad Halpern	Mayor Pro Tem
Westlake Village	Phillippe Eskandar	Deputy City Manager
Whittier	Henry Bouchot	Councilmember
Whittier	Vicki Smith	Public Works Manager

EXHIBIT D6
CALIFORNIA PUBLIC RECORDSACT
CALIFORNIA PUBLIC RECORDS ACT ACKNOWLEDGEMENT AND AGREEMENT

The undersigned duly authorized representative, on behalf of (Contractor), acknowledges and agrees to the following:

The contents of its proposal in response to the Task Order solicitation, the contract and any documents pertaining to the performance of the Task Order resulting from this contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information it believes are confidential or proprietary, the Clean Power Alliance (CPA) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the responsibility of the Contractor to provide to CPA the specific legal grounds on which CPA can rely in withholding information requested under the California Public Records Act, should CPA choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, the Contractor must provide a specific and complete legal basis, including applicable case law that establishes the requested information is exempt from the disclosure requirements of the California Public Records Act.

If the Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by CPA, CPA will release the information as required by the California Public Records Act and the Contractor will hold CPA harmless for release of this information.

It will be Contractor's obligation to defend, at Contractor's expense, any legal actions or challenges seeking to obtain from CPA any information requested under the California Public Records Act withheld by CPA at the Contractor's request.

Furthermore, the Contractor shall indemnify CPA and hold it harmless for any claim or liability, and defend any action brought against CPA, resulting from CPA's refusal to release information requested under the Public Records Act withheld at Contractor's request.

Nothing in this Agreement creates any obligation for CPA to notify the Contractor or obtain the Contractor's approval or consent before releasing information subject to disclosure under the California Public Records Act.

Name of Firm

Signature of Authorized Representative

Print Name and Title of Signatory

Date

Staff Report – Agenda Item 4

To: Board of Directors

From: Gabriela Monzon, Clerk of the Board

Approved By: Ted Bardacke, Executive Director

Subject: Receive and File Annual Electricity Usage by Jurisdiction

Date: September 2, 2021

RECOMMENDATION

Receive and file.

DISCUSSION

Per CPA's Joint Powers Agreement, in the case of a weighted (voting shares), the corresponding voting shares are based on CPA's overall retail load served, by jurisdiction, in the previous fiscal year. Attachment 1 shows the annual retail load by jurisdiction for FY2020/21. These percentages will be used in the event of a voting shares vote during FY2021/22. A voting shares vote may be called for by a minimum of three members of the Board of Directors following an affirmative vote of the Board via the standard "one member, one vote" voting procedure.

ATTACHMENT

1. [Annual Load by Jurisdiction](#)

Jurisdiction	Annual Retail Load for July 1, 2020 to June 30, 2021	Percent of Total
LOS ANGELES, COUNTY OF	3,224,635,216	29.94%
CARSON, CITY OF	575,083,499	5.34%
OXNARD, CITY OF	507,840,782	4.72%
SANTA MONICA, CITY OF	480,571,653	4.46%
THOUSAND OAKS, CITY OF	468,482,960	4.35%
SIMI VALLEY, CITY OF	436,084,361	4.05%
VENTURA, COUNTY OF	422,847,757	3.93%
DOWNEY, CITY OF	395,281,988	3.67%
BEVERLY HILLS, CITY OF	382,066,511	3.55%
VENTURA, CITY OF	362,751,765	3.37%
HAWTHORNE, CITY OF	314,032,987	2.92%
WHITTIER, CITY OF	304,905,941	2.83%
CAMARILLO, CITY OF	304,309,278	2.83%
ALHAMBRA, CITY OF	263,987,226	2.45%
ARCADIA, CITY OF	253,939,509	2.36%
CULVER CITY, CITY OF	239,550,124	2.22%
WEST HOLLYWOOD, CITY OF	234,895,705	2.18%
REDONDO BEACH, CITY OF	221,521,303	2.06%
PARAMOUNT, CITY OF	168,237,644	1.56%
MANHATTAN BEACH, CITY OF	152,969,715	1.42%
CALABASAS, CITY OF	140,031,743	1.30%
CLAREMONT, CITY OF	136,851,050	1.27%
MOORPARK, CITY OF	127,774,955	1.19%
MALIBU, CITY OF	120,477,010	1.12%
AGOURA HILLS, CITY OF	104,396,337	0.97%
TEMPLE CITY, CITY OF	103,847,502	0.96%
SOUTH PASADENA, CITY OF	88,188,649	0.82%
WESTLAKE VILLAGE, CITY OF	79,948,451	0.74%
ROLLING HILLS ESTATES, CITY OF	48,564,357	0.45%
SIERRA MADRE, CITY OF	43,423,328	0.40%
HAWAIIAN GARDENS, CITY OF	33,341,106	0.31%
OJAI, CITY OF	29,521,441	0.27%
Total	10,770,361,853	100%

Staff Report – Agenda Item 5

To: Board of Directors

From: Geoff Ihle, Manager of Market Risk

Approved By: Ted Bardacke, Executive Director
David McNeil, Chief Financial Officer

Subject: Quarterly Risk Management Team Report

Date: September 2, 2021

RECOMMENDATION

Receive and file the Risk Management Team Quarterly Report from April to June 2021.

BACKGROUND/DISCUSSION

CPA's Energy Risk Management Policy (ERMP) establishes a staff-level Risk Management Team (RMT) responsible for implementing, maintaining, and overseeing compliance with the ERMP and for maintaining the Energy Risk Hedging Strategy. The ERMP requires quarterly reporting to the Board on the activities, projected financial performance, and general market outlook facing CPA.

The Quarterly RMT Report for the period covering April 1, 2021 through June 30, 2021 (Q2) is attached.

The RMT also reports ERMP compliance to the Finance and Energy Planning & Resources Committees on a monthly basis.

ATTACHMENT

1. [RMT Report for Q2 2021](#)



Quarterly Report of Risk Management Team April 1, 2021 through June 30, 2021 (Q2 2021)

I. Introduction

The Board of Directors of Clean Power Alliance (CPA) approved an Energy Risk Management Policy (ERMP) at its July 12, 2018 meeting, which provides the framework for conducting procurement activities in a manner that maximizes the probability of CPA meeting its portfolio, reliability, and financial goals. The ERMP was subsequently amended in July 2019, July 2020 and July 2021.

The ERMP requires quarterly reporting to the Board on the activities, projected financial performance, and general market outlook facing CPA. The Risk Management Team (RMT)¹ submits this report in accordance with this requirement. The RMT also reports on ERMP compliance to both the Finance Committee and Energy Planning & Resources Committee on a monthly basis.

II. Risk Management Team Activities

The RMT is responsible for implementing, maintaining, and overseeing compliance with the ERMP and for maintaining the Energy Risk Hedging Strategy. The primary goal of the RMT is to ensure that the procurement activities of CPA are executed within the guidelines of the ERMP and are consistent with Board directives. A number of business practices are prescribed in the ERMP. What follows is a summary of CPA's compliance with these practices as outlined in the Policy.

A. ERMP Acknowledgement Form

It is the policy of CPA that all CPA Representatives participating in any activity or transaction within the scope of the ERMP shall sign on an annual basis or upon any revision, a statement acknowledging compliance with the ERMP. Execution of the ERMP Acknowledgement Form was completed by Board members, relevant CPA staff, and relevant consultants.

There are no existing or potential conflicts of interest to report. All business has been conducted consistent with applicable laws and regulations.

B. Transaction Types

The ERMP includes a list of approved transaction types. All products that have been purchased or sold by CPA during the current quarterly periods represent an approved transaction type as listed in Appendix C of the ERMP.

C. Counterparty Suitability

¹ The RMT is comprised of CPA's Executive Director, Chief Operating Officer, Chief Financial Officer, and Director of Power Planning and Procurement.

The ERMP requires that all counterparties with whom CPA transacts must be reviewed for creditworthiness and assigned a credit limit. A formal Counterparty Credit Protocol document that describes the method for evaluating counterparties and establishing a credit limit was developed by CPA's Chief Financial Officer and CPA's former scheduling coordinator, The Energy Authority (TEA). The Protocol was approved by the Executive Director, in consultation with the RMT, and enacted in Q1 2019.

Pursuant to the ERMP, no counterparty credit limit may exceed \$50 million. CPA is fully compliant with this obligation. Due to elevated forward power prices, during the quarter several of CPA's counterparties' credit exposures grew to exceed their designated credit limits. These exceedances have shrunk due to a combination increased collateral posting from counterparties and counterparties' ongoing deliveries to CPA under their contracts which reduces credit exposure.

D. System of Record

As required by the ERMP, all transactions are being stored both in CPA's systems as well as in CPA's Scheduling Coordinator's (currently Tenaska Power Services, or TPS) trading and risk management system. Similarly, all transaction approvals are being logged and stored on TPS's servers, with information being made available to CPA staff via a secure web portal. The transaction record also includes the confirmation letters for each transaction. CPA is in the process of transitioning its transaction repository to an updated data warehouse, which will provide additional functionality and security features.

E. Position Tracking and Management Reporting

In order to manage risk, the ERMP requires the regular production of various reports. The current status of each report required by policy follows:

- Financial Model Forecast: The financial model captures historical and projected revenues and energy and operating costs and produces various financial reports and forecasts on an accrual basis. The model uses load forecast data produced by CPA, energy contract details from CPA's Front Office systems, revenue projections from CPA's revenue model², historical financial results from the accounting system maintained by CPA, and forward prices from the ICE Data Service and TPS.
- Net Position Report: Short- and long-term net position reports are in production, managed directly by CPA procurement staff, and linked to TPS's trade capture system. The short-term net position report updates daily and incorporates the current weather outlook for the next 60 days to show net positions for the current and next months. The long-term net position report assumes normal weather and shows net positions through the balance of the current year and prompt four years.
- Counterparty Credit Exposure: CPA is fully compliant with the credit policies included in the ERMP, with the above-mentioned market price-induced exceedances being managed by the RMT. CPA receives daily updates of counterparty credit exposures on both a notional and mark-to-market basis.

² CPA's revenue model is currently maintained by a third-party consultant, MRW. That model is currently being transitioned to being maintained in-house.

- Monthly Risk Analysis: The ERMP requires both stress testing of financial results, as well as probability-based assessments of future financial projections. CPA continues to implement risk analysis tools to stress test financial results and validate potential hedging transactions. These models continue to be built out and refined.
- Quarterly Board Report: Subject of this report.

F. Delegation of Authority

All executed transactions during the current period have been approved consistent with the Delegation of Authority outlined in Section 5 of the ERMP.

G. Limit and Other Compliance Violations

The ERMP requires that transaction volumes should not be executed that exceed the requirements of meeting CPA's load (energy and capacity), renewable and/or carbon free energy requirements. The ERMP designates specific prompt-year (PY) up to prompt 5-year hedge targets for different product types. These targets are measured at the end of the quarter for the following prompt quarter, e.g. Q4 for prompt Q1. RMT reviewed the relevant quarterly hedge targets for 2021 and beyond and identified no policy deviations.

H. Training

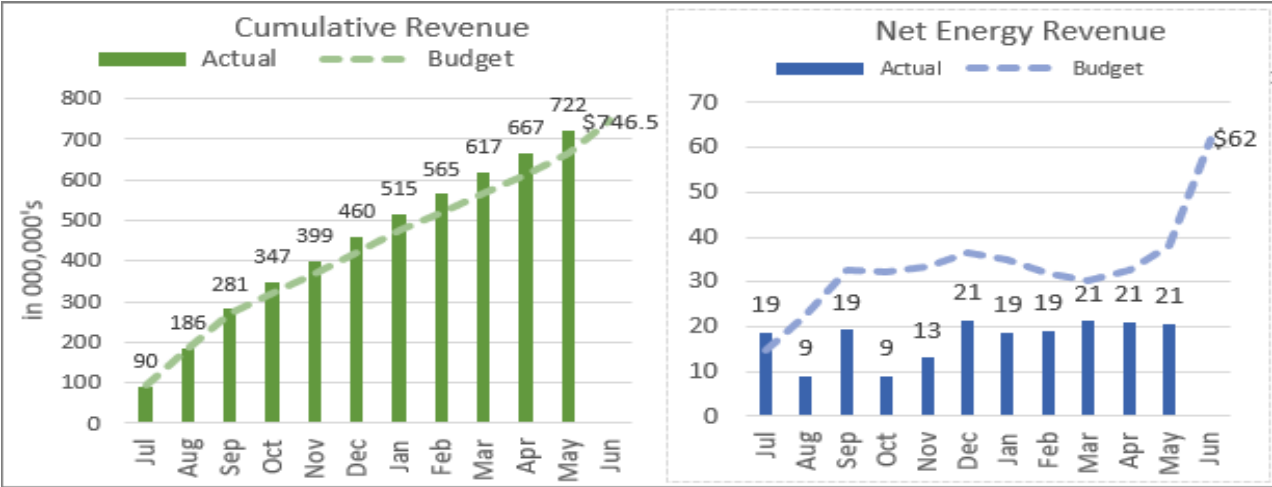
The ERMP acknowledges the importance of ongoing education as part of its risk management framework. Consistent with this, the ERMP outlines certain training requirements. All procurement and risk management staff, including the members of the RMT, were up to date on required training.

I. Hedging Strategy

CPA is compliant with the hedging strategy provided in Appendix A of the ERMP.

J. Financial Performance

CPA recorded the following revenue and margin (electricity revenue less cost of energy) results for the 11 months ending May 31, 2021 (FY 2020/21). Net energy revenue was 11.2 million below budgeted results for the period, as described in the April and May Financial Dashboards. Staff are in the process of closing CPA's June 30, 2021 fiscal year end. Staff plan to present audited annual financial statements to the Finance Committee at its November 24, 2021 meeting and the full Board thereafter.



III. General Market Conditions

Pricing in Q2 2021 reflect generally mild temperature and load conditions for CPA in April and May 2021, in line with the “spring” period expectations. June 2021 included record temperatures across the Western United States, with two heat events and above average temperatures throughout California and the West. The first heat event occurred from June 12 through June 20, impacting California, the Southwest, and Northern Mountain West. The second heat event occurred over the Pacific Northwest from June 24 through June 30. CPA experienced elevated load and prices during the heat events, mitigated by the successful implementation of CPA’s hedging strategy.

Staff Report – Agenda Item 6

To: Board of Directors

From: Sherita Coffelt, Sr. Director, External Affairs

Approved by: Ted Bardacke, Executive Director

Subject: EA Q2 Communications Report

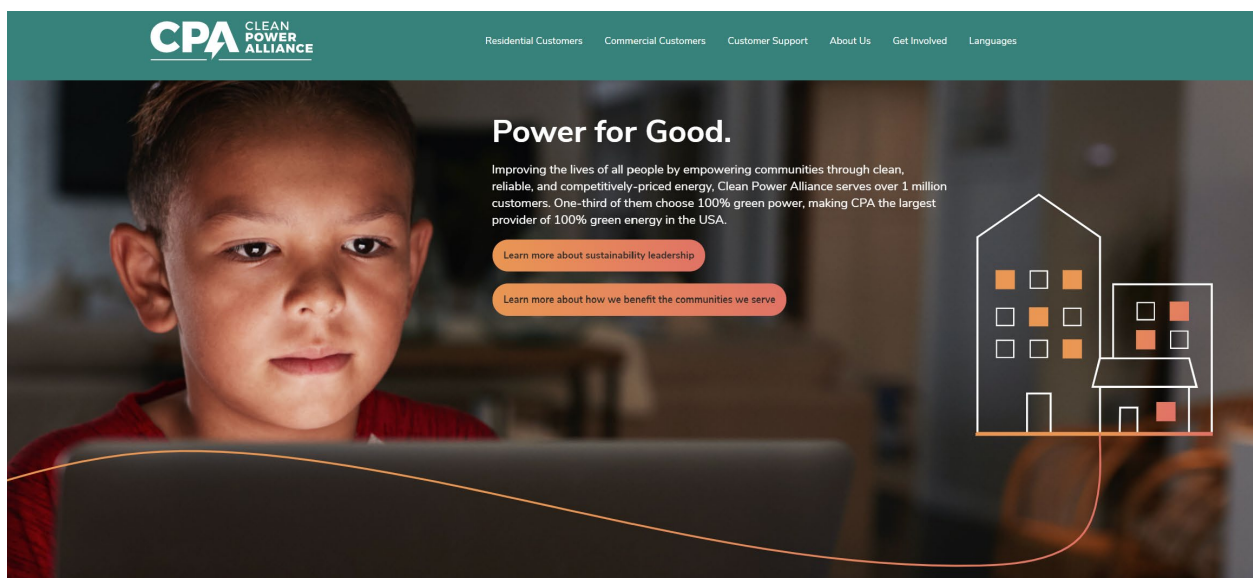
Date: September 2, 2021

RECOMMENDATION

Receive and file.

BACKGROUND/DISCUSSION

As Clean Power Alliance (CPA) transitions into a new fiscal year, the External Affairs (EA) team has continued to advance and support many of the agency’s programs and initiatives as well as an exciting brand and website refresh.



Brand and Website Refresh

Last week, CPA's EA team initiated the launch of the agency's refreshed brand and website. The new brand seeks to reflect the reliability the customers expect and the altruism that guides CPA's procurement of clean power as well as our local investment and programs. With a mix of bright colors inspired by nature; sun, sky, land, and photography which shows how electricity makes our lives brighter starting at the local level all for the sake of our entire planet. Hence our new tagline, *Power for Good*.

Staff will email a link to updated logos and agency materials to board members and member agency staff. Please use updated logos beginning immediately.

The website enhancement will continue through the fall, as we update our sitemap, architecture and calculator. While the look and the feel of the website has changed, the complete re-architecture will modernize the user experience and ensure it is optimized whether you are connected via desktop, cell phone or tablet.

Arrearage Management Program (AMP)

AMP is a debt forgiveness program for customers with at least \$500 in past due electric bills with some portion at least 90 days past due. After making twelve on-time payments, a customer can have up to \$8,000 forgiven.

We have been advertising the availability of this program over the past months, but in July we elevated our efforts to include limited outbound calling as part of a pilot program. We had a 3.8% conversion rate with Calpine representatives confirming customers with \$14,771.04 in past due bills enrolling. Based on the results of the pilot, we increased the marketing investment to help the agency recover outstanding debt.

So far, 4,156 customers have enrolled in AMP. These customers have billings of more than \$2.1 million. That represents 33.13% of the 12,525 customers eligible with approximately \$7.5 million outstanding.

Power Share

The EA Team continues to work with the Programs Team to promote Power Share. During the quarter, the team combined paid advertising, direct mail, targeted emails and an optimized website experience that gives customers the option to send themselves a reminder email to sign-up later if they do not have their account number available. Almost 200 customers have taken advantage of that new tool. Enrollments are now 1,006 customers.

Additionally, the EA team created a digital tool for the Community Solar program that brings together partners for projects. This will be critical in advance of the upcoming RFO.

As part of the redesign, existing Power Share materials will be redesigned in the upcoming weeks.

Default Rate Changes

With Agoura Hills, Calabasas and Manhattan Beach going to 100% Green Power in October, the External Affairs Team has been working with the city staff to finalize messaging and outreach plans. Additionally, staff has presented at public meetings in all three cities and will continue to promote the benefit of the default changes to the environment, as well as the financial impact for customers, customers' choices as well as customer assistance options available. The initial postcard will be mailed 30 days before the change and another postcard will be mailed 30 days after the change. Staff will be updating websites, newsletters and social media with the information various times between the postcard mailings.



CALeVIP

CPA participated in the launch of CALeVIP on August 5. The agency issued a press release and shared social media posts on all of its social media platforms. The boosted Facebook/Instagram post on CALeVIP became one of the most popular and well-engaged posts of the quarter. The post reached over 4,000 people in Ventura County, had almost 200 engagements in the form of comments, reactions and shares. Over 150 people clicked the link on the post to go to the website to get more information and to apply.



Calpine Grant Promotion

The EA Team continues to work with member agencies and CBOs to promote Calpine's Community Reinvest Grant. So far, several agencies across the CPA service area have applied and/or indicated interest. Applications, which can be found online at www.cleanpoweralliance.org/calpinegrant, are being accepted until Sept. 15. Winners will be notified and funds awarded by the end of October.

ATTACHMENT

1. [Dashboard Look-Ahead](#)

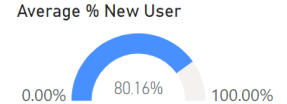
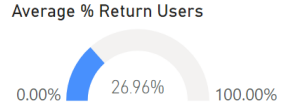
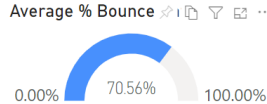
Dashboard

Measuring Our Performance

Metrics	Q1 (Jan – March)	Q2 (April -June)	Q3 (June – Aug)	Q4	2020
Power Share (enrollments)	83/6300 goal	463/6300 goal	1006/6300	XX	XX
Arrearage Management Program (AMP)	400 enrollments; \$150,000 in billing	1,824 enrollments; \$866,926.78 in billing	4,156 enrollments; \$2.1 million in billing		
Website Traffic	53,944 views	69,210 views	87,239 views	XX	XX
Social Media Engagement Rate	4.2%	6.1%	31%	XX	XX
Newsletter open rate	33%	29.5%	27.6%	XX	XX
PR Impressions & Ad Value	638,000,000 impressions \$4.1 million ad value	200,000,000 impressions \$2.6 million ad value	53,500,000 impressions \$482,550 ad value		

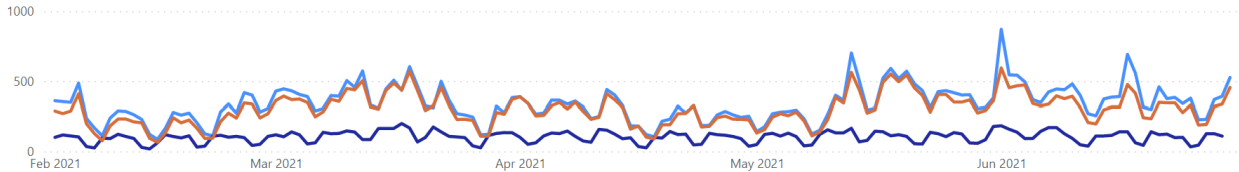
Website Dashboard

All Web Site Data Audience Overview



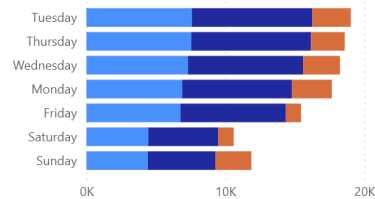
Users Over Time

● New Users ● Returning Users ● Bounced Users



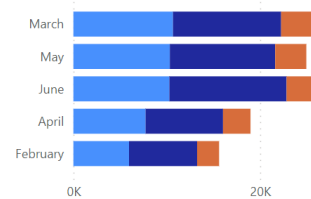
Users by Day

● Bounced Users ● New Users ● Returning Users

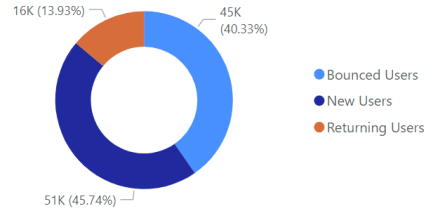


Users by Month

● Bounced Users ● New Users ● Returning Users



Bounced Users, New Users and Returning Users



News Clips

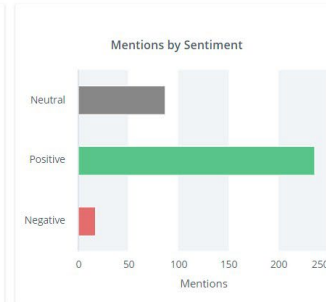
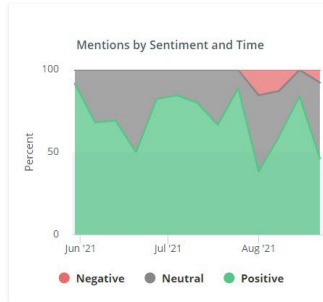
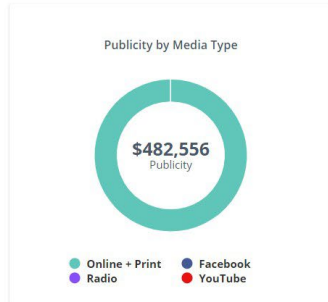
Popular stories:

- CPA Board Approves 15-year Contract with Heber South Geothermal Facility
- CPA Signs Four Long-Term Contracts for Renewable Energy
- CPA Promotes Calpine Grant Program for Local Non-Profits
- CPA Helps Fund CALeVIP Rebates for Electric Vehicle Charging Stations in Ventura County

EA Quarterly Report 6-1-21 to 8-25-21



Mention Analytics



Total Online + Print Audience
53,248,606

Total Online + Print Publicity
USD \$482,554

Total Social Followers
259,248

Total Social Publicity
USD \$2

Total Number of Clips 358

Collapse All Clips

FY 2021-2022 Q2 Preview

In addition to day-to-day duties such as social media, newsletters, media inquiries, public meeting, speech and presentation support -- the EA team is concentrating on many key upcoming initiatives.

2021



September

Rollout brand refresh and first phase of web redesign
New facilities online and PPA approval
CAC retreat



October

Member agency default rate changes
Power Share RFO (Oct. 14 Board meeting) and associated campaign
Website redesign phase two
Calpine Grant Recipients Awarded



November

Power Ready RFO and campaign
Time-of-Use campaign (Feb. - March
changeover implementation)

Staff Report – Agenda Item 7

To: Board of Directors

From: Natasha Keefer, Vice President, Power Supply

Approved By: Ted Bardacke, Executive Director

Subject: Renewable Power Purchase Agreements with Desert Quartzite and Radiant

Date: September 2, 2021

RECOMMENDATIONS

Approve long-term Renewable Power Purchase Agreements with each of the following sellers for renewable energy and authorize the Executive Director to execute the two agreements:¹

- Desert Quartzite, LLC (Desert Quartzite) – 300 MW solar + 150 MW storage
- Radiant BMT, LLC (Radiant) – 3 MW solar

BACKGROUND

2020 Clean Energy RFO

CPA launched the 2020 Clean Energy RFO targeting procurement of 1.5-2 million MWh of annual renewable energy via long-term contracts, which provide better value to CPA than short-term contracts, ensure compliance with long-term contracting mandates, and expand the amount of renewable energy serving California.

CPA received a robust response to the RFO from 105 conforming renewable, renewable plus storage, and standalone storage projects. On January 14, 2021, a review team consisting of two Board members from the Energy Committee as well as senior staff

¹ Per CPA's Energy Risk Management Policy, any power purchase transactions greater than 5 years require approval by the Board.

consisting of the Executive Director, Chief Operating Officer, and Vice President of Power Supply met to analyze the submitted projects. These review team members evaluated confidential terms and conditions, including pricing, and selected a shortlist of projects to be recommended to the Energy Planning and Resources Committee (Energy Committee). On January 27, 2021, the Energy Committee reviewed and approved the recommended shortlist, authorizing staff to proceed with renewable power purchase agreement (PPA) negotiations. From the Energy Committee approved shortlist, CPA entered into exclusive negotiations for 8 renewable or renewable plus storage projects for contracts 10 years in length or longer. Desert Quartzite is one of the shortlisted projects from this solicitation.

2020 DAC-GT and CS-GT RFO (aka Power Share)

CPA launched the 2020 DAC-GT and CS-GT RFO targeting procurement of 12.19 MW of RPS-eligible generation and 3.13 MW of RPS-eligible solar generation to fill its program allocation under the CPUC-approved DAC-GT and CS-GT programs. The DAC-GT and CS-GT programs, also referred to as “Power Share” by CPA, promote renewable energy development in underserved communities and provide enrolled customers with 100% renewable energy and a 20% bill discount.

CPA received three responses to the RFO, one DAC-GT offer and two CS-GT offers.² All offers were for RPS-eligible solar generation. On April 20, 2021, a review team consisting of three Board members from the Energy Committee as well as senior staff consisting of the Executive Director, the Vice President of Power Supply, and the Director of Customer Programs met to analyze the submitted projects. These review team members evaluated confidential terms and conditions, including pricing, and selected a shortlist of projects to be recommended to the Energy Committee. On April 28, 2021, the Energy Committee reviewed and approved the recommended shortlist, authorizing staff to proceed with renewable PPA negotiations. From the Energy Committee approved shortlist, CPA

² The low response rate to the RFO was largely due to the nascent nature of the program and lack of project pipeline, particularly for community solar projects.

entered into exclusive negotiations for 3 renewable projects for contracts 15 years in length. Radiant is one of the shortlisted projects from this solicitation.

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

OVERVIEW OF PROJECTS

Project	Technology	Capacity (MW)	Online Date	Term	Developer	RFO
Desert Quartzite	Solar + Storage	300 MW solar + 150 MW storage	3/1/2024	15	EDF Renewables	2020 Clean Energy RFO
Radiant	Solar	3 MW	12/31/2023	15	Radiant	2020 DAC-GT and CS-GT RFO

Each of these projects is described in detail in the attached Project Descriptions A and B.

RATIONALE

The projects selected in the 2020 Clean Energy RFO and DAC-GT RFO help CPA meet its customers' large renewable energy demand, while maintaining competitiveness. The Board of Directors has previously approved 17 long-term renewable contracts, which make up approximately 46.6% of CPA's overall load once they come online, as shown in the table below:

Long-Term Renewable Contracts Contributing to CPA's Load³:

Project	Renewable MWs	Status	Commercial Operation Date	Term (Years)	County	Approx. % of Load Served
Voyager Wind	21.6	Online	12/28/2018	15	Kern, CA	0.7%
Kaweah Hydro	20.1	Online	6/16/2020	10	Tulare, CA	0.3%
Isabella Hydro	12.0	Online	12/8/2020	10	Kern, CA	0.4%
Mohave (White Hills) Wind	300.0	Online	12/16/2020	20	Mohave, AZ	7.7%
Golden Fields Solar	40.0	Online	12/22/2020	15	Kern, CA	1.1%
Arlington Solar + Storage	233.0	Contracted	12/31/2021	15	Riverside, CA	6.5%
High Desert Solar + Storage	100.0	Contracted	9/15/2021	15	San Bernardino, CA	2.8%
Azalea Solar + Storage	60.0	Contracted	12/31/2022	15	Kern, CA	1.7%
Rexford Solar + Storage	300.0	Contracted	10/1/2023	15	Kern, CA	7.8%
Daggett Solar + Storage	123.0	Contracted	3/31/2023	15	San Bernardino, CA	3.5%
Chalan Solar + Storage	64.9	Contracted	12/31/2023	15	Kern, CA	1.7%
Estrella Solar + Storage	56.0	Contracted	12/31/2022	15	Los Angeles, CA	1.7%
Heber South Geothermal	14.0	Contracted	1/1/2022	15	Imperial, CA	1.1%
Resurgence Solar + Storage	48.0	Contracted	3/31/2023	20	San Bernardino, CA	1.3%
Arica Solar + Storage	93.5	Contracted	12/1/2023	15	Riverside, CA	2.6%
Daggett 2 Solar + Storage	65.0	Contracted	9/30/2023	15	San Bernardino, CA	1.8%
Geysers Geothermal	50.0	Contracted	1/1/2022	15	Sonoma, CA	4.0%
Total Contracted	1,601.0					46.6%
Desert Quartzite Solar + Storage	300.0	Pending	12/1/2023	15	Riverside, CA	8.7%
Radiant Solar	3.0	Pending	12/31/2023	15	San Bernardino, CA	0.1%
Total with Pending	1,904.0					55.4%

The two proposed PPAs in this staff report constitute 303.0 MW of renewable generating resources, covering an additional 8.8% of CPA's overall demand. These contracts will enable CPA to reach 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, with the proposed PPAs, CPA will have met and exceeded its state long-term contracting mandate.

³ CPA's executed Luna Storage and 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:**

		2021-2024	2025-2027	2028-2030
1	State Mandated RPS per Compliance Period - % of Retail Sales	40%	49%	57%
2	State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS LT Contracts	65%	65%	65%
3	CPA's LT RPS Mandate = Row #2 * Row #1	25.9%	32.1%	36.8%
4	RPS Achieved by CPA with Existing LT Contracts	28.2%	45.6%	44.4%
5	Open Position relative to State Mandate (Row 3,4) +Above/ (-) Short	2.3%	13.5%	7.6%
6	RPS Achieved by CPA with Existing LT Contracts + Proposed Contracts	30.5%	54.2%	52.8%
7	Open Position relative to State Mandate (Row 3,6) +Above/ (-) Short with Proposed Contracts	4.6%	22.1%	16.0%

SUPPLY CHAIN PROVISIONS

To address forced labor concerns in the Xinjiang region of China and forced labor concerns within the renewable energy supply chain more generally, CPA has included a Supply Chain Code of Conduct in both PPAs to, among other important human rights obligations, prevent use of PV modules that used forced labor in the mining, processing, procurement, or manufacturing of such equipment.

Power Share

The Radiant project specifically is being procured under the CPUC Disadvantaged Communities Green Tariff (DAC-GT) program, which is a program designed to encourage the development of clean energy resources located in disadvantaged communities within the state of California. This program allows CPA to offer eligible customers who enroll with 100% renewable energy and a 20% bill discount. The CPUC reimburses CPA on program costs, including above-market procurement costs, the 20% customer bill discount, and CPA's program implementation costs. The Radiant project complies with project eligibility requirements of the DAC-GT program and would serve about 1,300 Power Share customers. CPA currently has 1,006 customers enrolled in the Power Share program.

Because the CPUC is reimbursing for above-market and other program costs, should CPA's Board of Directors approve the execution of the PPA, CPA is required to submit the PPA for approval by the CPUC.

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 Desert Quartzite and Radiant are each responsible for acquiring necessary CEQA or NEPA review and permits with relevant lead agencies. For the Desert Quartzite project, documentation of the Conditional Use Permit (CUP) from Riverside County has been received through the completed Environmental Impact Report (EIR) process led by the Bureau of Land Management (BLM) and Riverside County. For Radiant, the project is CEQA exempt and the lead agency for the CUP is the San Bernardino County Planning Commission. CPA has no role, jurisdiction, or authority whatsoever with respect to CEQA review or project approval.

ATTACHMENTS

1. [Project Description A: Desert Quartzite](#)
2. [Project Description B: Radiant](#)
3. [RFO Update and Power Purchase Agreement Presentation](#)
4. [Renewable Power Purchase Agreement with Desert Quartzite, LLC⁴](#)
5. [Renewable Power Purchase Agreement with Radiant BMT, LLC⁴](#)

⁴ Consistent with industry practice, portions of the agreement have been redacted to protect market sensitive information.

PROJECT DESCRIPTION A: DESERT QUARTZITE**Project Overview**

Desert Quartzite is 300 MW solar and 150 MW / 600 MWh lithium-ion battery storage facility located in Mesa Verde, CA in Riverside County. The commercial operation date is March 1, 2024.

The project has completed its interconnection agreements. Desert Quartzite will have Full Capacity Deliverability Status (FCDS), meaning it will provide resource adequacy attributes to CPA in addition to energy benefits. Desert Quartzite will interconnect to SCE's 220 kV Colorado River substation. Site control has been fully secured for the entirety of the proposed delivery term. The Environmental Impact Report (EIR) determination is complete.

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

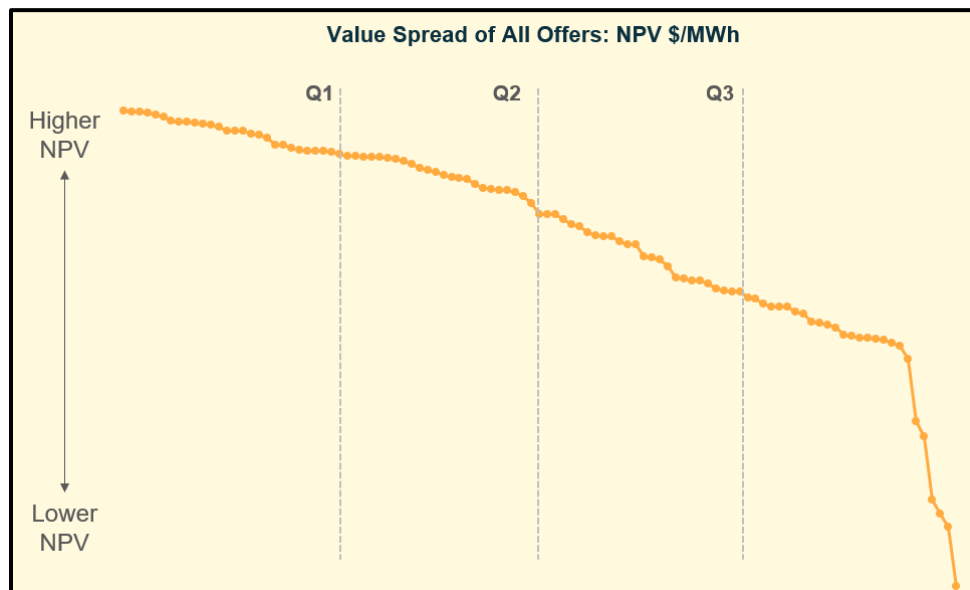
EDF Renewables, Inc. (EDF) is a global renewable energy company with 35 years of expertise in renewable energy, headquartered in San Diego, CA. EDF has developed over 16 GW of renewable energy projects in North America for its utility and corporate customers. EDF has over 330 MW of Battery Energy Storage Systems (BESS) deployed globally and has a wealth of experience in engineering, installing commissioning and operating BESS systems in a wide variety of applications and geographies. EDF Renewables has executed PPAs with multiple CCAs including MCE, SVCE, 3CE, and CleanPowerSF.

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 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 this offer falls within the first quartile (Q1) of offer submissions ranked on value in the 2020 Clean Energy RFO (see chart below).



The solar portion of the project is priced below current first quartile 2021 market prices as reflected in LevelTen's Q2 PPA 2021 Price Index, which provides average "P25"⁴ solar PPA pricing in \$/MWh terms recently offered for SP15 solar projects in California.

A similar publicly available benchmark for the storage portion of the project does not exist.

¹ <https://www.leveltenenergy.com/post/q2-2021> Represents the most competitive 25th percentile offer price.

Solar PPA Price by Hub

P25 Hub Price

**Development Score**

The project ranks High as it is in late-stage development and substantially de-risked. All land for the project is under contract and the project has executed interconnection agreements.

Workforce Development

The project ranks High as construction for the project will be conducted using a project labor agreement. The developer estimates this project will create up to 450 new construction jobs and 5 new permanent jobs.

Environmental Stewardship

The project ranks Medium as the project's entire footprint is situated within a Development Focus Area identified by the California Energy Commission, California Department of Fish and Wildlife, and the U.S. Bureau of Land Management in their Desert Renewable Energy Conservation Plan ("DRECP"), meaning that the site has been specifically identified for renewable energy development. Biological and cultural surveys are complete and incorporated into the final EIR.

Benefits to Disadvantaged Communities

The project ranks Medium as it is not located within a Disadvantaged Community (DAC) but will provide benefits to DACs including targeted hiring from workers in neighboring communities.

Project Location

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

PROJECT DESCRIPTION B: RADIANT**Project Overview**

Radiant is a 3 MW solar generating facility located within a Disadvantaged Community (DAC) in Newberry Springs, a few miles east of Barstow in San Bernardino County. The commercial operation date is December 31, 2023.

The project has an executed interconnection agreement. The project will interconnect at SCE's Helios 12kV distribution circuit. Site control has been fully secured for the entirety of the proposed delivery term. Radiant BMT expects the project's Conditional Use Permit (CUP) to be secured by July 2022.

CPA pays for the output of the solar generation at a fixed-price rate per MWh, with no escalation, for the full term of the contract (15 years). CPA is entitled to energy and renewable energy credits (RECs) products from the project.

Developer

The project developer is Radiant BMT, LLC, a Special Purpose Entity (SPE) made up of three renewable energy veterans. Combined, the three principals have more than 50 years of experience in renewable project development. Radiant BMT was formed in 2017 to develop a portfolio of wholesale distributed generation projects targeted for SCE's Renewable Feed-In Tariff program (ReMAT). SCE's ReMAT program was suspended in December 2021, preventing Radiant BMT from completing the projects. Radiant BMT has since identified the DAC-GT program as an avenue to reactivate and complete the projects.

Evaluation Criteria

CPA ranks projects for economic value based on the NPV to CPA and on a High, Medium, Neutral, and Low scale in five other evaluation criteria categories (Development 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

Because CPA received only three offers through the 2020 DAC RFO, pricing benchmarks from CPA's 2019 Distributed Track RFO were used to determine competitiveness. The Radiant project PPA offer price is approximately 25% lower than the average 2019 Distributed Track RFO offer for ground-mounted solar. The project is not expected to incur above-market costs; although if the project does incur above-market costs, the CPUC will reimburse those costs via funding available as part of the DAC-GT program.

Development Score

The project ranks Medium. All land for the project is under contract, and the project has an executed interconnection agreement. The project expects approval of its CUP in July 2022. Radiant BMT completed four similarly sized projects prior to their RFO submission and has been in operations for 4 years.

Workforce Development

The project ranks High as construction for the project will be conducted using union labor via a Project Labor Agreement. The developer estimates the project will create 25 new direct construction jobs.

Environmental Stewardship

The project ranks Neutral as the project footprint is not located in an ecological avoidance area and is on already disturbed land. A Phase I Environmental Site Assessment has been completed. Pursuant to discussions with San Bernardino County staff, Radiant was advised that the project site has little or no endangered species habitat or linkage.

Benefits to Disadvantaged Communities

The project ranks High as it is located within a DAC and demonstrates benefits to DACs including targeted local hiring.

Project Location

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

Item 7

RFO Update and Long-Term PPAs

September 2, 2021

Agenda

- Status of RFOs underway
- Summary of action requested
- 2020 Clean Energy RFO
 - Desert Quartzite project overview
- 2020 DAC RFO (aka Power Share)
 - Radiant project overview
- Next steps

RFOs Currently Underway

- CPA has two RFOs underway:

1

2020 DAC RFO (aka Power Share)

*Disadvantaged
Community Green
Tariff (DAC-GT)*

*Community Solar
Green Tariff
(CS – GT)*

2

2020 Clean Energy RFO

Action Requested

- CPA is seeking Board approval for two long-term renewable energy contracts; one from CPA's 2020 Clean Energy RFO, one from CPA's 2020 DAC RFO:

Project	Technology	Capacity (MW)	Online Date	Term	Developer	RFO
Desert Quartzite	Solar + Storage	300 MW solar + 150 MW storage	3/1/2024	15	EDF Renewables	2020 Clean Energy RFO
Radiant	Solar	3 MW solar	12/31/2023	15	Radiant BMT	2020 DAC RFO

2020 Clean Energy RFO

2020 Clean Energy RFO Overview

- Objective: Secure 1.5 – 2.0 million MWh of annual renewable generation supply from utility-scale resources
- CPA launched the 2020 Clean Energy RFO in October 2020, with bids due on November 20th
- On January 27, 2021, the Energy Committee approved a shortlist of 13 projects; 8 entered into exclusive negotiations
- To date, the Board has approved 5 long-term PPAs (Heber South geothermal, Geysers Geothermal, Arica, Daggett 2, and Resurgence)
- One additional PPA shortlisted from the RFO, Desert Quartzite, is presented today for Board consideration

2020 Clean Energy RFO Procurement Objectives

- Targets securing 1.5-2 million MWh of annual renewable energy via long-term contracts
- Helps CPA meet its customers' large renewable energy demand while capturing better value compared to short-term renewable energy contracts
- Near-term online date projects enable CPA to meet its regulatory obligations under SB 100 and SB 350 long-term renewable energy contracting requirements¹
- Supports CPA load requirements with a diverse portfolio of cost effective and clean technologies, including non-solar resources
- RFO shortlisted projects were approved by the Energy Committee

(1) SB350 requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced via from long-term contracts beginning in the 2021-2024 compliance period

Renewable Energy Position

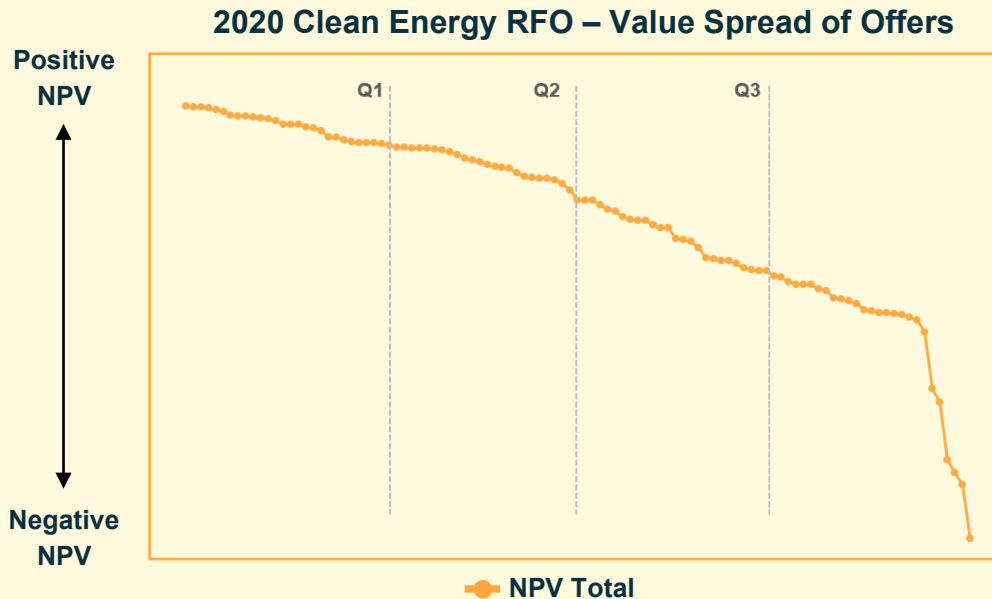
- CPA’s Board has approved 17 long-term renewable energy contracts and 2 standalone storage contracts to date, which make up approx. 43.3% of CPA’s overall load
- The two proposed PPAs will add another approx. 8.8% of CPA’s overall demand:

Project	Renewable MWs	Status	Commercial Operation Date	Term (Years)	County	Approx. % of Load Served
Executed Contracts to Date	1,601					46.6%
Radiant Solar	3	Pending	12/31/2023	15	San Bernardino, CA	0.1%
Desert Quartzite Solar + Storage	300	Pending	3/1/2024	15	Riverside, CA	8.7%
Total with Pending	1,904					55.4%

- With contracts executed from the 2020 Clean Energy RFO, CPA has met and exceeded its state long-term contracting mandate

Valuation Results

- Shortlisting in the 2020 Clean Energy RFO focused on first quartile projects, with additional projects in the second quartile added based on other portfolio considerations (resource diversification, online date)



Desert Quartzite Solar + Storage

Project Overview

- 300 MW solar + 150 MW/600 MWh lithium-ion battery
- Located in Mesa Verde, CA (Riverside County)
- Commercial Operation Date: December 1, 2023
- Developer: EDF Renewables

Rationale

- High evaluation criteria scores
- Early online date to meet SB350 compliance

Evaluation Summary

Criteria	Rank
Value	1 st quartile
Development Score	High
Workforce Development	High
Environmental Stewardship	Medium
Benefits to DACs	Medium
Project Location	Medium

2020 DAC RFO

DAC Programs (CPA Branded as “Power Share”)

- Two distinct programs that promote the development of renewable generation in and for underserved communities:

**Disadvantaged
Community Green
Tariff (DAC-GT)**
12.19 MW

*Encourages the development
of clean energy resources
throughout the state*

**Community Solar
Green Tariff
(CS – GT)**
3.13 MW

*Community-based projects
designed to serve local
communities*

Both programs allow eligible CPA customers who enroll in the Power Share program to receive 100% renewable energy and a 20% bill discount; the CPUC will reimburse CPA on program costs, including above-market procurement costs

2020 DAC RFO Overview

- Objective: Secure supply for the CPA Power Share Program from small and mid-size local/regional projects and enable enrollment
- CPA launched the 2020 DAC RFO in December 2020, with bids due on March 15th
- On April 26, 2021, the Energy Committee shortlisted 3 projects from this RFO, including one DAC-GT and two Community Solar projects
 - Staff is expecting to bring the Community Solar project PPAs to the Board for approval in October
- If approved by CPA's Board today, the PPA will be submitted to the CPUC for approval and be eligible for above-market cost reimbursement
- CPA is planning to launch a second RFO to secure additional supply later this year

Radiant Solar

Project Overview

- 3 MW solar generating facility
- Located in Newberry Springs, CA in San Bernardino County
- Commercial Operation Date: December 31, 2023
- Developer: Radiant BMT, LLC

Rationale

- Reasonable evaluation criteria scores
- Makes progress towards filling about CPA's DAC-GT program allocation – approximately 1,300 of 5,400 customers

Evaluation Summary

Criteria	Rank
Development Score	Medium
Workforce Development	High
Environmental Stewardship	Medium
Benefits to DACs	High
Project Location	Medium

NEXT STEPS

Next Steps

- The PPA from the 2020 Clean Energy RFO provides CPA with a cost effective, reliable renewable supply resource and will support CPA's compliance obligations
- The PPA from the 2020 DAC-GT RFO provides CPA with capacity towards filling our DAC-GT program allocation which in turn provides CPA DAC customers with renewable energy at a discount
- **Action Requested: CPA is seeking Board approval for the Desert Quartzite and Radiant long-term PPAs**
- CPA may bring additional long-term PPAs for Board consideration, from both the DAC RFO and 2020 Clean Energy RFO in future meetings

Upcoming Procurement Activity

- CPA is expecting to launch three additional RFOs later this year:

2021 Mid-Term Reliability RFO

- In June 2021, the CPUC ordered load serving entities to procure 11,500 MW of new capacity statewide to replace capacity retiring from the Diablo Canyon Power Plant and other once-through-cooling (OTC) thermal power plants
- CPA will launch an RFO to procure additional resources needed to comply with the order

2021 Power Share RFO

- CPA was able to secure ~25% of its Power Share program supply through its 2020 RFO; CPA will be launching another RFO to secure supply for its remaining program allocation for both DAC-GT and Community Solar programs
- CPA will be sharing additional outreach material with member agencies in September ahead of the RFO launch so that members can promote and potentially participate in the programs

2021 Power Ready RFO

- CPA has been working with member agencies to identify suitable sites for back-up solar+storage resources for member agency critical loads
- CPA will be launching an RFO for a third-party developer to design, build, own, and operate these back-up resources under a long-term PPA

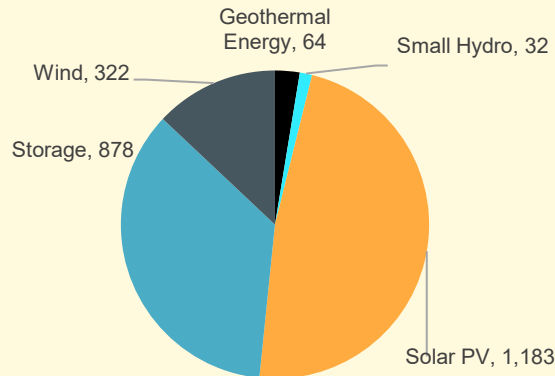
(1) CPUC Decision Requiring Procurement to Address Mid-Term Reliability (2023-2026) ([D.21-06-035](#))

APPENDIX

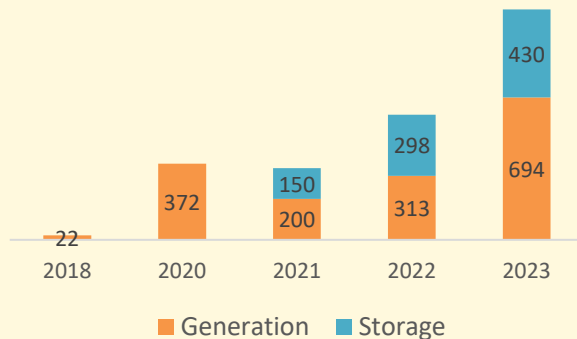
CPA Long-Term Portfolio

- The Board of Directors has approved 19 long-term contracts to date with renewable and storage resources for terms of 10-20 years, for a total of 1,601 MW of renewables and 877 MW of storage
- The majority of contracted MW are solar and/or storage
- 6 projects are currently online and serving CPA's load, with the remaining MW coming online in 2021-2023

MW Capacity by Technology



MW Capacity Online by Year



RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Desert Quartzite, LLC, a Delaware limited liability company

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

Description of Facility: Solar photovoltaic generation plus battery energy storage

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	Complete
Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, []Neg Dec, []Mitigated Neg Dec, [x]EIR	Complete
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	Complete
Executed Interconnection Agreements (Facility will have two Interconnection Agreements; both are executed)	Complete
Financial Close (Seller expects Affiliate provided construction financing)	N/A
Expected Construction Start Date	██████████
Initial Synchronization	7/15/2023
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	7/15/2023
Expected Date of CAISO Commercial Operation	11/15/2023

Milestone	Expected Date for Completion
Expected Commercial Operation Date	2/1/2024

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	938719
2	████████
3	████████
4	████████
5	████████
6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████
13	████████
14	████████
15	████████

Guaranteed Capacity: 450 MW of total Facility capacity

Guaranteed Storage Capacity: 150 MW of Installed Storage Capacity at four (4) hours of continuous discharge

Guaranteed PV Capacity: 300 MW of Installed PV Capacity

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	██████
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

Guaranteed Construction Start Date: November 1, 2022

Guaranteed Commercial Operation Date: March 1, 2024

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 15	\$ [REDACTED] /MWh (flat) with no escalation

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	\$ [REDACTED] /kW-mo. (flat) with no escalation

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 for each of the Generating Facility and the Storage Facility

Anticipated Flexible Capacity from the Storage Facility: 150 MW.

Scheduling Coordinator: Buyer or Buyer’s designated SC

Security Amounts:

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

Performance Security: \$60/kW of Installed PV Capacity plus \$90/kW of Installed Storage Capacity

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	1
1.1 Contract Definitions.....	1
1.2 Rules of Interpretation	26
ARTICLE 2 TERM; CONDITIONS PRECEDENT	27
2.1 Contract Term	27
2.2 Conditions Precedent	28
2.3 Development; Construction; Progress Reports.....	29
2.4 Remedial Action Plan	30
ARTICLE 3 PURCHASE AND SALE	30
3.1 Purchase and Sale of Product.....	30
3.2 Sale of Green Attributes.....	30
3.3 Imbalance Energy	31
3.4 Ownership of Renewable Energy Incentives	31
3.5 Future Environmental Attributes	31
3.6 Test Energy	31
3.7 Capacity Attributes	32
3.8 Resource Adequacy Failure	32
3.9 CEC Certification and Verification	33
3.10 Eligibility	34
3.11 California Renewables Portfolio Standard.....	34
3.12 Compliance Expenditure Cap	34
3.13 Project Configuration.....	35
ARTICLE 4 OBLIGATIONS AND DELIVERIES	35
4.1 Delivery.....	35
4.2 Title and Risk of Loss.....	36
4.3 Forecasting.....	36
4.4 Dispatch Down/Curtailment	38
4.5 Energy Management	39
4.6 Reduction in Energy Delivery Obligation	43
4.7 Guaranteed Energy Production.....	45
4.8 Storage Facility Availability; Ancillary Services	45
4.9 Storage Facility Testing; Storage Capacity Tests	46
4.10 WREGIS	47
ARTICLE 5 TAXES.....	49
5.1 Allocation of Taxes and Charges	49
5.2 Cooperation.....	49
ARTICLE 6 MAINTENANCE OF THE FACILITY	49
6.1 Maintenance of the Facility	49

6.2	Maintenance of Health and Safety	49
6.3	Shared Facilities.....	50
ARTICLE 7 METERING.....		50
7.1	Metering.....	50
7.2	Meter Verification.....	51
ARTICLE 8 INVOICING AND PAYMENT; CREDIT		51
8.1	Invoicing.....	52
8.2	Payment.....	52
8.3	Books and Records	52
8.4	Payment Adjustments; Billing Errors	52
8.5	Billing Disputes	53
8.6	Netting of Payments.....	53
8.7	Seller’s Development Security	53
8.8	Seller’s Performance Security.....	53
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral	54
8.10	Buyer Financial Statements	54
ARTICLE 9 NOTICES.....		55
9.1	Addresses for the Delivery of Notices	55
9.2	Acceptable Means of Delivering Notice.....	55
ARTICLE 10 FORCE MAJEURE		55
10.1	Definition	55
10.2	No Liability If a Force Majeure Event Occurs	56
10.3	Notice.....	56
10.4	Termination Following Force Majeure Event or Development Cure Period	57
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION		57
11.1	Events of Default	57
11.2	Remedies; Declaration of Early Termination Date.....	60
11.3	Damage Payment; Termination Payment	60
11.4	Notice of Payment of Termination Payment or Damage Payment.....	62
11.5	Disputes With Respect to Termination Payment or Damage Payment	62
11.6	Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date	62
11.7	Rights And Remedies Are Cumulative.....	63
11.8	Mitigation.....	63
11.9	Seller Pre-COD Termination and Liability Cap	63
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....		63
12.1	No Consequential Damages.....	63
12.2	Waiver and Exclusion of Other Damages.....	63
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY		64
13.1	Seller’s Representations and Warranties	64

13.2	Buyer’s Representations and Warranties	65
13.3	General Covenants	66
13.4	Workforce Development.....	67
ARTICLE 14 ASSIGNMENT		67
14.1	General Prohibition on Assignments	67
14.2	Collateral Assignment.....	67
14.3	Permitted Assignment by Seller.....	67
14.4	Shared Facilities; Portfolio Financing	68
14.5	Buyer Financing Assignment.....	68
ARTICLE 15 DISPUTE RESOLUTION		68
15.1	Governing Law	68
15.2	Dispute Resolution.....	68
15.3	Attorneys’ Fees	69
ARTICLE 16 INDEMNIFICATION.....		69
16.1	Indemnification	69
16.2	Claims	69
ARTICLE 17 INSURANCE.....		70
17.1	Insurance.....	70
ARTICLE 18 CONFIDENTIAL INFORMATION		71
18.1	Definition of Confidential Information.....	71
18.2	Duty to Maintain Confidentiality.....	72
18.3	Irreparable Injury; Remedies	72
18.4	Further Permitted Disclosure	73
18.5	Press Releases	73
ARTICLE 19 MISCELLANEOUS		73
19.1	Entire Agreement; Integration; Exhibits.....	73
19.2	Amendments	73
19.3	No Waiver	73
19.4	No Agency, Partnership, Joint Venture or Lease.....	73
19.5	Severability	74
19.6	Mobile-Sierra	74
19.7	Counterparts.....	74
19.8	Electronic Delivery	74
19.9	Binding Effect.....	74
19.10	No Recourse to Members of Buyer	74
19.11	Forward Contract	74
19.12	Change in Electric Market Design.....	75
19.13	Further Assurances.....	75

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 Annual Expected Available Generating Facility Capacity Report
Exhibit F-2	Form of Monthly Expected PV 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 Commercial Operation Date Certificate
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 Assignment Agreement
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 Consent to Collateral Assignment
Exhibit T	Supply Chain Code of Conduct
Exhibit U	Material Permits

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 the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

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

“**Ancillary Services**” means those ancillary services specifically identified in Exhibit Q, as each such ancillary service is defined in the CAISO Tariff as of the Effective Date, subject to Section 4.1(c).

“**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.

“**Anticipated Flexible Capacity**” means the amount and category of Flexible Capacity identified on the Cover Sheet which Seller anticipates as of the Effective Date that the Facility will be qualified by the CAISO to provide to Buyer.

“**Approved Forecast Vendor**” means (x) any of CAISO or Vaisala, 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.

“**Auxiliary Use**” means the Energy that is used (including Energy used during the charging or discharging of the Storage Facility) within the Storage Facility to power the motors, temperature control systems, control systems and other electrical loads that are integral to the operation of the Storage Facility.

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

“**Availability Standards**” has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

“**Available Effective Storage Capacity**” 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 undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to 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) and (b):

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less PV Energy from the Generating Facility than the full amount of PV Energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time; and

(b) either:

(i) 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 (A) not having submitted a Self-Schedule for the MWs subject to the reduction or (B) having submitted a Self-Schedule in the Day-Ahead Market for the MWs subject to the reduction, but thereafter having submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market and did not receive a Schedule from the CAISO in the Real-Time Market for such MWs subject to the reduction; or

(ii) Buyer or the SC submitted a Self-Schedule for the period covered by the curtailment and:

(A)

[REDACTED]

(B)

[REDACTED]

If the Generating 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 curtailed Energy that was not delivered from the Generating Facility 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 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 or other breach hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point; *provided*, 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 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 Charges Invoice**” has the meaning set forth in Exhibit D.

“**CAISO Commercial Operation**” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

“**CAISO Dispatch**” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC, Alternative Dispatches 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, sold or conveyed under CAISO or CPUC 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 Facility or the Generating Facility (as applicable) is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy or PV Energy (as applicable) delivered to the Delivery Point or Generating Facility Meter (as applicable) qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility or the Generating Facility (as applicable) indicating that the planned operations of the Facility or the Generating Facility (as applicable) 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 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 Auxiliary Use. All Charging Energy shall be used solely to charge the Storage Facility, and unless authorized in writing by Seller, all Charging Energy shall be generated solely by the Generating Facility. Prior to the Grid Charging Effective Date, the Parties acknowledge that with reference to Exhibit R, all Charging Energy will originate at, and flow directly from, the Generating Facility, through the Generating Facility Meter and Storage Facility Meter, to the Storage Facility, and will not cross the Facility’s high voltage transformer or Delivery Point.

“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 Charging Energy 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 the CAISO Tariff, if applicable, and (b) subject to Section 7.1(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 (as adjusted to reflect Electrical Losses). Any instruction to charge the Storage Facility pursuant to a 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.

“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:

(i) prior to the date on which Seller has achieved CAISO Commercial Operation for the Generating Facility, an amount equal to (a) the Development Security amount required hereunder divided by (b) ninety (90); and

[REDACTED]

[REDACTED]



“**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.

“**Consent to Collateral Assignment**” has the meaning set forth in Section 14.2.

“**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 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 this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating this 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 3.8(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) as a result of an Oversupply Curtailment [REDACTED]

(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 Agreements 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*; 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 (0), 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” means 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 Auxiliary Use. All Discharging Energy shall 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 the Facility, 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 the CAISO Tariff, and (b) subject to Section 7.1(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; *provided*, if any such automatic adjustment is prohibited by, or would result in Seller incurring any penalties or charges that are not reimbursable by Buyer pursuant to this Agreement under, the CAISO Tariff, then Seller shall instead reduce deliveries of PV Energy as necessary to avoid exceeding the Interconnection Capacity Limit and all such reduced PV Energy deliveries shall constitute (and be treated as) Deemed Delivered Energy. Any instruction to discharge the Storage Facility during a Buyer Dispatched Test shall be considered a Discharging Notice, and 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 Flexible Capacity" means the effective flexible capacity (in MWs) of the Facility pursuant to the counting conventions set forth in the Resource Adequacy Rulings and the CAISO Tariff, which such flexible capacity may be used to satisfy Flexible RAR.

"Effective Storage Capacity" means the lesser of (a) P_{MAX}, and (b) the 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 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 calculated pursuant to Exhibit O by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"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 the Storage Facility Metering Point associated with delivery of Charging Energy to the Storage Facility, in each case as applicable. If any amounts included within the definitions of "Electrical Losses" and "Auxiliary 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 or multiple units thereof.

“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(12) of Exhibit O.

“Energy Replacement Damages” has the meaning set forth in Section 4.7.

“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 proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“Facility” means the combined Generating Facility and the Storage Facility.

“Facility Energy” means PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period.

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

“Flexible Capacity” means, with respect to any particular Showing Month, the number of MWs of Product which are eligible to satisfy Flexible RAR.

“Flexible RAR” means the flexible capacity 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.

“**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.

“**Force Majeure Unavailability**” has the meaning set forth in Exhibit C.

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility that prevents Seller from generating PV 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.

“**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 (i) PV Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; *provided*, 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 and the CPUC; *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: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), 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; and (3) 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.

“**Grid Charging Effective Date**” has the meaning set forth in Section 3.13.

“**Guaranteed Capacity**” means the sum of (x) the Guaranteed PV Capacity and (y) 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.

“**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.

“**Idle Period Auxiliary Use**” means Auxiliary Use consumed by the Storage Facility during periods in which the Storage Facility is not charging or discharging pursuant to a Charging Notice or Discharging Notice.

“**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 applicable 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 commencement of Trial Operations (as defined in the CAISO Tariff).

“**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 (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) P_{MAX}, 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 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(s)**” means the interconnection agreement(s) 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 is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreements, in the amount of 300 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 Agreements.

“**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 United States Internal Revenue Code of 1986.

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

“**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- 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.

“Material Permits” means all permits required for Seller to commence construction, as set forth on Exhibit U.

“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 restrictions, rules, requirements, and procedures set forth in 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.

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

“**Permitted Transferee**” means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person (on a consolidated basis with its Affiliates) 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; 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 (failing such operations experience) has retained a third-party with such experience to operate the 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 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 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 United States Internal Revenue Code of 1986.

“**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.

“**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, a load-serving 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 Commercial Operation Date.

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing with the Showing Month that includes the RA Guarantee Date, during which the Net Qualifying Capacity of the Generating Facility or the Storage Facility, plus any Replacement RA (if applicable) that was provided by Seller to Buyer for such Showing Month, was less than the Qualifying Capacity of the Generating Facility or the Storage Facility, respectively, for such month (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for Buyer which actually includes the Generating Facility’s or the Storage Facility’s Net Qualifying Capacity or any Replacement RA, 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 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, Future Environmental Attribute, or Capacity 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 Flexible Capacity and 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 Resource” shall have the meaning used in Resource Adequacy Rulings.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-12-006 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.

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“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. The SC may be Buyer if Buyer meets all applicable requirements.

“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 each 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*, 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 (including 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, and includes all Auxiliary Use.

“**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 shown in 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. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time may be greater than the Stored Energy Level as defined in the preceding sentence, and the Facility’s energy management system shall provide a continuous monitoring and read out of the Stored Energy Level as defined in the preceding sentence.

“Supplementary Capacity Test Protocol” has the meaning set forth in Exhibit O.

“Supply Chain Code” has the meaning in Exhibit T.

“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 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 (i) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) 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 (ii) 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.

“**UIE**” has the meaning set forth in Section 4.5(k)(i).

“**Ultimate Parent**” means EDF Renewables, Inc., a Delaware corporation.

“**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, unless the context otherwise requires;

(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, 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) Necessary Interconnection Agreements 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 Agreements delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Generating Facility, and of the Storage Facility (for general charging and discharging into the CAISO market but not for provision of Ancillary Services), have been obtained and all conditions thereof required for commencement of operation have been satisfied and shall (as applicable) be in full force and effect;

(e) Seller has obtained each CAISO Certification for the commencement of operation of the Facility (for general charging and discharging into the CAISO market but not for provision of Ancillary Services);

(f) Seller has received CEC Precertification of the Facility or the Generating Facility (as applicable), (and reasonably expects to receive final CEC Certification and Verification for the Facility or the Generating Facility (as applicable), 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 that are reasonably capable of being completed prior to the Commercial Operation Date, including (as applicable) 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;

(i) Seller has taken all actions and executed all documents and instruments, required to authorize Buyer (or its designated agent) to act as Scheduling Coordinator under this Agreement, and Buyer (or its designated agent) is authorized to act as Scheduling Coordinator except to the extent Buyer has failed to take any commercially reasonable action necessary to become or designate the Scheduling Coordinator; and

(j) 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.**

(a) 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 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.

(b) Seller shall: (i) use commercially reasonable efforts consistent with Prudent Operating Practice to attempt to ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with applicable requirements expressly set forth in the Supply Chain Code; and (ii) implement (and cause its Affiliates involved with the Facility to implement) commercially reasonable audit procedures consistent with Prudent Operating Practice with respect to Supply Chain Code compliance matters, and use commercially reasonable efforts consistent with Prudent Operating Practice to attempt to require all of their direct contractors and suppliers involved with the Facility (A) to implement such audit procedures and (B) to require all their sub-contractors and sub-suppliers to implement such audit procedures. Notwithstanding the foregoing, in recognition that Seller cannot reasonably be expected to control all third parties in the Facility supply chain, any failure of Seller to comply with the preceding requirements of this Section 2.3(b) or the Supply Chain Code (and any violations of the Supply Chain Code) shall not be considered a breach or default of this Agreement except where (and only where) such failure or violation is either (a) directly committed by Seller, or a Seller Affiliate involved with the Facility or (b) in the case of a failure or violation committed by Seller's or its Affiliates' direct suppliers or contractors (or their sub-contractors or sub-suppliers, or other supply chain participants involved with the Facility), Seller failed to use commercially reasonable efforts consistent with Prudent Operating Practice either (i) to attempt to require the inclusion of contract provisions based upon this Section 2.3 (as appropriate in Seller's reasonable judgment) in Seller's contract(s) with Seller's direct contractor or supplier involved with or responsible for (or in the chain of, as applicable) such failure or violation or (ii) to implement commercially reasonable audit procedures consistent with Prudent Operating Practice which, had such procedures been implemented, would reasonably have been

expected to avoid such failure or violation. Seller shall notify Buyer reasonably promptly if Seller becomes aware of any breach of its obligations under this Section 2.3(b).

(c) Upon the request of Buyer from time to time, Seller shall share with Buyer the written reports or other written results of any Supply Chain Code related audits Seller performs or that Seller arranges (and which are reasonably available to Seller) related to the Facility, as may be reasonably redacted for any confidential or proprietary information. To the extent that Seller does not perform an audit of any material relevant Supply Chain Code matters related to the Facility using a qualified independent third-party auditor, then at Buyer's request, Seller shall use commercially reasonable efforts to cooperate with Buyer to allow Buyer, at Buyer's sole expense, to retain an independent auditor to audit such Supply Chain Code matters.

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 or other Buyer breach hereunder, 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.

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 shall 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 shall 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.** Subject to Section 4.9: (i) 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 ; and (ii) 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/or received or delivered by the Storage Facility may deviate from the amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as expressly set forth in this Agreement.

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 to 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*, 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 of the Generating Facility

(but not Storage Product, subject to Section 4.5(h)) on an as-available basis. As compensation for such Test Energy and associated Product (but not Storage Product, subject to Section 4.5(h)), Buyer shall pay Seller an amount equal to, for the first 200,000 MWh of Test Energy, seventy percent (70%) of the Renewable Rate, for the next 200,000 MWh of Test Energy, fifty percent (50%) of the Renewable Rate, and thereafter zero dollars (\$0) per MWh (together, 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 for the Generating Facility and the Storage Facility 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 Generating Facility and the Storage Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Generating Facility and the Storage Facility qualifies to provide all Resource Adequacy Benefits, including (as applicable) Flexible Capacity, 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.

(d) If Seller anticipates that it will have any RA Deficiency Amounts in a Showing Month, Seller may provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such Showing Month, minus (Y) the expected Net Qualifying Capacity of the Facility with respect to such Showing Month, provided that (a) the amount of Replacement RA in any Contract Year shall not to exceed twenty-five percent (25%) of the annual total amount of Resource Adequacy Benefits expected to be provided by the Facility, and (b) any intended Replacement RA is communicated by Seller to Buyer in a Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of including in Buyer’s RA Compliance Showing for such Showing Month.

3.8 Resource Adequacy Failure.

(a) **RA Deficiency Determination.** Subject to this Section 3.8 and to Section 3.12, 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 with respect to the Generating Facility or the Storage Facility (as applicable), Seller shall pay to Buyer

an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the difference, expressed in kW, of (A) the Qualifying Capacity of the Generating Facility or the Storage Facility (as applicable) (or, if Seller has not obtained certification from the CAISO of the Generating Facility’s or the Storage Facility’s Qualifying Capacity, the amount of Qualifying Capacity the Generating Facility or the Storage Facility (as applicable) would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (B) the Net Qualifying Capacity of the Generating Facility or the Storage Facility (as applicable) plus any Replacement RA that was provided by Seller to be included in the Showing Month for Buyer (or, if Seller does not have a Net Qualifying Capacity and did not provide any Replacement RA that was shown in a Showing Month for Buyer (other than due to Buyer’s action or inaction), the Net Qualifying Capacity shall be deemed to be zero (0) MW), multiplied by (ii) the price for CPM Capacity (in \$/kW) as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“**CPM Price**”);

[REDACTED]

[REDACTED]

[REDACTED]

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 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 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 (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any material changes to the information included in Seller's application for CEC Certification and Verification.

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 or the Generating Facility (as applicable) 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 (or Generating Facility's, as applicable) 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 (and Buyer's payment obligations hereunder for Product shall not be reduced) 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 costs or expenses 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 or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of such costs or 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) To the extent there are any actions that Seller might take to comply with changes in Law the costs and expenses of which are subject to the Compliance Expenditure Cap as set forth in the first paragraph above, such actions shall be referred to collectively as the "**Compliance Actions**"; *provided*, Compliance Actions shall not require Seller to (i) install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Law occurring after the Effective Date or (ii) charge the Storage Facility with Energy from the grid prior to the Grid Charging Effective Date. To the extent there are no such Compliance Actions that Seller might take, Seller shall be excused from its obligations under this Agreement that are made subject to this Section 3.12, including related to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes to the extent impaired by such change in Law. Additionally, to the extent any change in Law results in an increase in the potential liability of Seller to Buyer for RA Deficiency Amounts under Section 3.8 (excluding only changes in Law

solely related to Mechanical Availability that are addressed in Section 3.8) for which there are no Compliance Actions that would eliminate such increases in liability, Seller shall be excused from such increases in liability.

(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 costs (as may be revised and updated by Seller in its reasonable discretion after a Buyer rejection of the previously proposed 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 in a commercially reasonable timeframe 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 shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including discussions to commence no later than one hundred eighty (180) days prior to the end of the fifth (5th) Contract Year regarding the use of grid energy to provide Charging Energy to commence at the beginning of the sixth (6th) Contract Year, or earlier if a change of applicable Laws makes such change feasible at an earlier date; *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 in their sole discretion as set forth in a written agreement. The date on which the Parties execute any such agreement is herein referred to as the “**Grid Charging Effective Date**”.

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 (except for PV Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) in accordance with the terms of this Agreement. Seller shall 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.

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

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) 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 / one (1) MWh 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. The 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 such outage. The 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 shall 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 applicable 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; *provided further*, delivery of excess Facility Energy during a Settlement Interval in which the Generating Facility and/or Storage Facility is ramping down or ramping up to the Dispatch Operating Target or Operating Instruction shall not be considered a failure by Seller to comply with a Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that the Generating Facility and/or Storage Facility meets the Dispatch Operating Target or Operating Instruction as required by the CAISO Tariff.

(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. Subject to the provisos in Section 4.4(a), 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 (without double counting any penalties for which Seller is liable under Section 4.5(k)(i)).

(d) Seller Equipment Required for Operating 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 operating instructions from the CAISO and Buyer's SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by CAISO and Buyer's SC from time to time 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 and reasonably directed by Buyer, 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 expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), Section 4.5(l), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility prior to the Grid Charging Effective Date, 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. 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 causing Charging Notices to be issued; *provided*, Buyer's right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, the provisions of Section 4.5(a), and the availability of Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of 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 to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with 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 charges the Storage Facility (i) to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) in violation of the first sentence of this Section 4.5(c), then Section 4.5(k) shall apply, 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. During any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) Discharging Notices; 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 to the extent necessary 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 the Transmission Provider or Governmental Authority (it being acknowledged, however, that any deviations in charging, discharging or use of the Storage Facility expressly addressed in Section 4.5(k) shall be considered permitted uses hereunder and shall not result in a breach of or give rise to Seller liability under this Section 4.5(d)). Subject to the availability of Energy in the Storage Facility, 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 causing Discharging Notices to be issued, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing level of charge of the Storage Facility. 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 (including as automatically updated in accordance with the definition of 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 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 Buyer or its SC or a Governmental

Authority or the Transmission Provider. Buyer's SC 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 CAISO rules and the Operating Restrictions.

(f) Unauthorized Charges and Discharges. If Seller or anyone acting on behalf of Seller charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder (it being acknowledged, however, that any deviations in charging, discharging or use of the Storage Facility expressly addressed in Section 4.5(k) shall be considered permitted uses hereunder and shall not give rise to Seller liability under any other provisions hereof (including Sections 4.5(c), (d), and (f))), it shall be a breach by Seller and Seller shall reimburse Buyer for any costs (including the cost of Energy used for charging the Storage Facility, and any other CAISO costs, charges or penalties) arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same (after notice from Buyer and a reasonable period to implement such procedures), then it shall be a Seller Event of Default.

(g) Requirements for Charging and Discharging Notices. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(h) Pre-Commercial Operation Date Period, etc. Unless the Parties agree otherwise in writing, prior to the date on which both the Generating Facility and Storage Facility have achieved CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to test, charge and discharge the Storage Facility; *provided*, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility, (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Unless the Parties agree otherwise in writing, following the date on which both the Generating Facility and Storage Facility have achieved CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period following the date on which both the Generating Facility and Storage Facility have achieved CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Monthly Capacity Payment, pro-rated for partial months.

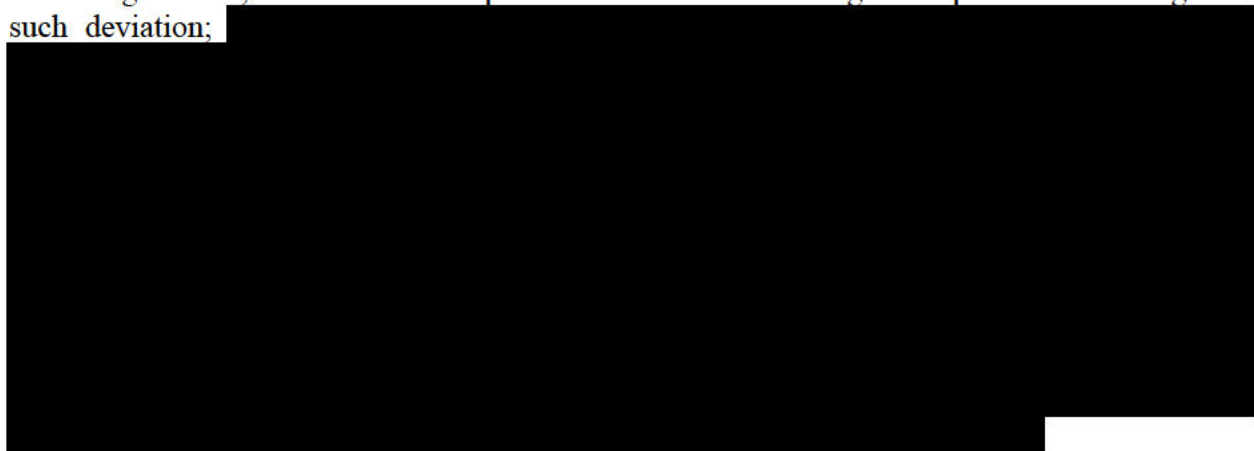
(i) Priority of CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch.

(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**”).

(k) Failure to Comply with Dispatches.

(i) During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch (and has not been reported as unavailable in accordance with Section 4.3 or Exhibit P), but the Storage Facility deviates from a CAISO Dispatch that otherwise complies with the Operating Restrictions and other requirements of this Agreement, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation;



(ii) For each Calculation Interval during the Delivery Term for which the Storage Facility has not been reported as unavailable in accordance with Section 4.3 or Exhibit P, and is not capable of responding to CAISO Dispatches (except if due to Seller not having obtained its initial CAISO Certification for the provision of Ancillary Services, the sole remedy for which is set forth in Section 4.5(k)(iii)), such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the Annual Storage Capacity Availability. Except as provided in Section 4.5(k)(iii), the remedy set forth in this Section 4.5(k)(ii) shall be Buyer’s sole remedy arising out of any such incapability of responding to CAISO Dispatches.

(iii) For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility either (A) fails to respond at all to an Ancillary Services Dispatch that is consistent with the Operating Restrictions and the CAISO Tariff, or (B) is not certified by the CAISO to provide Ancillary Services, the Storage Capability for such Calculation Interval shall be deemed reduced for

purposes of calculating the Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%). The remedy set forth in this Section 4.5(k)(iii) shall be Buyer's sole remedy arising out of such failure to respond at all to an Ancillary Services Dispatch that is consistent with the Operating Restrictions and the CAISO Tariff or to be certified by the CAISO to provide Ancillary Services.

(iv) In any case where Sections 4.5(k)(ii) or (iii) are applicable, Section 4.5(k)(i) shall be inapplicable.

(l) Station Use and Idle Period Auxiliary Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge: (i) during charging and discharging of the Storage Facility pursuant to a Charging Notice or Discharging Notice, Auxiliary Use that is integral to charging or discharging the Storage Facility (e.g., HVAC, fire suppression systems, telecommunications equipment and battery management systems) may be served by Charging Energy or Discharging Energy; *provided*, only Auxiliary Use loads that are reflected in Energy In and Energy Out during Efficiency Rate testing under Exhibit O may be served by Charging Energy or Discharging Energy pursuant to this Section 4.5(l)(i), (ii) except as contemplated by preceding clause (i), or the following sentence, Seller is responsible for providing or obtaining all Energy to serve Station Use (including paying the cost of any Energy from the local utility to serve Station Use), (iii) the supply of Auxiliary Use shall not be deemed a deviation for purposes of Section 4.5(k)(i) or a violation of this Agreement, including Sections 4.5(c), (d), and (f), (iv) Buyer shall use all reasonable efforts to ensure that the Storage Facility is charged each day in a manner necessary so that eleven (11) MWhs of Energy is available during each nightly period from sunset to sunrise to supply Idle Period Auxiliary Use, (v) Seller may serve Idle Period Auxiliary Use needs during each nightly period from sunset to sunrise with up to eleven (11) MWhs of Energy stored in the Storage Facility, and (vi) Seller shall reimburse Buyer for all Idle Period Auxiliary Use in the manner contemplated by paragraph (a) of Exhibit C. If any Energy provided by Buyer is used by Seller for Auxiliary Use (including Idle Period Auxiliary Use) and such use violates any CAISO rules, other applicable Laws or any applicable utility tariff, Seller (i) shall be solely responsible for (and shall reimburse Buyer, as applicable) any and all costs, penalties and charges resulting therefrom and (ii) shall take such actions as may be necessary to comply with such CAISO rules, other applicable Laws or applicable utility tariff).

4.6 **Reduction in Energy Delivery Obligation.** Without limiting Section 3.1 or Exhibit G, or any rights expressly provided hereunder to Seller in relation to the operation of the Facility:

(a) Facility Maintenance.

(i) 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) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an “Approved Maintenance Outage” under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall (A) reimburse Buyer for any costs, penalties or charges imposed by CAISO or the CPUC in connection therewith (including replacement Capacity Attributes as required by the CAISO), and (B) subject to Prudent Operating Practices, limit maintenance repairs performed pursuant to this Section 4.6(a) to periods when Buyer does not reasonably believe the Facility will be dispatched.

(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 (such approval not to be unreasonably withheld if such Planned Outage cannot be scheduled outside of such period consistent with Prudent Operating Practice). 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 Agreements or applicable tariff.

(d) Force Majeure Event. Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event to the extent such Force Majeure Event prevents Seller from delivering any such Product.

(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, (i) any reduction in Storage Capability or Availability Effective Storage Capacity resulting from Seller’s reductions in Product deliveries pursuant to this Section 4.6 shall not excuse any such reductions in the Storage Capability and/or Availability Effective Storage Capacity and/or Availability Effective Storage Capacity for purposes of calculating the Annual Storage Capacity Availability pursuant to Exhibit P to the extent any such reduction otherwise constitutes an Unavailable Calculation Interval pursuant to Exhibit P, (ii) any reduction in Product resulting from this Section 4.6 shall not reduce Seller’s obligations in respect to RA Shortfall Amounts otherwise arising under Section 3.8, except to the extent that such reduction is the result of circumstances set forth in Sections 4.6(d), and (iii) subject to the terms and conditions of this Agreement, Buyer has no obligation to pay Seller for any Product from the Generating Facility for which the associated PV Energy is not or cannot be

delivered to the Delivery Point (except to the extent delivered to the Storage Facility as Charging Energy) as a result of any of the conditions in this Section 4.6 or a Curtailment Order, other than Section 4.6(c) as to any Buyer Curtailment Period.

4.7 **Guaranteed Energy Production.** During each Performance Measurement Period, 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 Default or other Buyer failure to perform that directly prevents Seller from being able to deliver PV Energy to the Delivery Point or to the Storage Facility. 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 or to the Storage Facility 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 (“**Energy Replacement Damages**”); *provided*, 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 ten percent (10%) of the Expected Energy for the previous Contract Year.

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 [REDACTED] percent ([REDACTED]%) (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 the 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 by the Efficiency Rate Factor pursuant to Section (d) of Exhibit C.

(c) 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.

(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; *provided*, Buyer's exclusive remedies for Seller's failure to satisfy such obligation are as set forth in Section 4.5(k).

4.9 Storage Facility Testing; Storage Capacity Tests.

(a) 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 request or run (as applicable) 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, subject to applicable NERC requirements and other applicable Laws.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity and/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 and 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. 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, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility dispatch during a Buyer Dispatched Test, and Buyer shall pay all Charging Energy costs (and other CAISO costs and charges); for clarity, Buyer shall not be excused from paying Seller the Renewable Rate for all PV Energy used as Charging Energy during Buyer Dispatched Tests. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer's payment to CAISO for the 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, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. 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 (to the extent reasonably capable of being done prior to the Commercial Operation Date and, if not, as soon as reasonably possible thereafter), 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 (taking into account the timing of WREGIS' issuance of WREGIS Certificates in the normal course) ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any error or omission 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 next coming due 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) 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 (to the extent such steps are reasonably

capable of being taken prior to the first delivery under this Agreement) will be taken prior to the first Energy delivery under this Agreement.

(h) The Parties acknowledge and agree that this Section 4.10 reflects an understanding between the Parties that, under applicable Law, WREGIS Certificates for CAISO “co-located” facilities like the Facility will be created equivalent to the amount of PV Energy that is generated and metered at the Generating Facility (adjusted for losses to the Delivery Point, but without taking into account Energy losses associated with use of the Storage Facility), and Seller shall deliver WREGIS Certificates in amounts consistent with such understanding, subject to any change in any such Law.

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 commercially 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.

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 delivery of the 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 Agreements, 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 Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such shared facilities and/or co-tenancy agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including maintaining Shared Facility capacity equal to the Interconnection Capacity Limit for Buyer's sole use (as may be consistent with CAISO rules), (ii) provide for separate metering of the Facility, including by obtaining interconnection capacity under the Interconnection Agreements equal to the Interconnection Capacity Limit for the Facility's sole use, subject to applicable CAISO rules, (iii) not allow any other generating or energy storage facilities not included in the Facility but using Shared Facilities to be included within the Facility's CAISO Resource IDs, and (iv) provide that in the event of any discretionary allocation under such agreements of curtailment of output from generating or energy storage facilities using the Shared Facilities (not resulting from the fault of Seller or improper operation of the Facility) shall not be allocated to the Facility other than in proportion to the Facility's pro rata portion of the total capacity of all generating or energy storage facilities using the Shared Facilities.

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 and all Auxiliary Use consumed by the Facility. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at 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-Settlements (MRI-S) web and/or directly from the CAISO meter(s) at the Facility. Notwithstanding the foregoing or any other provision hereof, the Parties acknowledge that Seller is evaluating whether or not to combine the two Facility Interconnection Agreements into a single Interconnection Agreement, in connection with such evaluation Seller may desire to use two separate CAISO Resource IDs for each of the Generating Facility and the Storage Facility (i.e., four separate CAISO Resource IDs total) and, if so, Seller shall provide notice thereof to Buyer as soon as reasonably possible, but in any event at least sixty (60) days prior to the Commercial Operations Date, and the Parties shall cooperate to identify and implement such administrative details as may be appropriate to carry out such structure consistent with the other provisions of this Agreement.

(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, and (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. If any of the foregoing mutual understandings in (i) or (ii) between the Parties become incorrect during the Delivery Term, or if the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement result in charges or penalties [REDACTED] or other adverse consequences to either Party, 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. Additionally, with respect to such automatic adjustments to Charging Notices and Discharging Notices, until the Parties agree on an alternative approach, Buyer shall issue (or cause to be issued) all Charging Notices and/or Discharging Notices (as applicable) in a manner that minimizes the need for any such automatic adjustments and Buyer shall be responsible for all CAISO charges, costs and penalties that result from Seller's compliance with any such automatic adjustment.

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 request permission from CAISO to 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, 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, Idle Period Auxiliary Use, 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.

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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

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 (12)-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, C, 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. 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.

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. 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. 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 or Performance Security for another permitted form.

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.

8.10 **Buyer Financial Statements.** Buyer shall provide to Seller both upon request and as indicated below: (a) within forty-five (45) days following the end of its first, second and third fiscal quarters, unaudited quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (b) within one hundred eighty (180) days following the end of each fiscal year, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (c) as available, Buyer’s annual report, which will include an

overview of customer rate classes and retention rates (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer's member agencies and board members; (d) committed, unused bank line of credit as of the end of each fiscal quarter; and (e) other financial and operational information for the prior fiscal quarter as may be reasonably requested by Seller's financing parties.

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, and 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 commercially 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 or pandemic (including the COVID 19 pandemic (and variants thereof) [REDACTED])

landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; [REDACTED]; [REDACTED]; 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.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use commercially reasonable 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.

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 or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's actions (or failure to take commercially reasonable actions), then Seller may terminate this Agreement upon 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 Notice to the other Party. 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 any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision) 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) except for circumstances contemplated by Section 10.4(a), the failure by Seller to (A) achieve Construction Start on or before the Guaranteed Construction Start Date, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, in each case (A) and (B) as such dates may be extended in accordance with 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 applicable portion of the annual forecast provided 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 (or such longer period up to [REDACTED] ([REDACTED]) months total as may be necessary for the repair or replacement of a Facility transformer in the event of any damage or destruction thereto not due to a Force Majeure Event) (“Cure Plan”) and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein; *provided*, subject to Section 10.4(b), if a Force Majeure Event prevents Seller from completing a Cure Plan within its required timeframe, the time period for Seller to complete such Storage Cure Plan shall be extended by the period of such Force Majeure Event;

(iv) if, in any Contract Year, the Annual Storage Capacity Availability calculated under Section (a) of Exhibit P following the end of any calendar month (starting with the calculation following the second month for such Contract Year) multiplied by the weighted average Effective Storage Capacity of the applicable portion of such Contract Year is not at least

seventy percent (70%) of the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within twenty (20) 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 (or such longer period up to [REDACTED] ([REDACTED]) months total as certified by the Licensed Professional Engineer could not reasonably be accomplished in less time) (“**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; *provided*, in the event of a Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10, any unavailability of the Storage Facility caused by a Force Majeure Event for which Seller is the claiming party shall be excluded from the calculation of Annual Storage Capacity Availability and weighted average Effective Storage Capacity for purposes of determining whether a Seller Event of Default has occurred under this Section 11.1(b)(iv). Subject to 10.04(b), if a Force Majeure Event prevents Seller from completing a Storage Cure Plan within its required timeframe, the time period for Seller to complete such Storage Cure Plan shall be extended by the period of such Force Majeure Event;

(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 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, 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, as applicable, in each case 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 Payment; Termination Payment.** If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or 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 amount plus, if the Development Security is posted as cash, any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security plus, if the Development Security is posted as cash, any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall 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) 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, through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) 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 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 assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. Fair market value will be based on the value of Seller's assets or the entire 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 on or after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any and 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.

11.4 **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 (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable, despite using commercially reasonable efforts) to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60)-day period despite exercising commercially reasonable efforts), 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 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 on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

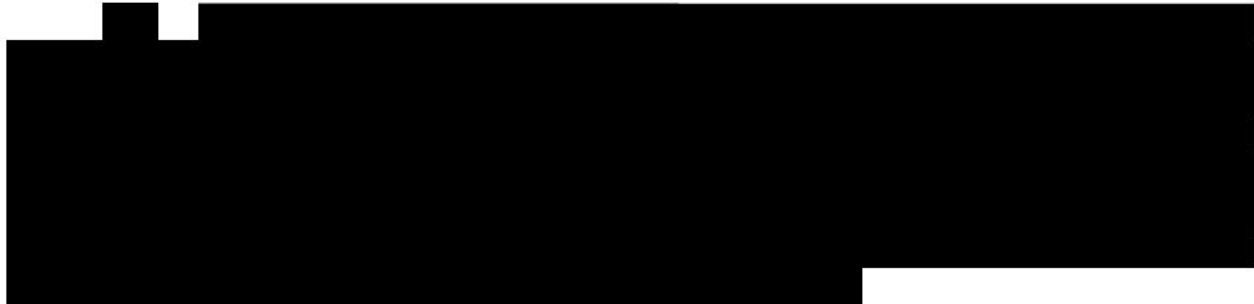
Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by

the terms set forth in this Section 11.6 pursuant to a written agreement reasonably 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.

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages or other express remedy or measure of damages are provided herein 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 OR ANY OTHER EXCLUSIVE REMEDY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 2.4, 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(f), 4.5(k), 4.7, 4.8, 4.10(e), 10.4, 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.

(f) Neither Seller nor its Affiliates have received notice specifically related to the Facility from, or been advised by, any existing or potential supplier or service provider that COVID-19 has caused, or is reasonably likely to cause, a delay in the construction of the Facility, or the delivery of materials necessary to complete the Facility, in each case that would cause the Construction Start Date to be later than the Guaranteed Construction Start Date or the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date.

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, 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 execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit S, along with such changes as may be reasonably requested by any Lender (“**Consent to Collateral Assignment**”).

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 (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, 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 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 reasonable prior Notice to Seller, provided that as conditions to any such assignment: (i) Seller and Buyer (and Seller's financing parties) shall first agree on the terms and conditions of a written assignment and consent agreement based on the initial form attached hereto as Exhibit L ("**Assignment Agreement**"), and provided further 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 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. As reasonably requested by Seller, Prepayment Assignee shall provide Seller with information and documentation with respect to Prepayment Assignee and the proposed municipal prepayment financing transaction.

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 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.

(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 by (or provided by) Seller 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 One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), 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. 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 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) Subcontractor Insurance. Seller shall require all of its subcontractors 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. All subcontractors shall name 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. 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, 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 provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. 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 shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall 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 attempts 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 or its Affiliates' 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 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.

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, after the Effective Date, a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered then either 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 overall 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.

[SELLER]

By: _____
Name: _____
Title: _____

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

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name: Desert Quartzite Solar Project

Site includes all or some of the following APNs:

879110008
879110011
879110012
879110010
879110007
879110006
879110001
879090035
879090034
879090033
879080024
879080021
879080020
879080027
879080026
879080022

City: Blythe

County: Riverside

Zip Code: 92225

Latitude and Longitude: 33° 34' 01 N, 114° 45' 07" W

Facility Description: A solar photovoltaic generating facility with a net nameplate capacity of 300 MW AC co-located with a battery storage facility with net nameplate capacity of 150 MW AC and 600 MWh located near the city of Blythe, CA in Riverside County

Delivery Point: SCE Colorado River Substation

Generating Facility Metering Points: See Exhibit R

Storage Facility Metering Points: See Exhibit R

P-node: As established by CAISO NRI Process

Transmission Provider: Southern California Edison

Additional Information: N/A

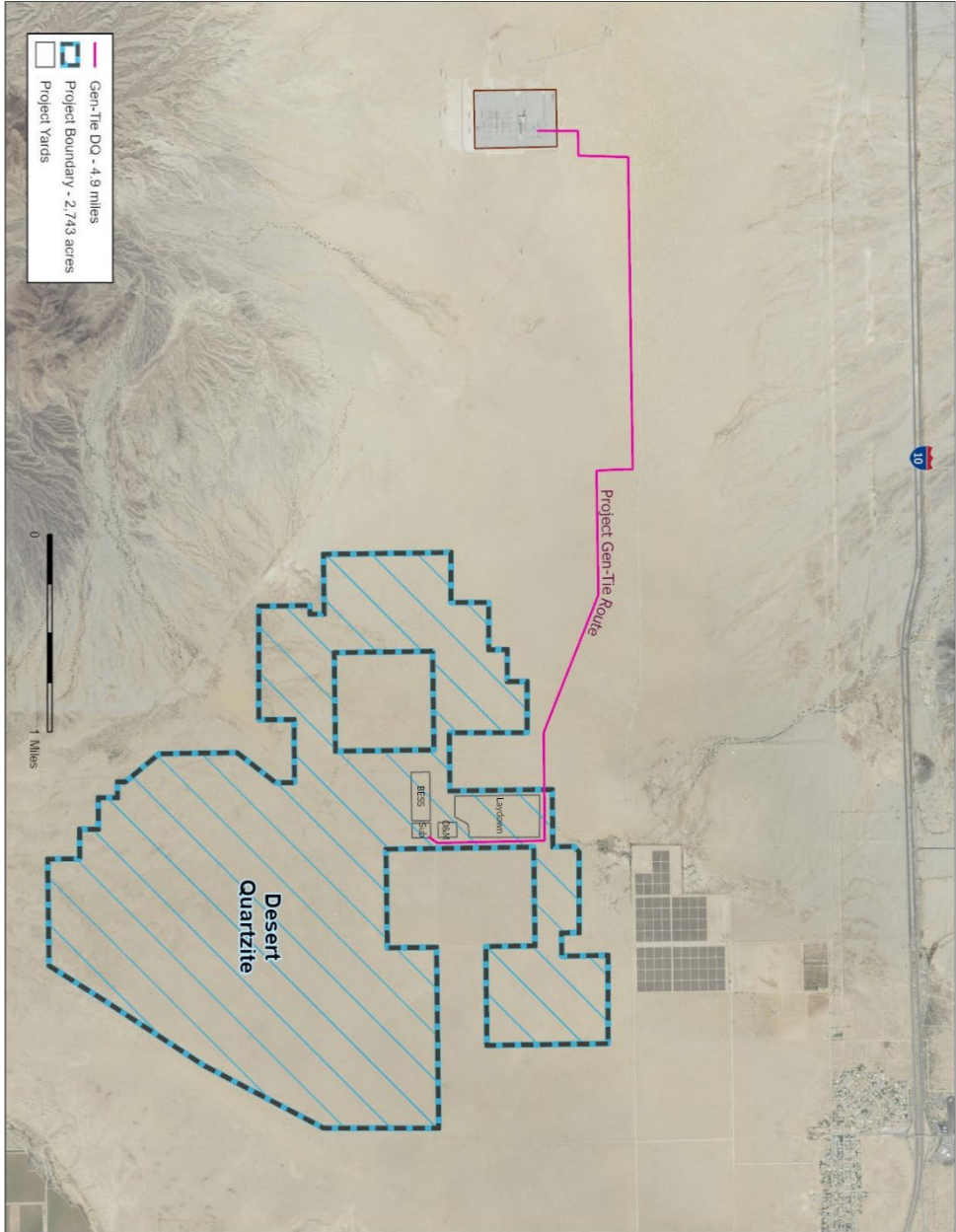


EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. **“Construction Start”** will occur upon Seller’s (i) acquisition of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) Seller’s execution of one or more engineering, procurement, and construction contracts (or similar contract(s)) and issuance of one or more notices to proceed (or reasonable equivalent) to a contractor or integrator party thereto, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary to fully authorize all engineering, procurement and construction of the Facility to begin and proceed to completion without foreseeable interruption of material duration. 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. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend 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 date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Construction Start prior to the Guaranteed Construction Start Date, as extended by the payment of Daily Delay Damages, Buyer shall refund to Seller the Daily Delay Damages for each day Seller achieves Construction Start prior to the Guaranteed Construction Start Date times the Daily Delay Damages, not to exceed the total amount of Daily Delay Damages paid by Seller pursuant to this Section 1(b). Additionally, 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 and not previously refunded by Buyer. If requested by Seller, the Parties shall negotiate in good faith and enter into a three-party escrow agreement arrangement with a bank or other creditworthy escrow agent under which all Daily Delay Damages would be paid into a mutually agreed bank escrow (rather than directly to Buyer) and under which Buyer would have the unconditional right to draw down thereon the amount of all such amounts that cease to become subject to refund to Seller hereunder if Seller misses the Guaranteed Commercial Operation Date and Buyer becomes entitled to such amounts.

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 to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”).
 - 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 [REDACTED] ([REDACTED]) 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. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for 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. 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).
3. **Termination for Failure to Achieve Commercial Operation.** Except for circumstances contemplated by Section 10.4(a), if the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** Independent of Seller’s extension rights under Sections 1 and 2 of this Exhibit B above, 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 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 the [REDACTED] Material Permits by the Guaranteed Construction Start Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- b. a Force Majeure Event or [REDACTED] occurs, [REDACTED]
- c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to receive approval for initial synchronization and to connect and sell Product at the Delivery Point by the original expected [REDACTED] date as set forth in the Cover Sheet, 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 (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer default).

Notwithstanding anything in this Agreement to the contrary: (A) 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 any reason, including a Force Majeure Event, and (B) the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and/or 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 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. For each applicable month of each Contract Year, Buyer shall pay Seller (1) the Renewable Rate for each MWh of PV Energy, plus Deemed Delivered Energy (if any), delivered or deemed delivered in such month, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, minus (2) an amount equal to the Renewable Rate times the total number of MWhs of Idle Period Auxiliary Use in such month, grossed up by a percentage equal to 100% minus the Efficiency Rate.

(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 calendar 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 or Efficiency Rate is 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 or Efficiency Rate is applicable.

“**Efficiency Rate Factor**” means:

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

$$\text{Efficiency Rate Factor} = 100\%$$

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

$$\text{Efficiency Rate Factor} = 100\% - [(\text{Guaranteed Efficiency Rate} - \text{Efficiency Rate}) \times .5]$$

(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 for a given Contract Year 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; *provided further*, if the Storage Capacity Availability Payment True-Up (or remaining portion thereof after previous offsets against payments owed from Buyer to Seller) is greater than the Monthly Capacity Payment due and owing, then Seller shall not owe Buyer a payment (if there are remaining payments to be made by Buyer pursuant to this Agreement, and if not, then Seller shall pay to Buyer any remaining balance therefore), but Buyer shall offset against each successive Monthly Capacity Payment until Buyer has recovered the entire Storage Capacity Availability Payment True-Up. 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 $A \times B - C$, where:

A = The sum of the year-to-date Monthly Capacity Payments for a given Contract Year

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, then:

$$\text{Capacity Availability Factor} = \frac{\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}}{\text{YTD Annual Storage Capacity Availability}}$$

- (C) If the product of [(i) YTD Annual Storage Capacity Availability plus (ii) Force Majeure Unavailability], times (iii) the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

$$\text{Capacity Availability Factor} = (\text{Guaranteed Storage Availability} - \text{YTD Annual Storage Capacity Availability}) * 1.5 - (\text{Force Majeure Unavailability} * 0.5)$$

provided, 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.

“Force Majeure Unavailability” means total YTD unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party divided by the total YTD Calculation Intervals.

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

(f) Tax Credits. The Parties agree that none of 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

(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. Buyer shall submit an NQC request to CAISO in relation to the Generating Facility and the Storage Facility as early as is reasonably possible prior to the Commercial Operation Date. 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's SC (which may be Buyer) 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 consistent with the CAISO Tariff.

(ii) Notices. Buyer's SC (which may be Buyer) 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 shall 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) telephone or electronic mail to the personnel designated to receive such information. Buyer (as the Facility's SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(iii) CAISO Costs and Revenues. Except as otherwise set forth in this part (iii) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy and Charging 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, except to the extent any Non-Availability Charges arise from Scheduling Coordinator's violation of the Tariff. Subject to Section 4.5(k) of the Agreement, 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 shall 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 or Buyer's designated SC 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, or cause its designated SC to cooperate reasonably with Seller, to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's

compliance, with any applicable NERC reliability standards. This cooperation shall include the provision of information in Buyer's or its designated SC's possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with applicable 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 (including Material 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

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

	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-2

FORM OF MONTHLY EXPECTED PV ENERGY REPORT

[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

FORM OF MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY REPORT

[MW 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																									
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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-4

FORM OF MONTHLY EXPECTED AVAILABLE STORAGE CAPABILITY REPORT

[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:

$$[(A - B) * (C - D)] - (E + F)$$

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) the market value of Replacement Green Attributes

D = the Renewable Rate, in \$/MWh

E = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is (C – D)

“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 ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (a) $(A - B)$, (b) $(C - D)$, or (c) $[(A - B) * (C - D)] - (E + F)$, yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Performance Measurement Period, Buyer shall 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 [*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 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]_____.
7. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required by the CAISO for such meters.
8. The Storage Facility and its meters have been designed and installed in a manner such that all Energy used for Auxiliary Use within the Storage Facility is metered, and there is no Station Use within the Facility (outside of the Storage Facility) that is served by Energy from the Storage Facility.

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 peak electrical output of the Generating Facility at the Delivery Point is ___ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test conducted on [Date] 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) Such Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, (ii) a Battery Discharging Factor of __%, and (iii) an Efficiency Rate 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 conducted on [Date] 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) Such Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, (ii) a Battery Discharging Factor of __%, and (iii) an Efficiency Rate 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 of the Agreement).

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. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

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. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] 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. [XXXXXXXX] 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. [XXXXXXXX]. 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.

[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

FORM OF ASSIGNMENT AGREEMENT

[NTD: Preliminary draft subject to negotiation and mutual agreement of both Parties]

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 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**”)[NOTE: **Appendix 1 to provide for transfer of RECs.**]. 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 shall 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 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 **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or

(4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in 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 [Severability], [Counterparts], [Amendments] and [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, 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

PPA BUYER

By:

By:

.....

Name:

Name:

Title:

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 [] 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 PPA¹

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.

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 3.8 of the Agreement, Seller hereby provides the below Replacement RA

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

product information: ¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

<p><i>Desert Quartzite, LLC</i> (“Seller”)</p>	<p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</p>
<p>All Notices:</p> <p>Street: 15445 Innovation Drive City: San Diego, CA 92128 Attn: Devon Muto</p> <p>Phone: 858-442-4957 Facsimile: Email: Devon.Muto@edf-re.com</p>	<p>All Notices:</p> <p>Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director</p> <p>Phone: (213) 269-5870 Email: tbardacke@cleanpoweralliance.org</p>
<p>Reference Numbers:</p> <p>Duns: Federal Tax ID Number:</p>	<p>Reference Numbers:</p> <p>Duns: Federal Tax ID Number:</p>
<p>Invoices:</p> <p>Attn: Devon Muto Phone: 858-442-4957 Facsimile: E-mail: Devon.Muto@edf-re.com</p>	<p>Invoices:</p> <p>Attn: Vice President, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org</p>
<p>Scheduling:</p> <p>Attn: Phone: Facsimile: Email:</p>	<p>Scheduling: TBD</p> <p>Attn: Phone: Email:</p>
<p>Confirmations:</p> <p>Attn: Phone: Facsimile: Email:</p>	<p>Confirmations:</p> <p>Attn: Vice President, Power Planning & Procurement Phone: (213) 269-5870 Email: nkeefe@cleanpoweralliance.org</p>
<p>Payments:</p> <p>Attn: Phone: Facsimile: E-mail:</p>	<p>Payments:</p> <p>Attn: Vice President, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org</p>
<p>Wire Transfer:</p> <p>BNK: [TBD] ABA: [TBD] ACCT: [TBD]</p>	<p>Wire Transfer:</p> <p>BNK: River City Bank ABA: 121-133-416 ACCT: XXXXXX8042</p>

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 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 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 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 Facility's SCADA device using Buyer's Remote Terminal Unit (RTU), and transfer data to the database server for the calculation, recording and archiving of data points.
 - (2) Communications. The RTU testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the 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 System data.
 - (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable 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.
- (3) The CT procedures, as described within this Exhibit O, shall be applicable until the Grid Charging Effective Date. Prior to the Grid Charging Effective Date, all Charging Energy used to charge the Storage Facility during any CT shall exclusively be PV Energy from the solar Generating Facility. This Exhibit O shall be modified prior to the Grid Charging Effective Date, as mutually agreed upon by Buyer and Seller pursuant to Section 3.13 of this Agreement.

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 (subject to derating solely caused by battery degradation, but in no event less than industry standard levels) at the Storage Facility Meter (MW) until the SOC reaches 100% or the stored energy reaches a level capable of discharging 600 MWh of Discharging Energy, 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) 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) and SOC (%).

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) nearest 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, during which time the Storage Facility may be regulated between 0.95 power factor leading and lagging as needed to comply with CAISO reactive power requirements:

- (1) That the CT successfully started;
- (2) The maximum sustained discharging real power level for four (4) consecutive hours pursuant to A(1) above;
- (3) The amount of time during which the maximum charging real power level was sustained pursuant to A(2) above;

- (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging real power 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 real power level registered during the CT (for purposes of calculating the ramp rate);
- (6) Amount of Charging Energy and Energy In to go from 0% SOC to 100% SOC or a stored energy level capable of discharging of 600 MWh of Discharging Energy; and
- (7) Amount of Discharging Energy and Energy Out to go from 100% SOC or a stored energy level capable of discharging of 600 MWh of Discharging Energy 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. Buyer shall ensure that the Storage Facility has charged and discharged at least 80% of one (1) Cycle in the 24-hour period prior to the beginning of the CT.
- (2) Abnormal Conditions. If abnormal operating or grid conditions (including low irradiance) occur prior to or during a CT 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. Except as provided in Part I(2)(4), 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.

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 on a reasonable basis 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 modification and additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design, equipment and vendor selection for 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 Energy Out (as reported under Section II.D(7) above) divided by the total amount of Energy In (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated pursuant to a subsequent Capacity Test.

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 a stored energy level capable of discharging of 600 MWh of Discharging Energy 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 a stored energy level capable of discharging of 600 MWh of Discharging Energy 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 (without adjusting for Electrical Losses) ("Energy In").
- (6) Discharge the Storage Facility until the stored energy level is equal to the amount of Energy necessary to discharge 600 MWh of Discharging Energy.
- (7) 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.
- (8) 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. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Section III.A(7)(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.

- (9) 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.
- (10) If the Storage Facility has not reached 0% SOC pursuant to Section III.A(7), continue discharging the Storage Facility until it reaches a 0% SOC.
- (11) Record and store the Discharging Energy (in MWh) as measured at the Storage Facility Meter, if applicable.
- (12) “Energy Out” means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses) 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(7) or Section III.A(10), as applicable.
- (13) In order to determine an accurate Efficiency Rate during testing, the Storage Facility components will be operated in substantially the same manner as during normal Storage Facility operations, including, for example, that energy required for running auxiliary power such as HVAC units and control systems will be served by the existing feeder circuit that is used to charge and discharge energy, and no external power supply source (e.g., diesel generators or utility electric service) shall be permitted to serve such loads.

- Test Results

- (1) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.
- (2) The resulting Efficiency Rate is calculated as the total amount of Energy Out (as reported under Section III.A(12) above) divided by the total amount of Energy In (as reported under Section III.A(5) above), and expressed as a percentage, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated.

B. AGC Discharge Test

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% 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 Pmax at .95 power factor 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 (only applicable after the Grid Charging Effective Date)

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff).
- System starting state: The Storage Facility will be in the on-line state at between 30% and 70% 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 Pmax at .95 power factor 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.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during 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:

where:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \text{the lesser of: } \frac{\text{A-B}}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}} \right)$$

“**A**” is the “**Available Effective Storage Capacity**”, 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 to (considering the conditions of the Storage Facility in total) receive Charging Energy from the Generating Facility (without double-counting any loss of Energy accounted for in variable B in the equation above) and deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on actual operating conditions), but “**A**” shall never exceed the Effective Storage Capacity.

“**B**” is the “**PV Availability Adjustment Amount**”,

[REDACTED]

[REDACTED]

[REDACTED]

“Storage Capability” 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 from the Generating Facility (calculated as the available battery capability (in MWh) to receive Charging Energy from the Generating Facility 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 to the Delivery Point (calculated as the available battery capability (in MWh) to delivery Discharging Energy to the Delivery Point in the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system battery racks in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system battery rack (based on actual operating conditions) that are able to receive Charging Energy from the Generating Facility and deliver Discharging Energy to the Delivery Point, but Storage Capability shall never exceed the Effective Storage Capacity x four (4) hours.

“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”, “Storage Capability”, “PV Availability Adjustment Amount” and “Effective Maximum Charging Amount” 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 Facility for such Calculation Interval, or (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity”, “Storage Capability”, “PV Availability Adjustment Amount” and “Effective Maximum Charging Amount” in the foregoing shall be based solely on the availability of the Storage Facility to charge or discharge Facility Energy and the Generating Facility to provide Charging Energy, and exclude reasons at the high-voltage side of the Delivery Point or beyond. Any Calculation Interval in which the Storage Facility cannot receive all CAISO Dispatches shall be deemed an Unavailable Calculation Interval.

(c) Seller shall design the Storage Facility so that the final as-built stamped design drawings for the Storage Facility have a total rated power for the Storage Facility inverters associated with the Installed Storage Capacity (taking into account Electrical Losses to the Delivery Point) of no less than 150 MW charging and 150 MW discharging at [REDACTED] degrees Celsius ([REDACTED] °C). If requested by Buyer, Seller shall provide Buyer with such technical documentation as may be reasonably designated by Buyer related to the foregoing, including for example, a derate table for temperatures that exceed [REDACTED] degrees Celsius ([REDACTED] C).

(d) After [REDACTED] 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 such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date (or, if requested by Seller, prior to Seller’s commencement of Facility construction); *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 battery storage
A. Contract Capacity	
Guaranteed Storage Capacity (MW):	150
Effective Storage Capacity (MW):	150
B. Total Unit Dispatchable Range Information	
Interconnect Voltage (kV)	220
Maximum Storage Level (MWh): (Energy capacity required to be stored in the Storage Facility net of all losses from the battery to the Delivery Point. This accounts for losses internal to the battery system, power conversion loss, Electrical Losses, Auxiliary Use, etc. The Plant EMS will report the maximum storage level as 100% SOC).	611 MWh
Minimum Storage Level (MWh): (Minimum Energy level to which the Storage Facility may be instructed to be discharged; provided, 11 MWh are to be charged in the Storage Facility by sundown each day as reserve energy for self-serving Idle Period Auxiliary Use from sunset to sunrise.	0 MWh
Stored energy capability (MWh):	611

(Throughput obtained by cycling the battery from Maximum Storage Level to Minimum Storage Level)		
Maximum Discharge (MW): Discharge capability of the Storage Facility measured at the Point of Delivery	150	
Maximum Charge (MW): Charge capability of the Storage Facility measured at the Storage Facility Meter	150	
Guaranteed Efficiency Rate:	See Cover Sheet	
Maximum Cycles / Contract Year:	█	
Maximum energy throughput (MWh/year) at the Point of Delivery: Calculated as Energy throughput of 1 full equivalent cycle times maximum cycles per contract year = 600 MWh * █. Any Idle Period Auxiliary Use does not count towards maximum energy throughput.	█	
Maximum daily energy throughput (MWh/day) at the Point of Delivery: Calculated as the energy throughput of █ full equivalent cycles times maximum allowed cycles per day = 600 * █. Any Idle Period Auxiliary Use does not count towards maximum energy throughput.	█	
C. Charge and Discharge Rates		
Mode	Maximum (MW)	Maximum Ramp Rate (MW/s) Description
Energy (Charge)	█ █ █ █ █ █	█
Energy (Discharge)	█	█
D. Ancillary Services		
Frequency regulation is included:	Yes	
Spin is included:	Yes	

E. Additional Restrictions

1. The Storage Facility shall be charged exclusively with PV Energy unless the Parties mutually agree otherwise pursuant to Section 3.13 (excluding, for the avoidance of doubt, de minimis amounts of grid energy that may be used by Seller to serve Idle Period Auxiliary Use when Storage Facility energy is not available).
2. The sum of PV Energy plus Discharging Energy shall not exceed the Interconnection Capacity Limit.
3. Average Annual SOC of the Storage Facility in each Contract Year must be less than ■%.

EXHIBIT R
METERING DIAGRAM

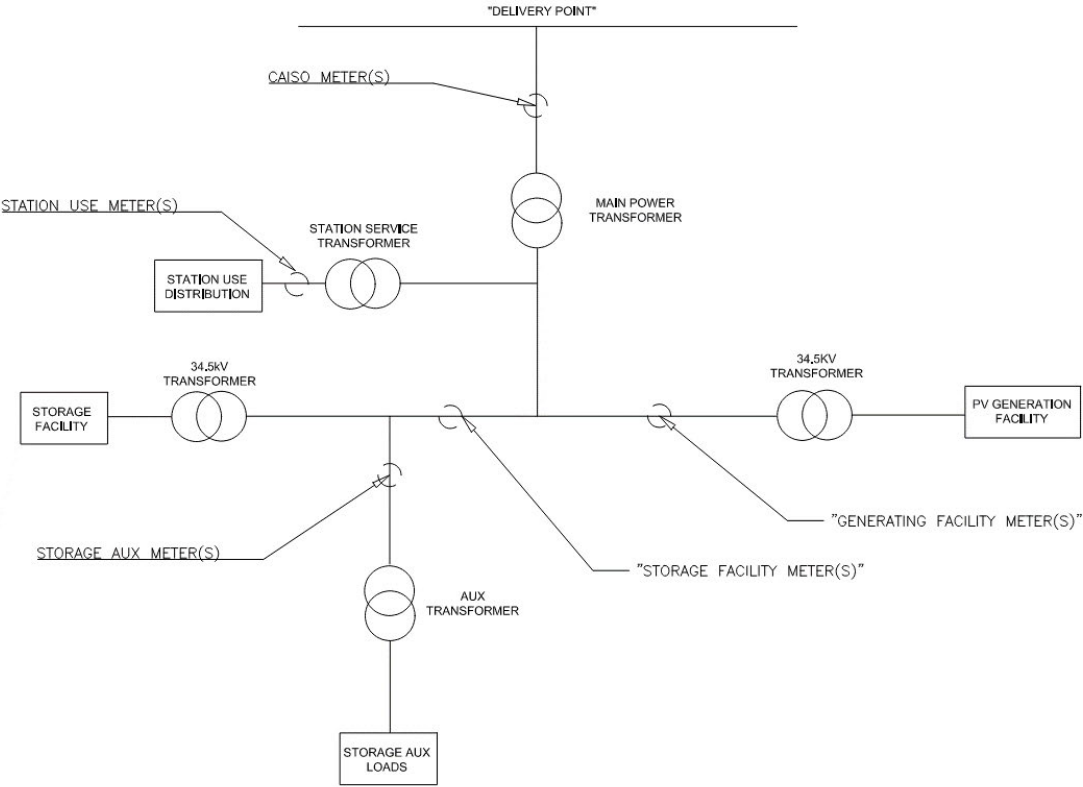


EXHIBIT S

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (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 Storage Units (the “Project”) 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 CPA is authorized to act in accordance with Collateral Agent's instructions pursuant to Section 1.1(b), and that 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 sixty (60) 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*, (a) if possession of the Project 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 (such notice, a "Financing Document Default Notice") CPA 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 has financial qualifications and operating experience *[TBD]* (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 Project (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 Project 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 Project 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 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 Project; *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 Project 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

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.

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 *[Legal Status of Seller]* 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. MICELLANEOUS

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.

[Remainder of Page Left Intentionally Blank.]

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.

<p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p>	<p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</p>
<p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>	<p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>
<p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i></p> <p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>	

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

EXHIBIT T

Supply Chain Code of Conduct

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Buyer's requirements and expectations for Seller's supply chain are detailed below in this Supply Chain Code of Conduct ("**Supply Chain Code**"). Requirements of this Supply Chain Code may, in certain circumstances, exceed the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("**ILO**"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. Freely Chosen Employment

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. Young Workers

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, reasonable due diligence of educational partners, and protection of students' rights in accordance with

applicable laws and regulations. Suppliers shall provide appropriate support and training to student workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. Working Hours

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law.

4. Wages and Benefits

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. Workers shall be compensated for overtime at pay rates greater than regular hourly rates if required by local laws. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment

There is to be no inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Suppliers shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. In accordance with applicable law, workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

EXHIBIT U
MATERIAL PERMITS

<i>No.</i>	<i>Material Permits</i>
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5*	[REDACTED]
6*	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]
11	[REDACTED]
12	[REDACTED]
13	[REDACTED]
14	[REDACTED]

[REDACTED]

Execution Version

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Radiant BMT, LLC

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

Description of Facility: 3 MW-ac solar photovoltaic project

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	Complete
Documentation of Conditional Use Permit if required: CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input checked="" type="checkbox"/> EIR	7/1/22
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Complete
Executed Interconnection Agreement	Complete
Financial Close	████████
Expected Construction Start Date	████████
Initial Synchronization	11/15/23
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	N/A
Expected Date of CAISO Commercial Operation	12/1/23
Expected Commercial Operation Date	12/31/23

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	9,492.6
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

Guaranteed Capacity: 3 MW of total Facility capacity

Guaranteed Construction Start Date: 8/1/23

Guaranteed Commercial Operation Date: 12/31/23

Contract Price: The Contract Price shall be:

Contract Year	Contract Price (\$/MWh)
1 – 15	██████ /MWh (flat) with no escalation

Product:

- 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

Scheduling Coordinator: Prior to COD: Seller. From COD through Delivery Term: Buyer.

Development Security: \$60/kW of Guaranteed Capacity

Performance Security: \$60/kW of Guaranteed Capacity

TABLE OF CONTENTS

	Page
ARTICLE 1	DEFINITIONS..... 1
1.1	Contract Definitions..... 1
1.2	Rules of Interpretation..... 17
ARTICLE 2	TERM; CONDITIONS PRECEDENT..... 18
2.1	Contract Term..... 18
2.2	Conditions Precedent..... 19
2.3	Development; Construction; Progress Reports..... 20
2.4	Remedial Action Plan..... 20
ARTICLE 3	PURCHASE AND SALE..... 21
3.1	Purchase and Sale of Product..... 21
3.2	Sale of Green Attributes..... 21
3.3	Compensation..... 21
3.4	Imbalance Energy..... 22
3.5	Ownership of Renewable Energy Incentives..... 22
3.6	Future Environmental Attributes..... 22
3.7	Test Energy..... 23
3.8	[Reserved]..... 23
3.9	[Reserved]..... 23
3.10	CEC Certification and Verification..... 23
3.11	Eligibility..... 23
3.12	California Renewables Portfolio Standard..... 23
3.13	Compliance Expenditure Cap..... 23
3.14	Project Configuration..... 24
ARTICLE 4	OBLIGATIONS AND DELIVERIES..... 24
4.1	Delivery..... 24
4.2	Title and Risk of Loss..... 25
4.3	[Reserved]..... 25
4.4	Forecasting..... 25
4.5	Dispatch Down/Curtailment..... 26
4.6	Reduction in Energy Delivery Obligation..... 27
4.7	Guaranteed Energy Production..... 28
4.8	WREGIS..... 28
ARTICLE 5	TAXES..... 30
5.1	Allocation of Taxes and Charges..... 30
5.2	Cooperation..... 30
ARTICLE 6	MAINTENANCE OF THE FACILITY..... 31
6.1	Maintenance of the Facility..... 31
6.2	Maintenance of Health and Safety..... 31

TABLE OF CONTENTS
(continued)

		Page
6.3	Shared Facilities.....	31
ARTICLE 7	METERING.....	31
7.1	Metering.....	31
7.2	Meter Verification.....	32
ARTICLE 8	INVOICING AND PAYMENT; CREDIT.....	32
8.1	Invoicing.....	32
8.2	Payment.....	32
8.3	Books and Records.....	33
8.4	Payment Adjustments; Billing Errors.....	33
8.5	Billing Disputes.....	33
8.6	Netting of Payments.....	33
8.7	Seller’s Development Security.....	33
8.8	Seller’s Performance Security.....	34
8.9	First Priority Security Interest in Cash or Cash Equivalent Collateral.....	34
8.10	Buyer Financial Statements.....	345
ARTICLE 9	NOTICES.....	35
9.1	Addresses for the Delivery of Notices.....	35
9.2	Acceptable Means of Delivering Notice.....	35
ARTICLE 10	FORCE MAJEURE.....	35
10.1	Definition.....	35
10.2	No Liability If a Force Majeure Event Occurs.....	36
10.3	Notice.....	37
10.4	Termination Following Force Majeure Event or Development Cure Period.....	37
ARTICLE 11	DEFAULTS; REMEDIES; TERMINATION.....	37
11.1	Events of Default.....	37
11.2	Remedies; Declaration of Early Termination Date.....	39
11.3	Damage Payment; Termination Payment.....	40
11.4	Notice of Payment of Termination Payment or Damage Payment.....	41
11.5	Disputes With Respect to Termination Payment or Damage Payment.....	42
11.6	Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.....	42
11.7	Rights And Remedies Are Cumulative.....	42
11.8	Mitigation.....	42
11.9	Seller Pre-COD Liability Limitations.....	423
ARTICLE 12	LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	43

TABLE OF CONTENTS
(continued)

	Page
12.1 No Consequential Damages.....	43
12.2 Waiver and Exclusion of Other Damages.....	43
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY	44
13.1 Seller’s Representations and Warranties	44
13.2 Buyer’s Representations and Warranties	45
13.3 General Covenants	46
13.4 Workforce Development.....	46
ARTICLE 14 ASSIGNMENT	46
14.1 General Prohibition on Assignments	46
14.2 Collateral Assignment.....	47
14.3 Permitted Assignment by Seller.....	47
14.4 Shared Facilities; Portfolio Financing	47
14.5 Buyer Financing Assignment.....	478
ARTICLE 15 DISPUTE RESOLUTION	48
15.1 Governing Law	48
15.2 Dispute Resolution.....	48
15.3 Attorneys’ Fees	48
ARTICLE 16 INDEMNIFICATION.....	48
16.1 Indemnification	48
16.2 Claims.	49
ARTICLE 17 INSURANCE.....	49
17.1 Insurance	49
ARTICLE 18 CONFIDENTIAL INFORMATION	51
18.1 Definition of Confidential Information.....	51
18.2 Duty to Maintain Confidentiality.....	51
18.3 Irreparable Injury; Remedies	52
18.4 Further Permitted Disclosure	52
18.5 Press Releases	53
ARTICLE 19 MISCELLANEOUS	53
19.1 Entire Agreement; Integration; Exhibits.....	53
19.2 Amendments	53
19.3 No Waiver.....	53
19.4 No Agency, Partnership, Joint Venture or Lease.....	53
19.5 Severability	53
19.6 Mobile-Sierra	53

TABLE OF CONTENTS
(continued)

	Page
19.7 Counterparts.....	54
19.8 Electronic Delivery	54
19.9 Binding Effect.....	54
19.10 No Recourse to Members of Buyer	54
19.11 Forward Contract	54
19.12 Change in Electric Market Design.....	54
19.13 Further Assurances.....	55

Exhibits:

Exhibit A	Description of the Facility
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Reserved
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F-1	Form of Monthly Expected Available Facility Capacity Report
Exhibit F-2	Form of Monthly Expected Facility Energy Report
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Form of Buyer Assignment Agreement
Exhibit M	Material Permits
Exhibit N	Notices
Exhibit O	Form of Consent to Collateral Assignment
Exhibit P	Supply Chain Code of Conduct

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 3.13.

“**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 the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

“**Approval Application**” has the meaning set forth in Section 2.1(c).

“**Approved Forecast Vendor**” means (x) any of the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.4(d).

“Availability Incentive Payments” has the meaning set forth in the CAISO Tariff.

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

“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 undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

“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 Assignment Agreement” 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 Scheduling Coordinator for the Facility, requiring the Facility to deliver less Facility Energy than the full amount of Energy forecasted in accordance with Section 4.4 to be produced from the Facility for a period-of-time; and

(b) for the same time-period as referenced in (a), Buyer or the SC for the Facility did not submit a Self-Schedule for the MWs subject to the reduction.

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 relevant Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or

as a result of a Buyer Curtailment Order; *provided*, 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’s Indemnified Parties**” has the meaning set forth in Section 18.2.

“**Buyer’s WREGIS Account**” has the meaning set forth in Section 4.8(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 Charges Invoice**” has the meaning set forth in Exhibit D.

“**CAISO Commercial Operation**” has the meaning of “Commercial Operation” set forth in the CAISO Tariff.

“**CAISO Costs**” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

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

“**CAISO Revenues**” means the credits and other payments incurred or received by Buyer after the Commercial Operation Date, as the Facility’s Scheduling Coordinator, as a result of Scheduling or Facility Energy from the Facility delivered by Seller to any CAISO administered market, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.

“**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.

“**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 Damages**” has the meaning set forth in Exhibit B.

“**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 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*, 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.

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

“**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).

“**Compliance Actions**” has the meaning set forth in Section 3.13.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

“**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.

“**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.

“**CPM Price**” has the meaning set forth in Section 3.5(b).

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

“**CPUC Approval**” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer’s administration of this Agreement. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

“**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).

“**Curtailed Energy**” means the amount of energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Curtailment Period, which amount shall be equal to the Real-Time Forecast, expressed in MWh, applicable to the Curtailment Period, less the amount of Facility Energy delivered to the Delivery Point during the Curtailment Period; *provided*, if the Facility Energy is greater than the calculation of potential generation, then the Curtailed Energy shall be zero (0).

“**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, or (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 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.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order; *provided*, 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 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 energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Bid Curtailment or Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast, expressed in MWh, applicable to the Buyer Bid Curtailment or Buyer Curtailment Period, as applicable, less the amount of Facility Energy delivered to the Delivery Point during the Buyer Bid Curtailment or Buyer Curtailment Period, as applicable; *provided*, if the Facility Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0).

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

"Deficient Month" has the meaning set forth in Section 4.8(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 (i) cash, or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

“**Disadvantaged Communities**” or “**DAC**” has the meaning set forth in CPUC Decision 18-06-027 as communities that are defined in the CalEnviroScreen 3.0 as among the top twenty-five percent (25%) of census tracts statewide, plus the census tracts in the highest five percent (5%) of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

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

“**Early Termination Date**” has the meaning set forth in Section 11.2.

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

“**Electrical Losses**” means all transmission or transformation losses between the Facility and 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 Facility, measured in kilowatt-hours or multiple units thereof.

“**Energy Replacement Damages**” has the meaning set forth in Section 4.7.

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

“**Excess MWh**” has the meaning set forth in Section 3.3(b).

“**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 Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

“**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 Facility Energy to the Delivery Point.

“**Facility Energy**” means the 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.

“**Fifteen Minute Market**” or “**FMM**” has the meaning set forth in the CAISO Tariff.

“**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.

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.8(a).

“**Future Environmental Attributes**” shall mean 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.

“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: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), 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; and (3) 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 Facility 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 3.5, updated November 12, 2019, as may be further amended from time to time.

“**Guaranteed Capacity**” means the generating capacity of the Facility, as measured in MW AC at the Delivery Point, that Seller commits to install pursuant to this Agreement set forth on the Cover Sheet.

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

“**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 commencement of Trial Operations (as defined in the CAISO Tariff).

“**Installed Capacity**” means the actual generating capacity of the Facility, 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 hereto.

“**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 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.

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

“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 credit support, senior or subordinated construction, interim, back leverage or long-term debt, working capital, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, maintenance, 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- 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.

“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 and

Renewable Energy Incentives. If Seller is the Non-Defaulting Party, the value of any Renewable Energy Incentives and Tax Credits, determined on an after-tax basis, lost due to Buyer's Event of 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 and Tax Credits, if any, shall be included in the calculation of "Losses" which Seller may recover.

"Lost Output" has the meaning set forth in Section 4.7.

"Material Permits" means all permits required for Seller to commence construction, as set forth on Exhibit M.

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

"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, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Facility's PNode is less than zero dollars (\$0).

"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).

"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.

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

"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 fifty million dollars (\$50,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the 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 advance in accordance with Section 4.6(a).

"PNode" has the meaning set forth in the CAISO Tariff.

"Portfolio" means the single portfolio of electrical energy generating 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 on the Cover Sheet.

“Production Tax Credit” or **“PTC”** means the production tax credit for wind-powered electric generating facilities described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

“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 industry during the relevant time period with respect to distribution-interconnected small utility-scale generating facilities 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 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.

“Real-Time Forecast” has the meaning set forth in Section 4.4(d).

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

“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 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, Future Environmental Attribute, or Capacity Attribute.

“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.

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

“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.

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

“Seller Pre-COD Liability Cap” has the meaning set forth in Section 11.9.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(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.

“Settlement Point” means the Facility’s PNode to be assigned by CAISO in New Resource Implementation process prior to the Commercial Operation Date.

“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.

“**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.

“**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 (including 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.

“**Supply Chain Code**” has the meaning in Exhibit P.

“**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 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.

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

“**Termination Payment**” has the meaning set forth in Section 11.3.

“**Test Energy**” means 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 Commercial Operation Date.

“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 System Energy onto the Transmission System.

“Ultimate Parent” means Radiant BMT, LLC, a California limited liability company.

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“WECC” means the Western Electricity Coordinating Council or its successor.

“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 4.8(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 ("**Contract Term**"); *provided*, 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.

(c) Within one hundred eighty (180) days following Seller's receipt of notification from Buyer that Seller was shortlisted by Buyer for negotiation of this Agreement, or such later timeframe as may be approved by the director of the CPUC Energy Division or his/her/their designee, Buyer will submit this Agreement to the CPUC via a Tier 2 advice letter seeking an order that, after issuance and the passage of time, would constitute a CPUC Approval ("**Approval Application**"). Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer. If CPUC Approval of this Agreement is not obtained within one hundred eighty (180) days following the Effective Date, then either Party may terminate this Agreement upon written Notice to the other Party. 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.

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 setting forth 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 necessary for the Commercial Operation of the Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(e) 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 after the Commercial Operation Date);

(f) 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 and shall reasonably have assisted Buyer to complete any other requirements to enable Buyer to use the Product toward fulfilling its RPS requirements;

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

(h) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages.

2.3 **Development; Construction; Progress Reports.**

(a) 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 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.

(b) Seller shall use commercially reasonable efforts to (i) ensure that all materials, products and components used in constructing, installing, and operating the Facility throughout the Term are compliance with the Supply Chain Code of Conduct (Exhibit P), and (ii) include contract provisions substantively similar to those set forth in the Supply Chain Code of Conduct in all contracts entered by it or its Affiliates for the construction, installation, and operation of the Facility. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

(c) Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor to audit Seller's compliance with the requirements of Section 2.3(b).

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, including any failure of

Buyer to perform Buyer's obligations hereunder), 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, 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 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 shall purchase all the Product produced by or associated with the Facility in accordance with Section 3.3, 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 all or a portion of the Product; *provided*, no such resale shall relieve Buyer of any of its obligations under this Agreement. Buyer has no obligation to pay Seller for 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, Negative LMPs, 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 attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Compensation.**

(a) During the Delivery Term, Buyer shall pay Seller the Contract Price for each MWh of Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for each Contract Year. If at any point in any Contract Year, the amount of 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/or Deemed Delivered Energy shall be \$0.00/MWh.

(b) If during any Settlement Interval, Seller delivers Facility Energy in excess of the product of the Guaranteed 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.

(c) During the Delivery Term, Seller shall receive no compensation from Buyer for Curtailed Energy or Facility Energy that is delivered in violation of a Curtailment Order.

(d) Tax Credits. The Parties agree that the neither the Contract Price 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.

3.4 Imbalance Energy. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Scheduled Energy and that to the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

3.5 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.

3.6 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 3.6(a), and Sections 3.6(b) and 3.13, 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 3.6(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) 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.

3.7 **Test Energy**. Seller retains all rights to Test Energy.

3.8 **[Reserved]**.

3.9 **[Reserved]**.

3.10 **CEC Certification and Verification**. Subject to Section 3.13, 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 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, which deadline shall be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and such delay is caused by any reason other than an act or omission of Seller, as reasonable demonstrated to Buyer. 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.

3.11 **Eligibility**. Subject to Section 3.13, 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 3.11 means efforts consistent with and subject to Section 3.13.

3.12 **California Renewables Portfolio Standard**. Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the 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.

3.13 **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 to obtain, maintain, convey or effectuate Buyer's use of Green Attributes, 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 3.13 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.

3.14 **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 shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; *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. Seller shall 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 without limitation, 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. During the Delivery Term, the Facility 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 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.

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products that may become recognized from time to time in the CAISO market (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

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 [Reserved].

4.4 Forecasting. Seller shall provide the Facility Energy forecasts described below. Seller's Facility Energy forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Facility Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Facility 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 a non-binding forecast of each month's average-day expected Facility Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Facility Energy. 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 Buyer's designee (if applicable) a non-binding forecast of the hourly Facility Energy for each day of the following month in a form reasonably acceptable to Buyer.

(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 Expected Energy from the Facility for relevant periods) ("**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 Facility's Expected Energy for relevant periods. Seller shall provide each Day-Ahead Forecast through Seller's (or its SC's) Customer Market Results Interface for the Facility. If the Customer Market Results Interface is not available, Seller shall provide the Day-Ahead Forecast in the form of a CSV file delivered to Buyer's File Transfer Protocol (FTP) site as set forth in Exhibit N.

(d) Real-Time Forecast. Seller shall arrange for Buyer to be provided real-time data (i) with respect to the Available Generating Capacity, via an Outage Management System ("**OMS**") based on CAISO protocols, and (ii) with respect to hourly expected Energy quantities, via the Facility's EMS, in each case of (i) and (ii) in accordance with such procedures (including appropriate back-up procedures) as may be agreed and implemented by Seller and Buyer and, in the case of Energy forecasts, the Approved Forecast Vendor ("**Real-Time Forecast**"). Among other information provided through such procedures, Buyer shall be notified if, past the deadlines for Day-Ahead Forecasts provided in Section 4.4(c), there are change(s) in such Day-Ahead Forecasts of one (1) MW / (1) MWh or more, as applicable, in the Available Generating Capacity or the hourly expected Energy, in any case whether due to Forced Facility Outage, Transmission System Outage, Force Majeure or other cause, including (as appropriate) information regarding the beginning date and time of any event resulting in the change in Available Generating Capacity, the expected end date and time of any such event, and any other information required by the CAISO or reasonably requested by Buyer.

(e) CAISO Tariff Requirements. Seller shall comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol that may be applicable to the Facility (if any), including, as applicable, providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO in providing all data, information, and authorizations required thereunder.

4.5 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.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders; *provided*, Buyer shall compensate Seller for Deemed Delivered Energy in accordance with Section 3.3.

(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 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 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 Operating 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 operating instructions from the CAISO, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time 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 and directed by Buyer, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.5(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.

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

(a) Facility Maintenance.

(i) 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) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i).

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Facility shall be scheduled or planned during daylight hours 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. Subject to Article 10, 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.

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period, Seller shall deliver to Buyer an amount of Facility 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 Facility 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’s Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility 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) 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 (“**Energy Replacement Damages**”); *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver 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.

4.8 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.13, 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 all 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 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(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 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 4.8. 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 Facility Energy in the Deficient Month shall be reduced by three times (3x) 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 refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.8, 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 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 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. [STC REC-2, Non-modifiable. D.11-01-025]

(h) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement, the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in CPUC Decision 08-08-028, and as may be modified by subsequent decision of the CPUC or by subsequent legislation. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

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.

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 delivery of the 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 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*, such agreements (i) 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 separately meter all Station Use. The Facility Meter shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter shall be programmed to adjust for all losses or adjustments from the Facility Meter to the Delivery Point. The Facility Meter shall be kept under seal, such seals to be broken only when the Facility Meter is 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 Facility 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 Facility Meter reads from the CAISO Market Results Interface-Settlements (MRI-S) web and/or directly from the Facility Meter.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or more frequently than annually 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 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 Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, deviations between the Scheduled Energy and the Facility Energy, and the applicable LMP prices at the Delivery Point for each Settlement Interval, the Contract Price applicable to such Product, the calculation of Deemed Delivered Energy, and the amount of Replacement Product delivered during the preceding 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. Seller shall provide Buyer with reasonable access to any records, including invoices or settlement data from CAISO, necessary to verify the accuracy of any 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 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 G, 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 the earlier of

(i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, plus accrued interest, if any, if Development Security was posted as cash, less the amounts drawn in accordance with this Agreement. Seller may, at its option and at any time, exchange one permitted form of Development Security for any other permitted form of 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. 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, plus accrued interest, if any, if such Performance Security is posted as cash. Seller may, at its option and at any time, exchange one permitted form of Performance Security for any other permitted form of 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.

8.10 **Buyer Financial Statements.** Buyer shall provide to Seller both upon request and as indicated below: (a) within forty-five (45) days following the end of its first, second and third fiscal quarters, unaudited quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (b) within one hundred eighty (180) days following the end of each fiscal year, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; and (c) as available, Buyer's annual report, which will include an overview of customer rate classes and retention rate (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer's member agencies and board members.

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 commercially 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 commercially 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.

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 or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays 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, and notwithstanding anything to the contrary in Exhibit B, 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 Notice to the other Party. 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 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 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 Energy to the Delivery Point for sale under this Agreement that was not generated 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 such date 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) 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;

(v) 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 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, as applicable, in each case 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 Payment; Termination Payment. 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, subject to the Seller [REDACTED], be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon [REDACTED], and any amount of Development Security [REDACTED] that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. If the Development Security amounts drawn by Buyer plus other amounts incurred by Seller prior to such termination exceed the [REDACTED], then Buyer will promptly return such excess amounts 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) 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, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) 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 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 assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. Fair market value shall be based on the value of Seller's assets or the entire 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 shall 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 and 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.

11.4 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 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 on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) 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.

11.7 **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.

11.8 **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 4.7, 11.2 AND 11.3, AND AS PROVIDED

IN EXHIBIT B AND EXHIBIT G, 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 (i) will be located in and connected electrically to a circuit, load, or substation within Southern California Edison's service territory, and (ii) will be located within an eligible DAC.

(f) Neither Seller nor its Affiliates have received notice from or been advised by any existing or potential supplier or service provider that that the disease designated COVID-19 or the related virus designated SARS-CoV-2 have caused, or are reasonably likely to cause, a delay in the construction of the Facility or the delivery of materials necessary to complete the Facility, in each case that would cause the Commercial Operation Date to be later than the Guaranteed Commercial Operation Date. Notwithstanding the foregoing, this Section 13.2(f) shall not restrict Seller's ability to seek relief under Article 10 to the extent a Force Majeure event occurs after the Effective Date.

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 Seller 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 to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit O ("**Consent to Collateral Assignment**").

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 confirmed 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*, 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 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 reasonable prior Notice to Seller, *provided* that as conditions to any such assignment: (a) Seller and Buyer (and Seller’s financing parties) shall first agree on the terms and conditions of a written assignment and consent agreement based on the initial form attached hereto as Exhibit L (“**Buyer Assignment Agreement**”), such agreement not to be unreasonably withheld, conditioned, or delayed; (b) at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (i) Buyer’s Credit Rating at the time of such assignment (if applicable), and (ii) Baa3 from Moody’s and BBB- from S&P; (c) as reasonably requested by Buyer Assignee, Seller shall 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 (d) as reasonably requested by Seller, Buyer Assignee shall provide Seller with information and documentation with respect to Buyer Assignee and the proposed municipal prepayment financing transaction.

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. [STC 17, (Source: D.07-11-025, Attachment A.) D.08-04-009]

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a 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.

(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*, 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.** At all times during the Contract Term, 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 One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than One Million Dollars (\$1,000,000), 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 One Million Dollars (\$1,000,000). 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. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense employers' liability insurance of not 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. At all times during the Contract Term during which Seller has employees, Seller shall maintain, or cause to be maintained, at its sole expense workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. At all times during the Contract Term, Seller shall maintain, or cause to be maintained, at its sole expense 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. During the construction of the Facility prior to the Commercial Operation Date, Seller shall maintain, or cause to be maintained, at its sole expense 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) Subcontractor Insurance. At all times during the Contract Term during which Seller has subcontractors, Seller shall require its subcontractors 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. All subcontractors shall name 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. Seller shall deliver to Buyer certificates of insurance evidencing such coverage within ten (10) days after the obligation to maintain each type of insurance specified in Section 17.1(a) through (f) arises and upon annual renewal thereafter. 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. 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, such failure shall be a failure to perform a material covenant or obligation set forth in this Agreement and, as such, shall constitute an Event of Default pursuant to Section 11.1(a)(iii). With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. 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.

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 any Person other than the Party's or the Party's Affiliates' employees, Lenders, bona fide prospective Lenders, counsel, accountants, directors, or advisors who have a demonstrable need to know such information and agree to maintain the confidentiality of such Confidential Information according to the terms hereof or are otherwise bound by obligations of confidentiality with regard to the Confidential Information which are at least as protective as the confidentiality obligations set forth herein. Receiving Party may also disclose Confidential Information to the extent necessary 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 shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall 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 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.

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.

RADIANT BMT, LLC

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

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Radiant Minneola

Site includes all or some of the following APNs: APN# 521-05-108

City: Newberry Springs

County: San Bernardino

Zip Code: 92365

Latitude and Longitude: 34.84785 x -116.77272

Facility Description: 3 MW-ac solar photovoltaic project

Delivery Point: Cool Water 115kV bus

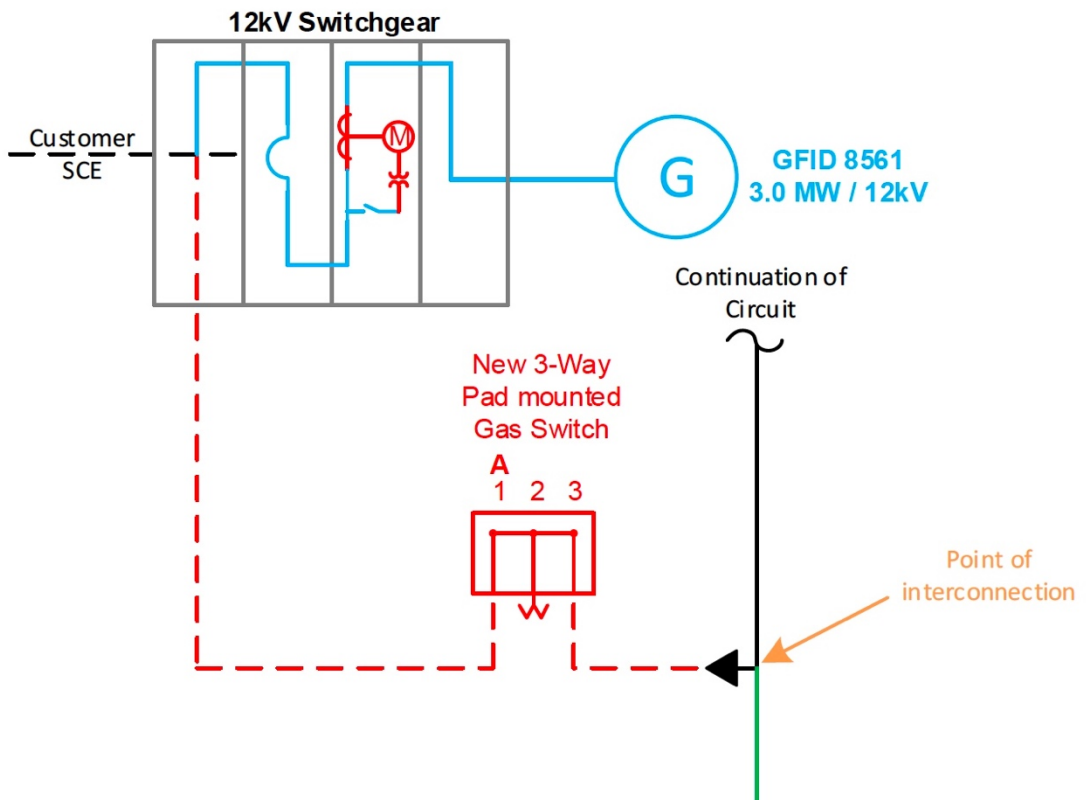
PNode: Project PNode to be determined by CAISO NRI process before COD

Transmission Provider: Southern California Edison

Location Map:



One Line Diagram of Interconnection:



Project Layout:

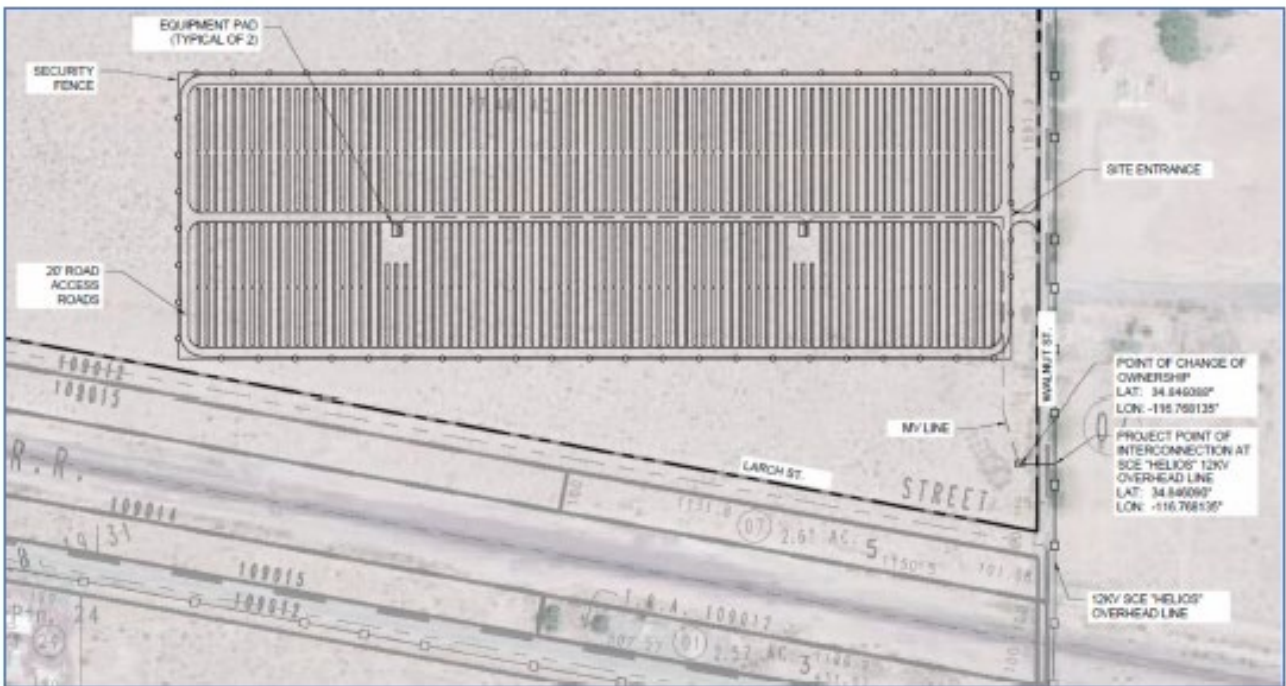


EXHIBIT B

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 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 final 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. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend 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. If Seller elects to extend the Guaranteed Construction Start Date, then on or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide Notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. 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 to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**).

- 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. If Seller elects to extend the Guaranteed Commercial Operation Date, then 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).

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 may be extended hereunder), 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 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 the Material Permits by the Guaranteed Construction Start Date, 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 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; or
 - e. Buyer has not obtained CPUC Approval within the timeframe specified in Section 2.1(c), and the Parties have mutually agreed to not terminate the Agreement pursuant to Section 2.1(c), and such delay in obtaining CPUC Approval has a material impact on Buyer’s ability to initiate Construction Start prior to the Guaranteed Construction Start Date.

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 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 Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed 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 elects to extend the Guaranteed Construction Start Date pursuant to Section 1(b) of this Exhibit B and/or if Seller elects to extend the Guaranteed Commercial Operation Date pursuant to Section 2(b) of this Exhibit B, but Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, then Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof and Seller shall be required to replenish the Development Security in an amount equal to Buyer's draw.

EXHIBIT C
RESERVED

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility during the Delivery Term. Beginning on the Commercial Operation Date, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of Product at the Delivery Point. At least thirty (30) days prior to the Commercial Operation Date, (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 Commercial Operation Date, 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 Commercial Operation Date. On and after the Commercial Operation Date, 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.

(b) 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 shall 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.

(c) 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 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.

(d) 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 shall 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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

MONTHLY EXPECTED AVAILABLE FACILITY CAPACITY

[MW 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
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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-2

MONTHLY EXPECTED 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	
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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:

$$[(A - B) * (C - D)] - (E + F)$$

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) the market value of Replacement Green Attributes.

D = the Contract Price, in \$/MWh

E = The amount of Energy Replacement Damages paid by Seller with respect to the immediately preceding Performance Measurement Period

F = The product of (a) the amount of Replacement Product in MWhs delivered by Seller in the immediately preceding Contract Year and (b) the price which is (C – D)

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

“**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 ten percent (10%) of the Expected Energy for the previous Contract Year.

No payment shall be due if the calculation of (a) $(A - B)$, (b) $(C - D)$ or (c) $[(A - B) * (C - D)] - (E + F)$, yields a negative number. In no event will Buyer owe any payment to Seller pursuant to this Exhibit G.

Within sixty (60) days after each Contract Year, Buyer shall 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*, 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 [*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 Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with an Installed Capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.

3. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on ___[DATE]___

4. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.

5. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

6. Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice and CAISO requirements, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity 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:

The installed nameplate capacity of the Facility is __ MW AC ("**Installed Capacity**").

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 the 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 of the Agreement).

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. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

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. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] 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. [XXXXXXXX] 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. [XXXXXXXX]. 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.

[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

FORM OF BUYER ASSIGNMENT AGREEMENT

This Buyer 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**”)[NOTE: **Appendix 1 to provide for transfer of RECs.**]. 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*, (i) PPA Buyer and PPA Seller shall 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 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 **[NOTE: Insert reference to bankruptcy event of default in PPA.]** occurs with respect to Financing Party; or
 - (4) delivery of a written notice by Financing Party if any of the events described in **[NOTE: Insert reference to bankruptcy event of default in 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*, (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 [Severability], [Counterparts], [Amendments] and [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*, 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

PPA BUYER

By:

By:

.....

Name:

Name:

Title:

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.

“Assignment Period” means the period beginning on [_____] and extending until [_____] *provided*, 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 PPA¹

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.

EXHIBIT M
MATERIAL PERMITS

<i>No.</i>	<i>Permits</i>
1	
2	

EXHIBIT N

NOTICES

<p>RADIANT BMT, LLC (“Seller”)</p>	<p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</p>
<p>All Notices: Street: 2410 Fair Oaks Blvd, Ste. 110 City: Sacramento, CA 95825 Attn: Todd Thorner Phone: (415) 652-1627 Email: tthorner@jtn-energy.com</p>	<p>All Notices: Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director Phone: (213) 269-5870 E-mail: tbardacke@cleanpoweralliance.org</p>
<p>Reference Numbers: Duns: XXXXXXXXXX Federal Tax ID Number: 81-4494477</p>	<p>Reference Numbers: Duns: Federal Tax ID Number:</p>
<p>Invoices: Attn: Todd Thorner Phone: (415) 652-1627 E-mail: tthorner@jtn-energy.com</p>	<p>Invoices: Attn: CPA Settlements Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org</p>
<p>Scheduling: Attn: Todd Thorner Phone: (415) 652-1627 Email: tthorner@jtn-energy.com</p>	<p>Scheduling: TBD Attn: Day Ahead Scheduling Phone: (817) 303-1104 Email: TenaskaComm@tnsk.com</p>
<p>Confirmations: Attn: Todd Thorner Phone: (415) 652-1627 Email: tthorner@jtn-energy.com</p>	<p>Confirmations: Attn: Vice President, Power Supply Phone: (213) 269-5870 E-mail: nkefer@cleanpoweralliance.org</p>
<p>Payments: Attn: Todd Thorner Phone: (415) 652-1627 E-mail: tthorner@jtn-energy.com</p>	<p>Payments: Attn: Vice President, Power Supply Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org</p>
<p>Wire Transfer: BNK: ABA: ACCT:</p>	<p>Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: XXXXXX8042</p>

EXHIBIT O

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) *[Name of Seller]*, a *[Legal Status of Seller]* (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 Storage Units (the “Project”) 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 CPA is authorized to act in accordance with Collateral Agent's instructions, and that 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 sixty (60) 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*, (a) if possession of the Project 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 (such notice, a "Financing Document Default Notice") CPA 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 has financial qualifications and operating experience *[TBD]* (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 Project (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 Project 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 Project 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 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 Project;

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 Project 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

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.

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 *[Legal Status of Seller]* 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. MICPALLANEOUS

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.

[Remainder of Page Left Intentionally Blank.]

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.

<p><i>[NAME OF PROJECT COMPANY],</i> <i>[Legal Status of Project Company].</i></p>	<p>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority.</p>
<p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>	<p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>
<p><i>[NAME OF COLLATERAL AGENT],</i> <i>[Legal Status of Collateral Agent].</i></p> <p>By: _____ <i>[Name]</i> <i>[Title]</i> Date: _____</p>	

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

EXHIBIT P

SUPPLY CHAIN CODE OF CONDUCT

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and use its commercially reasonable efforts to comply with this Supply Chain Code pursuant to Section 2.3(b) of the Agreement, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("ILO"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. Freely Chosen Employment

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. Young Workers

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence

of educational partners, and protection of students' rights in accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. Working Hours

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

4. Wages and Benefits

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment

There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and

concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

Staff Report – Agenda Item 8

To: Board of Directors

From: Jack Clark, Director of Customer Programs

Approved By: Ted Bardacke, Executive Director

Subject: Agreement for Demand Response Implementation Services with AutoGrid

Date: September 2, 2021

RECOMMENDATION

Approve agreement with AutoGrid, Inc. for Demand Response (DR) Implementation Services.

BACKGROUND

In October 2019 the Board approved a tripartite Services Agreement between CPA, Calpine Energy Services, and Olivine, Inc. for the implementation of a DER Demand Response Pilot Program, which was later named CPA Power Response. This pilot, originally scheduled to end in March 2021, was extended through November 2021 as part of the amended and restated Calpine agreement approved by the Board in April 2021. The Board received a comprehensive update on the Power Response program in November 2020, which included an overview of future plans to scale the program, including the release of an RFP for a program implementer.

CPA Power Response is an important tool to realize the objectives identified in the Resiliency and Grid Management category of the CPA Local Programs for a Clean Energy Future plan. Robust demand response programs can help contribute to grid resiliency and reliability, provide incentives and savings to customers, lower CPA's procurement costs, and shift customer usage to less GHG intensive times of day.

DISCUSSION**Power Response Pilot Program**

The CPA Power Response pilot program provides incentives to customers with existing behind-the-meter Distributed Energy Resource (DER) technologies to participate in demand response. Behind-the-meter DERs are customer-sited, geographically dispersed energy resources or technologies, like rooftop solar or EV chargers, that enable customers to generate electricity or shift/reduce their load during certain times of the day. DERs can be used individually or in aggregate to provide value to the grid, individual customers, or both.

CPA benefits from DER customers using less energy during demand response events, and the avoided load from DERs can also be aggregated and sold as a resource in the CAISO market. DER programs support customer energy cost reduction, GHG reductions, air quality improvements, help CPA reduce costly energy purchases, and earn revenue from wholesale market participation. Demand response also provides an opportunity for consumers to play a role in the operation of the electric grid by reducing their electricity usage during peak demand days when wholesale prices are highest (referred to as “events”) in exchange for financial incentives.

CPA made its first successful CAISO market bid of aggregated program load reduction in May 2021 after reaching the minimum amount of enrolled capacity required by CAISO. CPA is continuing to earn CAISO revenues from the five monthly demand response events allowed under the program, as well as gathering data on factors that impact customer performance and refining the bidding strategy.

Steady enrollment growth has continued throughout 2021 in the residential smart thermostat segment of the program, with some direct mail marketing continuing to drive engagement. Commercial customer acquisition was paused during the pilot extension period. There are currently 618 residential customers and 3 commercial customers enrolled in the pilot

Lesson Learned

Customer acquisition challenges were significant during the pilot, especially for commercial customer segments. Access to information regarding existing installed customer DER technology is limited, making targeted outreach challenging. Customers with previously installed technologies were less likely to participate in Demand Response which would require modifying existing operating procedures. While trade ally¹ partnerships can help address acquisition challenges, negotiating trade ally partnerships on an ad hoc basis through the pilot was complicated and inefficient.

During the pilot CPA was able to test direct load control on a subset of ecobee smart thermostat customers and observed much greater load drop for customers that had elected to allow Power Response to control their device during events than for those customers that were being requested to take voluntary action to reduce their consumption during events. Direct load control through technology relationships with trade allies is key to maximizing program performance, rather than relying solely on behavioral response.

RFP

CPA staff engaged in an RFP planning process for 4 months that involved analysis of the pilot experience and scaled program costs and benefits. Staff also met with several other CCAs as well as vendors to understand the current demand response landscape. To address lessons learned in the pilot, staff sought a program delivery model through the RFP that would work in partnership with trade allies who are already engaging customers in the market to drive customer acquisition, as well as provide more opportunities for direct device control. CPA released the RFP in April 2021 seeking a partnership with a Demand Response implementer to scale the Power Response program through a trade ally network.

¹ Trade ally refers to industry partners such as DER installers and vendors that can help deliver CPA programs to customers in course of their existing activities

In the RFP CPA sought an implementer to significantly scale up the enrolled capacity of the program from roughly 1 MW in the pilot, to 6MW of aggregated demand response over the initial 30-month term of the proposed contract. The RFP also specified:

- There must be both residential and commercial program options
- A \$1.2 million maximum yearly budget, inclusive of customer incentives.
- That 1 MW of the 6 MW goal must be attributed to customers living or located in Disadvantaged Communities (DACs) or taking service on low-income CARE rates.

CPA received 5 proposals to the RFP. Staff selection committee conducted interviews with 4 of the 5 proposers. Based on interviews, cost, and the quality of the proposal, staff elected to enter into negotiations with AutoGrid.

AutoGrid

Established in 2011, AutoGrid offers a suite of proprietary DER management software that allows them to optimize and dispatch flexible capacity from DERs in real time. They bring technology partnerships with trade allies that have deep market reach in CPA's territory to drive customer acquisition, as well as experience delivering flexible capacity at scale. They have implemented DER flex capacity programs for major national utilities and are bringing a network of trade allies to augment implementation of the next phase of Power Response. Initial trade ally partners will be ecobee, Google Nest, and Emerson (smart thermostats), Sunnova (battery storage), and ChargePoint (EV charging).

Proposed Agreement

Scope of Work

The Scope of Work contemplated in the Demand Response Implementation Services agreement is organized into five areas. AutoGrid will hold primary responsibility for completing the work for each of the areas, in collaboration with CPA. CPA will retain oversight of program implementation, marketing, and trade ally selection and management, which will be critical to the quality and success of the program.

- Implementation Planning

Implementation planning activities will commence upon approval of the Agreement and will include development of a detailed Implementation Plan, fine tuning of the project workplan, and finalization of program parameters, CAISO market strategy, and incentive levels. Autogrid will work with existing pilot program trade allies to transition currently enrolled program pilot participants into new program platform. Working with CPA and current Pilot Implementer, AutoGrid will integrate existing pilot customers into the new program and transfer CAISO registration details.

- Marketing Activities

Marketing activities will also commence upon approval of the Agreement. This will include market research activities including customer surveys and focus groups. This research will inform a comprehensive Marketing Plan that AutoGrid will deliver and execute.

- Trade Ally Network Development Services

AutoGrid will establish and integrate a network of trade allies into their DER Management platform for the Power Response program. Beyond the initial trade allies, AutoGrid will develop a Trade Ally Plan and Roadmap to add additional trade allies as the program scales. AutoGrid will also have responsibility for monitoring trade ally performance criteria established in consultation with CPA, and will ensure trade allies maintain all necessary licensing and insurance.

- Implementation, Operations, and Evaluation

AutoGrid will execute the Implementation Plan and manage all aspects of program administration and operations. This includes Scheduling Coordination and Demand Response Provider (DRP) services for enabling CAISO market integration of the Power Response program capacity. Additionally, AutoGrid will meet regularly with CPA to evaluate program progress, conduct annual Joint Management Reviews with CPA, and deliver a Final Report.

- Transition Services

This section details what will occur in the event the Agreement expires or is terminated. It includes development of a Transition Plan for all materials produced in conjunction with the program as well as for transitioning customers to a new implementer if appropriate.

Term

The initial 30-month Agreement term will begin upon execution of the Agreement and extend through December 2023. This term was designed to allow two full summers of demand response activity in the first Agreement term. There is an option to extend the Agreement for 3 successive one-year terms. Extension would require an amendment to the Demand Response Implementation Services Agreement and would result in additional cost to CPA. If an extension would require an adjustment to AutoGrid's compensation, the compensation will be within a reasonably commercial range of the rate card attached as Schedule 2 to Exhibit A of the Agreement.

Program Budget

The total Power Response program budget for the initial 30-month term, including customer and trade ally payments, is \$3,009,600. Additional incentives to recruit customers into the behavioral demand response will be determined at a later date. This budget will be allocated as follows:

- \$805,125 for customer incentives.
- \$904,275 for trade ally device fees These are passthrough costs to the Trade Allies.
- \$1,440,200 for all implementation services provided by AutoGrid, which includes:
 - \$115,000 for Implementation Planning
 - \$90,000 for Trade Ally Network Development Activities
 - \$225,000 for Marketing Activities
 - \$520,200 for Administration and Operations
 - \$320,000 for CAISO Scheduling Coordination and Demand Response Provider Services
 - \$45,000 for Transition Services
 - \$40,000 for Advanced Metering Equipment (telemetry required for large commercial customer sites)
 - \$85,000 for Program Evaluation Services

Performance Assurance

The Agreement includes a provision that AutoGrid shall post a Letter of Credit issued by a U.S. commercial bank, in a form substantially similar to the letter of credit set forth in Exhibit F to the Agreement, in the amount of \$160,000. This amount is intended to cover the prepaid balance in the customer incentive escrow account, plus approximately two months of AutoGrid service fees. CPA may draw on the Letter of Credit to cover unpaid amounts, amounts owed to CPA, or other obligation or liability incurred by CPA as a result of lack of performance under the Agreement.

FISCAL IMPACT

The Board approved FY 2021-22 budget included a \$963,500 allocation for the Power Response Program, sufficient to cover first year program costs. Costs for future years will be included in future budget proposals for the subsequent two years of the program

ATTACHMENTS

1. [Demand Response Implementation Services Agreement](#)
2. [Power Response Presentation](#)



AUTOGRID DEMAND RESPONSE IMPLEMENTATION SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement"), dated and effective as of September 3, 2021 (the "Effective Date"), is made by and between:

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA ("CPA"), and
AutoGrid Systems, Inc. ("Contractor").

CPA and Contractor are sometimes collectively referred to herein as the "Parties" and each individually as a "Party." In consideration of the terms of this Agreement, and for other good and valuable consideration, the Parties make the following acknowledgments and agreements:

RECITALS

WHEREAS, CPA runs a demand response program and seeks to bid in demand response resources into the CAISO market (collectively, the "Resource"), and CPA desires to retain a provider to perform certain Scheduling Coordinator and Demand Response Provider services, as specified below, and to market, implement, and scale a comprehensive Distributed Energy Resources based demand response program;

WHEREAS, Contractor is in the business of providing Scheduling Coordinator and Demand Response services, and ancillary or related services including a comprehensive distributed energy resource-based demand response program;

WHEREAS, CPA conducted a Request for Proposal ("RFP"), received 5 proposals, and CPA selected Contractor because Contractor has the expertise and experience to provide the specified services to CPA and offered CPA the Best Value;

WHEREAS, Contractor desires to provide these specified services to CPA and CPA desires to engage Contractor for these services;

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions upon which Contractor shall provide services to the CPA;

NOW, THEREFORE, it is agreed based on the consideration set forth below by the Parties to this Agreement as follows:

AGREEMENT

1. Definitions

- a) The definition of "Confidential Information" is set forth in paragraph 12.b. of this Agreement.
- b) "CPA Data" shall mean all CPA customer data gathered by Contractor in the performance of the Services pursuant to this Agreement, not including any data that is generated by or assigned to any Trade Ally (as such term is used in Exhibit A).

- c) "CPA Information" shall mean all Confidential Information provided by CPA to Contractor in connection with this Agreement.
- d) "CPA Materials" shall mean all written reports, plans, deliverables, or work product listed in Exhibit A as deliverables under this Agreement, in each case as prepared by Contractor, its officers, employees and agents for CPA for the performance of, the purpose of, or in the course of implementing this Agreement, including drafts, works-in-progress, or unfinished material relating to any reports, plans, deliverables, or work product listed in Exhibit A.
- e) "CPA Product" includes collectively CPA Data, CPA Information, and CPA Materials.
- f) "CAISO Protocols" means the Tariff, Business Practice Manuals, and the governing rules of the CAISO's operations.
- g) "Services" shall mean the scope of work Contractor provides to CPA as specified in Exhibit A.

2. Exhibits and Attachments.

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A – Scope of Work
 Exhibit B – Contractor's Workplan and Schedule
 Exhibit C – Compensation
 Exhibit D – Contractor's Proposal Response
 Exhibit E – Contractor Trader Restrictions
 Exhibit F – Letter of Credit Form

Should a conflict arise between language in the body of this Agreement and any exhibit or attachment to this Agreement, the language in the body of this Agreement controls, followed by Exhibit A, B, C, D, and E in that order, provided that nothing contained in Exhibit D shall create any additional covenants, representations or warranties than those specified elsewhere in this Agreement.

3. Services to be Performed by Contractor.

In consideration of the payments set forth in this Agreement and in Exhibit C, Contractor for itself and on behalf of its subsidiary, subsidiary Energy AI Systems as well as its Trade Allies listed in Schedule 1, as that schedule may be amended from time to time, shall use commercially reasonable efforts to perform services for CPA in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibits A and B ("Services"). For the avoidance of doubt, if Contractor uses such commercially reasonable efforts, but nevertheless fails to achieve the milestones in Exhibits A or B, Contractor shall take corrective actions mutually determined by the Parties to meet the milestones but shall not be otherwise liable for damages resulting from the missed milestones. Notwithstanding the foregoing and for avoidance of doubt, Contractor shall not be entitled to a payment relating to such milestone, deadline, or date specified in Exhibits A or B until such time as Contractor has met the requirements for payment. Contractor may subcontract any part of the Services, to the subcontractors listed on Schedule 1 (Subcontractors) to this Agreement. From time to time, Contractor may update Schedule 1 with CPA's prior written approval, not to be unreasonably withheld upon written notice to CPA. Contractor's Trade Allies shall not be deemed subcontractors for purposes of this agreement.

4. Performance Obligations

- a. CPA SCID. CPA is a registered Scheduling Coordinator at CAISO and has its own SCID to be used for the purposes of this Agreement. CPA will maintain its SCID throughout the term of the Agreement. Under this SCID, CPA will be receiving payments from and making payments to CAISO. Contractor shall provide timely CAISO settlement and collateral reporting, as applicable, to CPA, and work with CPA to manage any transaction sufficiently in advance of any applicable CAISO deadline for scheduling transactions. For the avoidance of doubt, the Contractor, not CPA, is obligated to perform all Scheduling Coordinator services on behalf of the Resource at the direction of CPA.
- b. Contractor Performance Obligations. Contractor represents and warrants that Contractor and its subsidiary, Energy AI Systems and its Trade Allies, as applicable, have the professional and technical personnel required to perform the Services and will perform the Services in a good, efficient, competent, and commercially reasonable manner, and in accordance with (i) all applicable industry practices (ii) instructions from CPA, (iii) all applicable laws, including CAISO Protocols, (iv) the terms of this Agreement and, (v) CPA risk management policies and protocols a link to the policies are available here: <https://cleanpoweralliance.org/key-documents/> including but not limited to policies and protocols relating to energy risk management and customer data and privacy, as those policies and protocols may be amended by CPA from time to time. Contractor shall execute any required acknowledgements of such policies and protocols as those policies and protocols are amended from time to time.

CPA shall provide Contractor with notice of any potential amendments of any applicable policies or protocols and an opportunity to review and to provide input for CPA's consideration. In the event that any amendments to the policies or protocols constitute a material change to Contractor's requirements under this Agreement, including but not limited to disclosure of unanticipated Confidential Information, dissolution of Contractor's intellectual property rights, or a material breach of Contractor's exclusivity agreements with Trade Allies, CPA and Contractor shall cooperate in good faith to amend the Agreement on commercially reasonable terms. If CPA and Contractor are unable to amend the Agreement, Contractor shall submit to CPA a declaration under penalty of perjury identifying the material change, explaining how this change was unforeseeable by Contractor, and summarizing the ways in which Contractor attempted to mitigate the impacts of the change without the need of termination. Upon CPA's acknowledgment of receipt of the declaration, Contractor may terminate the Agreement for convenience with ninety (90) calendar days advance notice and the termination shall be without any fee, penalty, charge, or cost to CPA. Contractor shall continue to provide Services and commence preparation for and implement transition services as specified in Exhibit A for a period of up to nine (9) months under the terms of the immediately prior policies or protocols; for the avoidance of doubt, during this period, CPA shall continue to provide payment for the services in accordance with those prior terms.

Contractor acknowledges and agrees that Contractor has authority to bind its subsidiary Energy AI Systems, a registered Demand Response Provider (DRP) and Distributed Energy Resource Provider (DERP) Service provider to perform the Services specified in this Agreement. Contractor further agrees that Contractor shall be solely responsible for any errors, omissions, or liability arising from the performance of the Services provided by its subsidiary Energy AI Systems and Trade Allies.

- c. Data Transmission. As expressly set forth in Exhibit A and Exhibit B, the Contractor will perform necessary services to obtain necessary interval meter data, or telemetered data for applicable resources, for the purposes of conducting bidding and settlement activities.

d. CAISO Payments. CPA shall be responsible for making any payments to CAISO.

5. Compensation.

CPA agrees to compensate Contractor as specified in Exhibit C:

- a) In consideration of the Services provided by Contractor in accordance with all terms, conditions and specifications set forth in this Agreement and Exhibit A and Exhibit B, CPA shall make payment to Contractor based on not-to-exceed amounts, and in the manner specified in Exhibit C.
- b) Unless otherwise indicated in Exhibit C, Contractor shall invoice CPA monthly to accountspayable@cleanpoweralliance.org for all compensation related to Services performed during the previous month. Payments shall be due within thirty (30) calendar days after the date the invoice is submitted to CPA at the specified email address. All payments must be made in U.S. dollars.

6. Term.

Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be thirty (30) months from the Effective Date ("Initial Term"). At least 9 months prior to the expiration of the Initial Term, CPA and Contractor may renew this Agreement for three (3) successive (12) month terms for a maximum of five and a half years (each 12-month term shall be referred "Renewal Term"), unless either Party provides ninety (90) days prior written notice of its intent not to renew the term of the Agreement ("Renewal Notice"). The Parties shall discuss in good faith a renewal of the Services, including any compensation for those Services for the Renewal Term. If compensation specified in Exhibit C requires an adjustment during a Renewal Term, then the compensation shall be within a commercially reasonable range of the rate card attached as Schedule 2 to Exhibit A to this Agreement.

7. Termination.

- a) Termination for Convenience. Except as otherwise provided in this Agreement, upon CPA's payment to Contractor of a termination fee as calculated in Schedule C-1 in Exhibit C, ("Termination Fee"), CPA may terminate the Agreement in accordance with this paragraph in whole, or from time to time in part, whenever CPA determines that termination is in CPA's best interests. Such a termination for convenience, in part or in whole, shall take effect by CPA delivering to Contractor, at least ninety (90) calendar days prior to the effective date of the termination with a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated. Within thirty (30) calendar days after Contractor's receipt of the Notice of Termination, Contractor shall submit to CPA its calculation of the Termination Fee and documents confirming Contractor's calculation of the Termination Fee.

If the termination for convenience is partial, Contractor may submit to CPA a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement which is not terminated. CPA may agree to accept any such equitable adjustment or may dispute the equitable adjustment and engage in good faith discussions with Contractor to reach an understanding about the equitable adjustment amount. Nothing contained herein shall limit the right of CPA and Contractor to agree upon amount or amounts to be paid to Contractor for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained in this paragraph 7.a. shall limit CPA's rights and remedies at law.

- b) Termination for Default. If either Party fails to provide in any material manner the Services required under this Agreement, otherwise fails to comply with the material terms of this Agreement, or violates any ordinance, regulation or law which materially impairs its performance herein and such default, failure or violation continues uncured for thirty (30) calendar days after written notice is given to the defaulting, failing or violating Party, the other Party may terminate this Agreement by giving five (5) business days' written notice. If Contractor requires more than thirty (30) calendar days to cure, then CPA may, at its reasonable discretion, authorize additional time as may reasonably be required to effect such cure provided that Contractor diligently and continuously pursues such cure.
- c) Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing Services in its entirety or if a termination to a part of the Agreement, those Services that have been terminated; (ii) any and all payment obligations of CPA under this Agreement will become due immediately except any equitable adjustment pursuant to paragraph 7(a); (iii) promptly transfer title and deliver to CPA all CPA Product pursuant to this Agreement; and (iv) each Party will promptly either return or destroy (as directed by the other Party) all Confidential Information of the other Party in its possession. Notwithstanding the foregoing, (a) each Party may retain Confidential Information that is contained in an automatic archived computer system backup; provided, however, that any such Confidential Information contained in such automatic archived computer system backup shall be subject to the terms and conditions of this Agreement and shall be accessible only to that Party's IT or legal professionals, (b) nothing in this Agreement shall prohibit a Party from retaining one copy of any of the Confidential Information with its legal counsel in order to ensure compliance with applicable law or legal process; and (c) each Party may retain Confidential Information consistent with that Party's authorized document retention policy.

At least ninety (90) days prior to expiration or termination of the Agreement, and upon request of CPA, Contractor shall reasonably cooperate with CPA to ensure a prompt and efficient transfer or return of all CPA Product and any data, documents and other materials provided by CPA in a manner such as to minimize the impact of expiration or termination on CPA's customers.

The following provisions of this Agreement shall survive any expiration or termination of this Agreement: 1 (Definitions), 2 (Exhibits and Attachments and Schedules), 4 (Performance Obligations), 7(c) (Effect of Termination), 8(B) (Limitation of Liability), 8(C) (Cap), 8(D) (Basis of Bargain), 8(E) (Disclaimer), 9 (Contract Materials), 12 (Confidential Information), 19 (Work Product), 21 (Assignment), 23 (Retention of Records and Audit Provision), 26 (Governing Law, Jurisdiction and Venue), 27 (Amendments), 28 (Severability) and 29 (Complete Agreement).

8. Performance Assurance: Limitations of Liability: Disclaimers.

- a) **Letter of Credit.** Within 30 days of the Effective Date of this Agreement, Contractor shall post a Letter 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 F in the amount of one-hundred and sixty thousand dollars (\$160,000). CPA may draw on the Letter of Credit to cover unpaid amounts, amounts owed to CPA, or other

obligation or liability incurred by CPA as a result of Contractor's performance or lack of performance under this Agreement, including damages. In the event CPA draws upon the Letter of Credit, Contractor shall, one time only, replenish the Letter of Credit, within five (5) business days, up to the one hundred and sixty-thousand dollar amount.

- b) **LIMITATION OF LIABILITY.** EXCEPT AS EXPRESSLY PROVIDED IN THIS PARAGRAPH 8(B) IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, REVENUE OR BUSINESS, COST TO COVER, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR WHETHER SUCH DAMAGES WERE FORESEEABLE UNLESS THE DAMAGES, CLAIMS, OR OBLIGATIONS ARE CAUSED BY OR RESULT FROM CONTRACTOR'S WILLFUL MISCONDUCT, GROSS NEGLIGENCE, OR FRAUD IN ANY MANNER WHATSOEVER.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING PARAGRAPH, BUT EXPRESSLY SUBJECT TO THE LIMITATION ON TYPES OF DAMAGES IN THE FOREGOING PARAGRAPH, CPA SHALL HAVE THE FULL BENEFIT OF INSURANCE UNDER PARAGRAPH 14, INDEMNITY UNDER PARAGRAPH 15, AND LETTER OF CREDIT SPECIFIED IN THIS PARAGRAPH 8(A). FOR AVOIDANCE OF DOUBT, CPA'S RIGHTS AND REMEDIES SPECIFIED HEREUNDER SHALL BE CUMULATIVE.

- c) **CAP.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR ANY AMOUNT IN EXCESS OF (1) \$900,000 IF THE LIABILITY ARISES WITHIN THE FIRST 12-MONTH PERIOD FOLLOWING THE EFFECTIVE DATE, (2) \$1,050,000 IF THE LIABILITY ARISES WITHIN THE SECOND 12-MONTH PERIOD FOLLOWING THE EFFECTIVE DATE, OR (3) \$1,200,000, IF THE LIABILITY ARISES BEYOND THE FIRST 24-MONTH PERIOD, FOR AN AGGREGATE TOTAL CAP OF \$3,150,000 FOR LIABILITY ARISING FROM THIS AGREEMENT.
- d) **BASIS OF BARGAIN.** THE PROVISIONS OF PARAGRAPH 8 OF THIS AGREEMENT ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH THE PARTIES WOULD NOT HAVE EXECUTED THIS AGREEMENT. SUCH PROVISIONS SHALL SURVIVE AND APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.
- e) **DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL GOODS AND SERVICES ARE PROVIDED HEREUNDER "AS-IS" AND WITHOUT WARRANTY OF ANY KIND. EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES NOT EXPRESSLY SET FORTH IN THIS AGREEMENT,

EXPRESS, IMPLIED AND OTHERWISE, INCLUDING WITHOUT LIMITATION ALL WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

9. Contract Materials.

- a) CPA owns all right, title and interest in and to all CPA Materials and CPA Data. Upon the expiration of this Agreement, or in the event of termination, CPA Materials and all CPA Information, in whatever form and in any state of completion, shall remain the property of CPA and shall be promptly returned to CPA. Upon termination, Contractor may make and retain a copy of such Contract Materials if required by law or pursuant to the Contractor's reasonable document retention or destruction policies.
- b) Contractor Software. Contractor shall provide access to proprietary software works hosted by Contractor in the course of providing Services to CPA (the "Software"), subject to the following conditions:
- i. The Software is and shall remain the exclusive property of Contractor. CPA understands and agrees that no right, title, or interest is being conveyed in the Software.
 - ii. CPA agrees to access the Software only for the intended purpose described in this Agreement.
 - iii. All proprietary rights, title, and interest in the Software and any associated documentation, manuals, and other materials is and shall remain the property of Contractor and its licensors. CPA acknowledges that Contractor or its licensors own and shall exclusively own all proprietary rights, including patents, copyrights, trade secrets, and other intellectual property rights in the licensed Software and any corrections, updates, bug fixes, and custom modifications to the Software regardless of whether or not they were made for or requested by CPA.
 - iv. CPA acknowledges and agrees that Contractor must, in order to carry out its function as hosting service and Contractor of the Software, from time to time inspect logs, system information, or other materials that may contain data belonging to CPA. CPA specifically authorizes Contractor to access such information as needed by Contractor to perform its duties under the Agreement, subject to paragraph 9(a) above, provided that Contractor shall provide CPA at least thirty (30) days advance notice of the need for access and with information regarding type of data or information being sought.
 - v. CPA shall take all reasonable and necessary steps required to protect the intellectual property of Contractor, including the Software, from any unauthorized use or possession by CPA's employees or third parties working with CPA. CPA agrees to prohibit and to take all reasonable measures to prevent unauthorized access to the Software by specifically protecting Virtual Private Network (VPN) links, Transport Layer Security (TLS) keys and certificates, and usernames and passwords, as

applicable. CPA shall report to Contractor any suspected or known unauthorized access to Contractor's intellectual property as soon as practicable. CPA shall assist Contractor in a timely manner with all efforts to prevent and mitigate losses related to any such unauthorized disclosure or access to the Software.

10. Payments of Permits/Licenses.

Contractor bears responsibility to obtain any license, permit, or approval expressly set forth in Exhibit A and required for it to provide the Services to be performed under this Agreement at Contractor's own expense prior to commencement of the Services.

11. Relationship of Parties.

CPA 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 the Joint Powers Agreement and is a public entity separate from its constitute members. CPA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CPA's constituent members in connection with this Agreement.

12. Confidential Information.

- a) Duty to Maintain Confidentiality. Each Party agrees that it will hold all the other Party's Confidential Information in confidence, and, except to its Trade Allies or potential Trade Allies in the performance of its obligations under this Agreement, provided that Trade Allies or potential Trade Allies agree to maintain the confidentiality of any Confidential Information, and each Party, including any Trade Allies or potential Trade Allies, subsidiaries, or subcontractors will not divulge, disclose, or directly or indirectly use under this Agreement, copy, digest, or summarize, any Confidential Information unless necessary to comply with any applicable law, regulation, or in connection with any court or regulatory proceeding applicable in which case, any disclosure shall be subject to this paragraph 12.c. and d., below.
- b) Definition of "Confidential Information". Subject to the exclusions in this paragraph 12(b), the following constitutes "Confidential Information," whether oral or written: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information, in whatever form, that a Party shares with the other Party in the course and scope or performance of this Agreement, including information that either Party stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other.

Confidential Information shall not include: (1) information that is known to the receiving Party at the time of disclosure; (2) information that is or becomes publicly known other than through any breach of this Agreement by the receiving Party or its Representatives; (3) information which is subsequently lawfully and in good faith obtained by the receiving Party or its Representatives from a third party, as shown by documentation sufficient to establish the third party as the source of the Confidential Information; provided that the disclosure of such information by such third party is not known by Contractor or its Representatives to be in breach of a confidentiality agreement with the disclosing Party or other similar obligation of confidentiality to the disclosing Party; (4) information that the receiving Party or its Representatives develop independently without use of or reference to Confidential

Information provided by the disclosing Party; or (5) information that is approved for release in writing by the disclosing Party.

Each Party agrees that the terms and conditions, but not the existence, of this Agreement shall be treated as the other's Confidential Information; provided, however, that each Party may disclose the terms and conditions of this Agreement: (a) as required by any court or other governmental body; (b) as otherwise required by law; (c) to legal counsel of the Parties; (d) in connection with the requirements of an initial public offering or securities filing; (e) in confidence, to accountants, banks, and financing sources and their advisors; (f) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or (g) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

- c) California Public Records Act. The Parties acknowledge and agree that the Agreement including but not limited to any communication or information exchanged between the Parties, any deliverable, or work product 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.
- d) Third Party Request for Confidential Information. Upon request or demand of any third person or entity not a Party hereto pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("Requested Confidential Information"), CPA will as soon as practical notify Contractor in writing via email that such request has been made. CPA will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release to the third party of the Confidential Information designated by Contractor. If Contractor takes no such action after receiving the foregoing notice from CPA, CPA 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 Contractor does take or attempt to take such action, Contractor agrees to indemnify and hold harmless CPA, its officers, directors, employees, and agents ("CPA Indemnified Parties"), from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of CPA Indemnified Parties for Contractor's attempt to prevent disclosure or CPA's refusal to disclose any Confidential Information.

13. Trading Restrictions

Contractor shall not compete with or against CPA using Confidential Information Contractor obtains from CPA for Contractor's own account or for the account of others in a manner that conflicts with the objective of the Services or otherwise harms CPA. Contractor shall issue to its traders the trading restrictions shown in the attached Exhibit E. Contractor shall instruct its traders to follow the attached restrictions or face disciplinary actions, including but not limited to the actions specified in Exhibit E. Within 30 days of the Effective Date, Contractor shall add the directives specified in Exhibit E to Contractor's operational controls, risk policy, risk management protocols or manuals, or any other applicable process involving trading or risk management. Contractor shall inform CPA of any violations of the trading restrictions in Exhibit E no later than 10 days following the discovery of the violation and Contractor's actions with

respect to traders who may have violated such restrictions. Beginning on the Effective Date and semiannually thereafter, Contractor shall provide CPA with a letter signed by Contractor's Controller or equivalent confirming compliance with this section in a form acceptable to CPA. **Contractor agrees and acknowledges that this provision is an express and absolute condition of this Agreement, is bargained for consideration, and is not a mere recital. Any violation of this Section 13 shall constitute a material breach of this Agreement.**

14. Insurance.

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to CPA within 10 business days after the Agreement is fully executed. The general liability policy shall be endorsed naming Clean Power Alliance of Southern California and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to CPA prior to commencement of work and maintained throughout the Term and any Renewal Term. Each certificate shall provide for thirty (30) days advance written notice to CPA of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph (d) below which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligation under paragraph 15 of this Agreement to indemnify, defend, and hold CPA harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. CPA agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the Agreement. In addition to any other available remedies, CPA may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained required coverage.

a) General Liability

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million (\$1,000,000.00) with a two million dollar (\$2,000,000.00) aggregate limit. CPA shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page.

b) Auto Liability

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

c) Workers' Compensation

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in

accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to CPA prior to commencement of work.

d) Professional Liability Insurance

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the Contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000.00 per incident. If the deductible or self-insured retention amount exceeds \$100,000.00, CPA may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund or Contractor's general insurance reserves are adequate to provide the necessary coverage and CPA may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

15. Indemnification.

Contractor agrees to indemnify, defend, and hold harmless CPA, its employees, officers, and agents, from and against, and shall assume full responsibility for payment of all wages, state or federal payroll, social security, income or self-employment taxes, with respect to Contractor's performance of this Agreement. Contractor further agrees to indemnify, and hold harmless CPA from and against any and all third- party claims, liabilities, penalties, forfeitures, suits, costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney's fees), which CPA may hereafter incur, become responsible for, or pay out, as a result of death or bodily injuries to any person, destruction or physical damage to tangible property, or any violation of governmental laws, regulations or orders, to the extent caused by Contractor's negligent acts, errors or omissions, or the negligent acts, errors or omissions of Contractor's employees, agents, or subcontractors while in the performance of the terms and conditions of the Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of CPA, elected and appointed officers, employees, agents and volunteers.

16. Independent Contractor.

- a) Contractor acknowledges that Contractor, its officers, employees, or agents will not be deemed to be an employee of CPA for any purpose whatsoever, including, but not limited to: (i) eligibility for inclusion in any retirement or pension plan that may be provided to employees of Contractor; (ii) sick pay; (iii) paid non-working holidays; (iv) paid vacations or personal leave days; (v) participation in any plan or program offering life, accident, or health insurance for employees of Contractor; (vi) participation in any medical reimbursement plan; or (vii) any other fringe benefit plan that may be provided for employees of Contractor.
- b) Contractor declares that Contractor will comply with all federal, state, and local laws regarding registrations, authorizations, reports, business permits, and licenses that may be required to carry out the work to be performed under this

Agreement. Contractor agrees to provide CPA with copies of any registrations or filings made in connection with the work to be performed under this Agreement.

17. Compliance with Applicable Laws.

The Contractor shall comply with any and all applicable federal, state, and local laws, including any policies or resolutions adopted by CPA affecting Services covered by this Agreement. A link to the policies or resolutions are available at: <https://cleanpoweralliance.org/key-documents/> and any policies or resolutions identified therein may be amended by CPA from time to time.

18. Nondiscriminatory Employment.

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age, protected veteran status, or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

19. Work Product.

All CPA Product shall become the sole property of CPA upon payment to Contractor for such work. CPA shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at CPA's expense, provide CPA Product to CPA or to any party CPA may designate, upon written request. Contractor may keep file reference copies of all documents prepared for CPA.

20. Notices.

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of CPA, to:

Name/Title: Theodore Bardacke, Executive Director
Address: 801 S Grand, Suite 400, Los Angeles, CA 90017
Telephone: 213-269-5890
Email: tbardacke@cleanpoweralliance.org

With a copy (which shall not constitute Notice as specified herein) to:

Name/Title: Procurement Administrator
Address: 801 S Grand, Suite 400, Los Angeles, CA 90017
Telephone: 213-269-5890
Email: contracting@cleanpoweralliance.org

In the case of Contractor, to:

Name/Title: Amit Narayan, CEO _____
Address: 255 Shoreline Ave, Suite 350; Redwood

City, CA 94065 _____
Telephone: _____
Email: amit@auto-grid.com

21. Assignment.

Neither this Agreement nor any of the Parties' rights or obligations hereunder may be transferred or assigned without the prior written consent of the other Party, except in connection with a change of control of the assigning Party, whether by merger, reorganization or otherwise, or a sale of all or substantially all of the assets of the assigning Party to which this Agreement relates in which case Contractor shall not be required to obtain written consent by CPA.

In addition to the foregoing, Contractor shall provide CPA written notice not later than 10 calendar days after any assignment or transfer of Contractor's rights or obligations under this Agreement, including in connection with (i) any change of control of Contractor or (ii) sale of all or substantially all of Contractor's assets. If CPA determines, in its sole discretion, that Contractor's successor or assignee does not meet CPA's interests, CPA may terminate this Agreement for convenience at no cost, penalty, or charge whatsoever to CPA except any customer payments that have been accrued and owing. Contractor, its successor, or assign shall provide services, at the rates specified in Exhibit C, for a period of up to nine (9) months to transition services specified in Exhibit A; provided that, for the avoidance of doubt, during this period, CPA shall continue to provide payment for the services in accordance with the terms of this Agreement.

In any event, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

22. Subcontracting.

Contractor may not subcontract Services to be performed under this Agreement without the prior written consent of CPA, except to the subcontractors listed in Schedule 1, as such Schedule may be updated in accordance with paragraph 3. If CPA's written consent to a subcontract is not otherwise obtained in compliance with paragraph 3, Contractor acknowledges and agrees that CPA will not be responsible for any fees or expenses claimed by such subcontractor.

23. Retention of Records and Audit Provision.

- a. Records Retention. Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records pertaining to the Compensation, the Services, and the calculation of amounts invoiced to CPA hereunder ("Agreement Records"), including any employee time sheets or correspondence related to Agreement Records. Such Agreement Records shall include, but not be limited to, documents supporting all income and all expenditures. Contractor asserts that all Agreement Records shall be Contractor's Confidential Information.
- b. Contract Compensation Audits. CPA shall have the right, during regular business hours, to review and audit all Agreement Records during the Term of the Agreement and for at least five (5) years of the completion or termination of this Agreement. Any such review or audit may be conducted on Contractor's premises or, at CPA's option Contractor shall provide all Agreement Records within a maximum of fifteen (15) days upon receipt of written notice from CPA. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings and shall promptly refund any

overpayments made by CPA based on undisputed audit findings.

- c. **Settlement Audits.** CPA has the right, at its sole discretion and upon reasonable written notice to Contractor, to examine copies of the relevant portions of the records as necessary to verify the accuracy of any invoice, charge, or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and the payments will be promptly made together with interest at the prevailing interest rate, if applicable, from the original date of payment. In addition, adjustments to any invoice may be made up to five (5) years from the date that the particular Services were completed to adjust for (a) corrections made by CAISO to prior CAISO statements and (b) tax claims. This paragraph of this Agreement survives any termination of the Agreement for a period of four (4) years from the date of such termination of this Agreement for the purpose of the right to examine records and such invoice and payment objections and corrections.

24. Conflict of Interest.

- a) No CPA employee whose position with the CPA enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the CPA's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the CPA's approval or ongoing evaluation of such work.
- b) The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to CPA. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this paragraph shall be a material breach of this Agreement.

25. Publicity.

Contractor shall not issue a press release or any public statement regarding the Agreement, Services contemplated by this Agreement, or any other related transaction unless CPA has agreed in writing the contents of any such public statement, which agreement shall not be unreasonably conditioned, withheld or delayed following Contractor's request.

26. Governing Law, Jurisdiction, and Venue.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

27. Amendments.

None of the terms and conditions of this Agreement may be changed, waived, modified or

varied in any manner whatsoever unless in writing duly signed by the Parties.

28. Severability.

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provisions, will continue in full force and effect and will in no way be impaired or invalidated.

29. Complete Agreement.

This Agreement constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

30. Counterparts.

This Agreement may be executed in one or more counterparts, including facsimile(s), emails, or electronic signatures, each of which shall be deemed an original and all of which together will constitute one and the same instrument.

[Signatures on the next page]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

AutoGrid Systems, Inc.

Clean Power Alliance of Southern California

By: Amit Narayan
Title: CEO

By: Ted Bardacke
Title: Executive Director

EXHIBITS

Exhibit A – Scope of Services

Exhibit B – Workplan

Exhibit C – Compensation and Budget

Exhibit D – Contractor Proposal and BAFO

Exhibit E – Trading Restrictions

Exhibit F – Letter of Credit

EXHIBIT A SCOPE OF SERVICES

Under the direction of the CPA Director of Customer Programs and Power Response Program Manager, AutoGrid shall perform the following demand response program implementation tasks in accordance with the Contractor Workplan timetable set forth in Exhibit B:

I. Pre-Implementation Planning and Implementation Plan

A. Pre-Implementation Planning:

Starting on the Effective Date, AutoGrid to review current Power Response pilot program details and provide recommendations for program modification including but not limited to incentive levels, incentive delivery, event duration and frequency, CAISO market participation strategy for enrolled resources, and technology options.

B. Implementation Plan

In consultation with, and under the guidance of, CPA programs staff, AutoGrid to develop an Implementation Plan to enroll a minimum of 6 MW of demand response capacity in the CPA-branded Power Response program within two years of implementation, with continuous annual growth as permitted by DER market penetration of selected Trade Allies and CPA program budget. For the purposes of this Agreement, Trade Allies shall be defined as a manufacturer, vendor, developer, installer, or aggregator of Distributed Energy Resource (DER) technologies.

The Implementation Plan shall provide a roadmap to reach a minimum of 6 MW of demand response enrolled capacity and must include the following elements:

- Overall approach to program implementation and enrolled capacity target of 6 MW, with subgoal of 1 MW of that capacity from enrollment of customers taking service on CARE/FERA rates or customers located in Disadvantaged Communities within CPA territory¹
- Program design
- Customer segmentation
- Technology types
- Trade Ally Network development (see Section III) and customer acquisition strategy
- Projected aggregated valuation of enrolled Demand Response (DR) capacity
- Program goals, Key Performance Indicators (“KPIs”), and metrics
- Detailed budgets and anticipated spend rates

¹ Disadvantaged Communities as defined by California SB 535 refer to the areas throughout California which have a combined economic, health, and environmental CalEnviroScreen score in the top 25th percentile.

- CAISO market participation strategy, including bidding strategy recommendations, market operations protocols, and market performance reporting
- Plan to integrate up to 1,000 customers that have already enrolled in the Power Response Pilot Program into the fully implemented program

CPA is open to implementation approaches to meet this level of enrolled DR capacity, but the Implementation Plan must, at a minimum:

- Include offerings for both commercial and residential customers
- Include smart thermostat and battery storage demand response options for residential customers
- Include Electric Vehicle (EV) charging and commercial battery storage demand response options for commercial customers
- Provide CPA with the ability to call at least 35 demand response events per year per enrolled customer
- Address Trade Ally network expansion plan and direct load control potential in CPA territory
- Address how to meet enrolled capacity goal of 1 MW for low-income customers (defined as taking service on CARE or FERA rates) and those living or located in Disadvantaged Communities (“DACs”) through both Bring Your Own Device (BYOD) and newly installed Trade Ally residential thermostat outreach.
- Implement multifamily smart thermostat DAC DR pilot for 2-3 apartment buildings located in DACs in CPA territory.
- Describe how Power Response enrolled demand response capacity can generate wholesale market or Resource Adequacy (“RA”) value to CPA beyond avoided wholesale energy purchases and best-fit paths for profit maximization (e.g., PDR, load modification, ancillary service offerings, etc.) depending on the nature of DR resources in CPA’s portfolio.
- Define options for customer portability at the end of Term.
- Use AutoGrid Flex as database of customer records.
- Describe any competing commitments on any aggregated DR resource in the program capacity portfolio limiting CPA’s program flexibility.

C. Rollout of Residential Behavioral Demand Response (BDR) Program

- AutoGrid to provide the ability to enroll interested customers into a residential BDR program.
- AutoGrid to dispatch BDR events by sending SMS and/or emails to registered homeowners. Messaging to be approved by CPA.

CPA may consider additional implementation approaches or elements, provided that nothing considered by CPA will change AutoGrid's requirement to meet the minimum requirements specified in this Section I.

Deliverable(s):

1. Implementation Plan that meets the requirements of Section I and is acceptable to CPA.

II. Marketing Activities

A. Marketing Plan

- Concurrent with the development of the Implementation Plan, AutoGrid shall conduct market research that will include:
 - Customer segmentation analysis of both residential and commercial customer groups
 - Customer interviews, surveys, or focus groups
 - Utilize customer segmentation, interviews, surveys or focus groups in BDR planning
 - Examination of DER market share in CPA territory by program technology and Trade Ally
 - Competitive demand response landscape analysis
- The market research should inform the Implementation Plan.
- Utilizing the insights gained from market research, review current Power Response marketing materials/strategies, and best practices and lessons-learned from past experiences to inform and adapt the Marketing Plan as appropriate.
- Develop and execute a comprehensive program Marketing Plan under the strategic guidance and oversight of CPA. Marketing plan must address the following:
 - Measurable objectives pertaining to customer acquisition and reach for each Trade Ally, program customer segment, and technology type
 - Residential and commercial marketing and acquisition strategies
 - Target program audiences and identification of eligible customers
 - Roles and responsibilities of CPA and selected Proposer in marketing implementation
 - Role of Trade Allies in marketing (see Section III)
 - Marketing budget and anticipated spend rates
 - Marketing metrics

Deliverable(s):

1. Comprehensive Marketing Plan for all customer segments and technologies that meets the requirements of this Section II.A. and is acceptable to CPA.

B. Marketing Plan Execution

- Implement the Marketing Plan in partnership with CPA and Trade Allies.
 - CPA and AutoGrid to conduct direct customer outreach for Commercial and Industrial customer (C&I) recruitment
 - All other Trade Allies will directly contact their customers and share information about program participants with CPA and AutoGrid
- Collaborate with and leverage Trade Ally marketing activities and AutoGrid to coordinate activation of potential CPA customer participants through existing Trade Ally partnerships and direct customer outreach.
- Coordinate and hold regular, but no less than once a quarter, marketing-specific check-ins with CPA team to review marketing metrics and budget spend
- Conduct regular, but no less than once a quarter, marketing strategy reviews and if necessary, make recommendations for changes
- Each program year, AutoGrid to provide the following services:
 - Summary of results and analysis of annual customer survey of at least 500 customers in CPA's service territory
 - Summary of results and analysis for up to two focus groups of up to 20 participants, with CPA providing input on the questions
 - Input to the program's marketing plan for behind the meter battery deployment, including:
 - Battery storage penetration rates in the year preceding the start of the program
 - Identification of program audiences within CPA's territory

Deliverable(s):

1. List of ChargePoint and other Trade Ally customers in CPA territory that accept to participate in the CPA program.
2. Yearly survey and focus group data and findings
3. Hold regular, but no less than once a quarter, meetings as specified in this Section II.

III. Trade Ally Network Development Services and Planning

A. Trade Ally Network Development

AutoGrid shall develop a qualified network of Trade Allies on CPA's behalf to acquire potential customers into the Power Response program.

- In addition to Trade Allies specified in Proposal, Exhibit D, AutoGrid and CPA will create a Trade Ally acquisition process to engage new trade allies in the Power Response program. See Deliverable 1 in this Section III.
- Trade Allies may include DER technology manufacturers, vendors, developers, aggregators, or installers.
- Acquired customers into the program may include those with existing installed technology that just need to be enrolled in demand response, or those installing new technologies.
- Build upon Trade Ally customer acquisition market activity by leveraging combined CPA, AutoGrid, and Trade Ally Program marketing, education, and outreach tactics.
- Facilitate Distributed Energy Resource Management systems (DERMS) integration of Trade Ally technologies to enable direct load control options.

Deliverable(s):

1. Establishment of DERMS Trade Ally Network interfaces. As of the Effective Date, AutoGrid must integrate the following Trade Allies to AutoGrid's DERMS platform: ChargePoint, ecobee, Emerson, Sunnova, and Google Nest.
2. AutoGrid must seek CPA's prior written approval of any change to the integrated Trade Ally network.
3. Provide CPA written confirmation from each Trade Ally of readiness to enroll and dispatch CPA customers.

B. Trade Ally Network Planning and Monitoring

AutoGrid to produce a Trade Ally Plan and Roadmap that contains all of the following:

- In addition to Trade Allies specified in Proposal, Exhibit D, AutoGrid and CPA will create a Trade Ally acquisition process to engage new trade allies in the Power Response program. See Deliverable 1 in this Section III.
- Work with CPA to identify additional commercial EVSE and battery DR trade allies beyond those proposed in Proposal and Best and Final Offer (BAFO) for program integration. Program integration would depend on AutoGrid product roadmap.
- Establish roadmap for timeline and projected costs to integrate additional Trade Allies specified as optional in the BAFO into the CPA Power Response program, including, Emerson, Sunrun, Schneider, SolarEdge, EATON, IMS Evolve, Schneider, and Flo, as well as others defined through ongoing coordination.
- Under the direction of CPA, develop Trade Ally selection criteria and Quality Control and Assurance standards protocols with CPA providing oversight,

input, and final approval on new Trade Ally selection. Trade Allies should meet ongoing minimum criteria that will be established by CPA in collaboration with AutoGrid but must include two or more of the following elements: current licensing, insurance, minimum customer service levels, and safety records.

- Training plan for on-boarding Trade Allies, including marketing training, and for providing ongoing support with a remote option to comply with local health and safety standards, if necessary.

AutoGrid to create tracking system of participating Trade Allies to include company information, applicable licenses and insurance, and contacts. In particular, the following will be tracked:

- a) Main point of contact for each Trade Ally
 - b) All electrical work to be performed by electricians that are licensed to work in the state of California
 - c) All companies to be bonded
 - d) All companies performing work on a homeowner or company site to carry workers compensation
- Tracking system must include metrics for participants, including participation rates, pending and completed project information, and other metrics to be determined.
 - Tracking system data must be made available to CPA by quarterly reporting or through online data portal.

Deliverable(s):

1. Delivery of Trade Ally Plan and Roadmap that meets the requirements of this Section III.B. and is acceptable to CPA.
2. Delivery of Trade Ally Tracking System that meets the requirements of this Section III.B and is acceptable to CPA.

IV: Program Implementation, Operations, and Evaluation (Ongoing)

A. Implementation Plan Execution and Program Administration

AutoGrid shall execute the Implementation Plan and manage all aspects of program implementation under the direction and oversight of CPA staff. These aspects shall include, but are not limited to:

- Launch Enrollment Campaign for Legacy Pilot Thermostat Customers:
 - Work with Trade Allies to launch Enrollment Campaign for already-enrolled legacy thermostat customers to encourage them to switch to the new program.

- Work with CPA and Power Response pilot implementer if needed to integrate existing pilot customers into the new program and transfer CAISO registration details.
- CPA to complete Google's security questionnaire; AutoGrid to assist.
- Conduct operations of the Power Response Program, including, at a minimum:
 - Customer verification, enrollment, and SCE Rule 24 meter data transfers. CPA to provide AutoGrid with weekly file of active CPA customers for AutoGrid to verify program eligibility.
 - Management of enrolled resources utilizing universal DERMS platform with standard Amazon Web Service security package.
 - Commercial customer pre-enrollment technological support if required by customer.
 - Deployment of mobile application or promotion of Trade Ally mobile applications for residential customer enrollment, event notifications, usage tracking, etc. This mobile application may be white-labeled for CPA Power Response.
 - Demand response events scheduling, dispatch, customer notifications, and performance reporting to CPA. CPA staff shall have the option to schedule and dispatch events, but AutoGrid will be default manager of this process.
 - Customer incentive payment verification, processing, and reporting
 - Customer service and communications conducted via AutoGrid Flex. CPA must have access to a centralized database of Power Response customers.
 - Work with CPA Data Manager at direction of CPA staff to exchange only necessary customer eligibility and billing data, process bill credits for incentive payments, if applicable, and coordinate customer service processes as needed. CPA is unable to provide real time meter data to trade allies.

Deliverables

1. Launch of Enrollment Campaign for legacy thermostat customers as specified in this Section IV.A.
2. CRM Solution Deployment as specified in this Section IV.A.
3. Successful enrollment of 6 MW of dispatchable DR capacity, including at least 1 MW of commercial capacity and 1 MW of Disadvantaged Community capacity by Year 3, at the following schedule, demonstrated by proof of successful Rule 24 data transfer:
 - a. Year 1: 1.6MW total
 - b. Year 2: 4.6 MW total
 - c. Year 3: 6 MW total

B. Demand Response Provider (DRP) and Distributed Energy Resource Provider (DERP) Services

AutoGrid shall perform all necessary functions enabling CAISO market integration of CPA's Demand Response Resource including but not limited to:

- Retaining a registered DRP/DERP. As of the Effective Date, Energy AI Systems is authorized to serve as the registered DRP/DERP and any change of DRP/DERP is subject to CPA's prior written approval
- DRP/DERP services to bid demand response resource capacity in the CAISO day-ahead, real-time or ancillary services markets using the bidding strategy developed in consultation with CPA, as well as handling of settlements validation and reporting (See C. Scheduling Services for Demand Response Resource, below).
- CAISO registration of enrolled DER/DR resources via Demand Response Registration System ("DRRS") and notification to customers of any third-party conflicts; customer assistance with conflict removal as needed.
- Aggregation, management, and value analysis of enrolled DERs ("Demand Response Resource") including analysis of market eligibility of Demand Response Resource by Sub LAP.
- Event baseline and performance calculations for CPA's Demand Response Resource.
- Complete any necessary steps to enable CPA to count its Demand Response Resources for Resource Adequacy, including completion of any Load Impact Protocol studies and reports, submissions to effect load modification, or other RA implementation services, as applicable.
- Meter data management and telemetry services as needed.
- Facilitate the submission of market inputs and receipt of dispatch notifications from the CAISO.
- Provide monthly summary reports detailing CAISO transactions in a mutually agreed upon format, including customer and financial performance.
- Any other DRP/DERP services that are required by CAISO, CPUC, or other regulatory entity, in order to effectuate market participation of the Demand Response capacity.

Deliverables

1. Monthly Reporting in a format acceptable to CPA, including:
 - a. Monthly DR Resource Value Analysis
 - b. Monthly CAISO transaction reporting including retail and wholesale performance data

C. Scheduling Services for Demand Response Resource

AutoGrid shall perform the following functions for CPA's Demand Response Resource(s):

- Retain the services of a certified CAISO Scheduling Coordinator. As of the Effective Date, Energy AI Systems is authorized to serve as a certified CAISO Scheduling Coordinator (SC) and any change in SC shall be subject to CPA's prior written approval.
- Utilizing the CPA SCID, perform all applicable required functions of a Scheduling Coordinator, including emergency operational actions, all scheduling and bidding functions in the applicable market(s), and RA and Supply Plan filings.
- Perform all CAISO and WECC scheduling functions for CPA in Day-Ahead and Real-Time markets on a 24/7, 365 days per year basis, for the Demand Response Resource, subject to market availability and operational limitations of the Demand Response Resource. Manage the interface with the CAISO for bidding the Demand Response Resource on CPA's behalf.
- Resource Management: At CPA's discretion, execute bidding and dispatch strategies for CPA's Demand Response Resource(s) to maximize the value of CPA's resource portfolio in the CAISO market.
- Market Monitoring: Monitor CAISO market activities and communicate to CPA information pertaining to such CAISO market activities that may impact CPA or be of interest to CPA.
- Shadow Settlements and Reconciliation: Shadow settle all CAISO settlement statement versions; analyze discrepancies found between AutoGrid's settlement statements and CAISO's settlement statements and will report any significant discrepancies to CPA. AutoGrid will be given parameters for further investigation of such discrepancies and filing of disputes with CAISO. For discrepancies falling within CPA's parameters, AutoGrid should anticipate filing disputes at CPA's cost with CAISO on behalf of CPA, managing these disputes with CAISO, and providing monthly status reports to CPA on all filed disputes as well as reviewing all additional CAISO settlement statements to verify CAISO has made requested changes to prior statements and verifying the accuracy of any additional CAISO charges and credits. AutoGrid will receive from CAISO historic and real time data collected by CAISO from, or provided to CAISO by, CPA and be given access to CPA's SCID at CAISO to review CAISO's bills and settlement statements.
- Assist in data collection for CPA's regulatory reporting; timely provide to CPA all information that is reasonably requested by CPA for CPA's regulatory or governmental reports. CPA will be responsible for required state, federal or regional reports applicable to its licenses and business interests.
- Any other Scheduling services that are required by CAISO in order to effectuate market participation of the Demand Response capacity.

Deliverables:

1. Monthly Reporting in a format acceptable to CPA, including:
 - a. Performance / Settlements Reporting: Validate all CAISO invoices, including performing CAISO shadow settlements, and provide event validation reports for days in which Demand Response Resource bids were submitted (with month-to-date information) to CPA. Contractor will provide a monthly report detailing all historic charges and credits by charge code and by month.
 - b. Market Performance Reporting: Prepare and provide to CPA in a mutually agreed upon format event summary and monthly summary reports on Demand Response Resource performance metrics. Reports should include graphical representation of key metrics and underlying data, including interpretation of market settlements data relative to performance.

D. Overall Program Performance and Evaluation

- Meet regularly with CPA staff, but no less than once a month, to review progress toward program goals and market performance, and recommend necessary program adjustments.
- Develop a dashboard that provides CPA staff with mutually agreed upon monthly reporting. Examples of potential reporting metrics/KPIs include:
 - Budget spend rates
 - Enrollment levels
 - Performance of marketing strategies and tactics including but not limited to impressions, conversion rates, etc.
 - Customer performance, aggregate kWh reductions, and avoided wholesale costs
 - Enrolled demand response resource financial valuation and financial performance, including program cost effectiveness
- Develop data visualizations for monthly reporting as requested by CPA staff.
- Provide comprehensive quarterly and annual reports describing overall program performance.
- Each year 30 days prior to the anniversary of contract signature, CPA and AutoGrid shall conduct a Joint Management Review of the Power Response program. This management review will include CPA's Chief Operating Officer, Director of Customer Programs, and Power Response program manager, as well as AutoGrid's Program Manager and Customer Success Manager. This management review will cover the annual program performance reports, establish workplan for the coming contract year, and evaluate potential adjustment of program goals and budgets.

- Comprehensive final report due October 2023 evaluating program performance throughout the Term. Report shall contain:
 - Comprehensive reporting of KPIs
 - Program valuation
 - Total program spend by type
 - Trade Ally status updates
 - Future program growth projections and valuation
 - Market and regulatory outlook for Demand Response

Deliverables:

1. Monthly, quarterly, and annual reporting as agreed upon in consultation with CPA staff
2. Annual Joint Management Reviews
3. Delivery of Final Report that meets the requirements of this Section IV.D and is acceptable to CPA

V. Transition Services

A. Transition Services

Commencing 90 days prior to the expiration or termination of this Agreement and continuing until such time as the transition services are complete, AutoGrid shall perform the following transition services at no additional cost to CPA above the \$45,000 specified in Exhibit C of this Agreement:

- Develop and deliver a transition plan 60 days prior to expiration of termination of this Agreement.
- Transfer all CPA Product in a form usable by CPA or the new implementation provider with the exception of any customer data not permitted to be transferred to CPA under applicable law and regulation.
- If needed, release all registered CPA customers for transition to new implementation provider, if applicable.
- Support transition, as may be reasonably directed by CPA, to new implementation provider, if applicable.
- In the event of a termination prior to the expiration of the Initial Term, delivery of Final Report as described in Section IV.D of this Exhibit A.
- Closeout and transition of CAISO settlement reporting in a manner that does not prejudice CPA.

- Cooperate in a commercially reasonable manner with all parties involved in transition.

CPA shall not be responsible for the removal of any installed telemetry or other equipment.

Schedules:

1. Schedule A-1 – List of Contractor’s Trade Allies approved by CPA on the Effective Date.
2. Schedule A-2 – Contractor’s Rate Card

Schedule A-1
List of Planned Trade Allies

AutoGrid is planning the use of the following Trade Allies

- 1) Sunnova Energy
- 2) ChargePoint
- 3) Google
- 4) Ecobee
- 5) Emerson

Schedule A-2
AutoGrid Rate Card

Role	Hourly rate (USD)
Solution Architect	230
Quality Assurance	180
Professional Services Engineering	200
Project Management	200
Production/Development Operations	220
Product Management	200
Data Scientist	250
Consultant	230
Business Analyst	180

EXHIBIT B

CONTRACTOR WORKPLAN

I. High level workplan capturing key agreement milestones.

Event	Date	Responsible Parties
Contract Year 1		
Contract Signing	September 2, 2021	AutoGrid and CPA
Kickoff Meeting	Week of September 7	AutoGrid and CPA
Pre-Implementation Planning (Section I, Exhibit A)	September 7, 2021 - October 31, 2021	AutoGrid and CPA
AutoGrid has formal agreements for CPA with Sunnova, Google, Emerson, ecobee, and ChargePoint	No later than October-15-2021	AutoGrid
Draft Implementation Plan Due to CPA (Section I, Exhibit A)	October 31, 2021	AutoGrid
Draft Trade Ally Plan and Roadmap due to CPA (Section III, Exhibit A)		
Implementation Plan Finalized (Section I, Exhibit A)	November 15, 2021	AutoGrid and CPA
Trade Ally Plan and Roadmap Finalized (Section III, Exhibit A)		
Year 1 Survey Data and Focus Group Studies Due (Section II, Exhibit A)	December 15, 2021	AutoGrid, Sunnova

Draft Marketing Plan Due (Section II, Exhibit A)	January 15, 2021	AutoGrid
Marketing Plan Finalized (Section II, Exhibit A)	January 30, 2021	AutoGrid and CPA
Launch enrollment campaign of legacy thermostat customers (Section IV, Exhibit A)	Completed no later than December 1, 2021	AutoGrid
Setup of AutoGrid Flex tenant for CPA including interfaces to Sunnova, Google, ecobee, Emerson, and ChargePoint (Section III, Exhibit A) and setup of AutoGrid Engage for use in the BDR program.	Completed no later than December 1, 2021	AutoGrid
Complete enrollment of 1.6 MW of dispatchable capacity into AutoGrid Flex. (Section IV.A, Exhibit A) Note: CAISO registrations will become effective no fewer than 75 days after the CAISO location creation process is complete, including any applicable incumbent DRP defense and SCE validation processes.	No later than December 31, 2021	AutoGrid
Contract Year 2		
Implement Monthly Program Reporting (Section IV, Exhibit A)	January 2022	AutoGrid
Implement Monthly Scheduling Coordination and DRP/DERP Reporting (Section IV, Exhibit A)	January 2022	AutoGrid

Program recruitments for all thermostats, batteries, and EV chargers	January 1, 2022 – March 31, 2022	AutoGrid, Sunnova, ecobee, ChargePoint, Google Nest, Emerson
Device and BDR enrollments	Continuous starting from January 1, 2022	
Residential Battery Dispatches Begin	January 2022 - Ongoing	AutoGrid, Energy AI Systems
Begin Enrollment of Commercial Capacity (Section IV.A, Exhibit A)	Beginning April 2022	AutoGrid
Complete enrollment of 4.6 MW of dispatchable capacity. (Section IV.A, Exhibit A)	No later than May 2022	AutoGrid
Google security questionnaire is completed	No later than April-2022	AutoGrid and CPA
Dispatches begin for the summer season	May 2022	AutoGrid, Energy AI Systems
First Management Review (Section IV, Exhibit A)	August 2022	AutoGrid and CPA
Dispatches end for summer season	October 2022	AutoGrid, Energy AI Systems
Year 2 Survey Data and Focus Group Studies Due (Section II, Exhibit A)	November 1, 2022	AutoGrid, Sunnova
Contract Year 3		
Complete enrollment of 6 MW of dispatchable capacity. (Section IV.A, Exhibit A)	No later than May 2023	AutoGrid
Dispatches start for the summer season	May 2023	AutoGrid, Energy AI Systems
Dispatches end for summer season	October 2023	AutoGrid, Energy AI Systems
Final Management Review (Section IV, Exhibit A)	August 2023	AutoGrid and CPA

Draft Final Report Due (Section IV, Exhibit A)	October 2023	AutoGrid
Final Report Finalized (Section IV, Exhibit A)	November 2023	AutoGrid and CPA
Year 3 Survey Data and Focus Group Studies Due (Section II, Exhibit A)	November 1, 2023	AutoGrid, Sunnova

EXHIBIT C

COMPENSATION AND BUDGET

I. Contract Implementation

AutoGrid shall satisfactorily provide or ensure the provision of all of the contemplated services detailed in Exhibit A at the fixed price per deliverable specified in this Section I and CPA shall pay AutoGrid as specified herein and in compliance with the terms and conditions of this Agreement.

For the purposes of this Exhibit, contract years will be defined as follows:

- Year 1: September 2, 2021 – December 31, 2021
- Year 2: January 1, 2022 – December 31, 2022
- Year 3: January 1, 2023 – December 31, 2023

A. Pre-Implementation Planning and Implementation Plan Activities:

- a. AutoGrid to invoice CPA \$60,000 upon contract signing to begin Pre-Implementation Planning activities as described in Exhibit A, Section I.A.
- b. AutoGrid to invoice CPA \$30,000 upon CPA's receipt of Implementation Plan that meets the requirements of Exhibit A, Section I.B and is acceptable to CPA.

B. Marketing Activities:

- a. AutoGrid to invoice CPA \$25,000 upon contract signing to begin Marketing Planning activities as described in Exhibit A, Section II.A.
- b. AutoGrid to invoice CPA based upon CPA's receipt of the following deliverables specified in Exhibit A:
 - i. AutoGrid to invoice \$25,000 upon delivery of list of enrolled ChargePoint customers in CPA territory and Comprehensive Marketing Plan for all customer segments and technologies that meets the requirements of Exhibit A, Section II.A and is acceptable to CPA.
 - ii. AutoGrid to invoice CPA for delivery of Focus Group and Survey Results as described in Exhibit A, Section II.B, per the following schedule.
 1. \$50,000 in Year 1
 2. \$75,000 in Year 2
 3. \$50,000 in Year 3

C. Trade Ally Network Development Activities

- a. AutoGrid to invoice CPA \$65,000, distributed as seen in Table 1 below, upon establishment of DERMS Trade Ally Network interfaces with all

proposed Trade Allies including ChargePoint, ecobee, Sunnova, and Google Nest, with written confirmation from each Trade Ally of readiness to enroll and dispatch CPA customer loads as described in Exhibit A, Section III.A.

Table 1: Trade Ally Network Fees			
	Year 1	Year 2	Year 3
Trade Ally			
Sunnova	\$50,000	\$0	\$0
Ecobee	\$0	\$0	\$0
Google Nest	\$10,000	\$0	\$0
ChargePoint	\$5,000	\$0	\$0
Emerson	\$0	\$0	\$0
Total	\$65,000	\$0	\$0

- b. AutoGrid to invoice \$25,000 upon delivery of Trade Ally Plan and Roadmap and Trade Ally Tracking System that meets the requirements of Exhibit A, Section III.A and is acceptable to CPA.

D. Program Implementation, Operations, and Evaluation

- a. Implementation Plan Execution and Program Administration
 - i. AutoGrid to invoice CPA \$25,000 upon delivery of CRM Solution Deployment as specified in Exhibit A, Section IV.A.
 - ii. AutoGrid to invoice CPA \$25,000 upon launch of Enrollment Campaign for legacy thermostat customers as specified in Exhibit A, Section IV.A.
 - iii. AutoGrid to invoice CPA a total of \$355,200 for ongoing administration and operations, including at least 1 MW of commercial capacity and 1 MW of Disadvantaged Community capacity by Year 3, and demonstrated by proof of successful Rule 24 data transfers as specified in Exhibit A, Section IV.A and invoiced based on the following milestones:
 - 1. \$54,200 upon enrollment of 1.6MW total
 - 2. \$138,400 upon enrollment of 4.6 MW total
 - 3. \$162,600 upon enrollment of 6 MW total, including 1 MW of commercial capacity and 1 MW of Disadvantaged Community Capacity
- b. Scheduling Coordinator, Demand Response Provider (DRP) and Distributed Energy Resource Provider (DERP) Services for Demand Response Resource:

- i. AutoGrid to invoice CPA \$50,000 upon contract signing for Energy AI Systems setup fees.
AutoGrid to invoice CPA \$10,000/month for the length of the Term beginning in October 2021, based on the monthly delivery of the following deliverables as described in Exhibit A, Sections IV.B and IV.C
- c. Overall Program Performance and Evaluation
 - i. AutoGrid to invoice CPA \$25,000 upon implementation of monthly, quarterly, and annual reporting as agreed upon in consultation with CPA staff and described in Exhibit A, Section IV.D.
 - ii. AutoGrid to invoice CPA \$20,000 following each of the two required Annual Joint Management Reviews as described in Exhibit A, Section IV.D.
 - iii. AutoGrid to invoice CPA \$40,000 upon delivery of the Final Report that meets the requirements of Exhibit A, Section IV.D.

AutoGrid to handle payment of Trade Ally Network fees specified in Table 2 to Trade Allies. New trade allies outside of those specified in Table 2 and associated setup costs will be agreed upon in writing per the process developed as part of Exhibit A, Section III.

Except for the payments expressly specified herein, AutoGrid shall not be entitled to receive any other payment from CPA during the Term for the services AutoGrid provides relating to the CPA Power Response program.

E. Residential Behavioral Demand Response (BDR)

AutoGrid to setup AutoGrid Engage, consumer-facing portal. Engage will have CPA logo, color brands, and CPA’s choice of images. Consumers who are interested in enrolling into CPA’s BDR program will log into Engage to sign up and accept BDR’s terms and conditions.

Before dispatch, enrollees will receive SMS and email messages – the timing and content of messages will be configurable. With the help of CPA IT group, Engage will be setup so that emails will appear to have come from CPA. There will be an option to send another SMS at the conclusion of each event to thank participants and notify them of the event’s conclusion.

Table 1A below outlines program costs

	Year 1	Year 2	Year 3	Notes
One-time Engage Setup	\$25,000			
Annual Engage License Fee	\$0	\$20,000	\$20,000	

Engage User Fees	\$0	\$25,000	\$50,000	Fee is \$5000 per 10K homes, assume 50K homes in year 2, 100K homes in year 3
Homeowner Incentive	Incentive structure will be determined before Jan-1-2022			
Total	\$25,000	\$45,000	\$70,000	

II. Trade Ally Device Fees

AutoGrid to invoice CPA a total amount not to exceed \$904,275 which are to be used by AutoGrid to make payments to Trade Allies for their ongoing device fees, as shown in Table 2 below, paid according to the following terms and schedule:

- Year 1: AutoGrid to invoice CPA for any device fees based on enrollments reached by December 31, 2021.
- Year 2: AutoGrid to invoice CPA for device fees based on total enrollments as of September 30, 2022.
- Year 3: AutoGrid to invoice CPA for device fees based on total enrollments as of September 30, 2023.

Table 2: Trade Ally Device Fees *			
	Year 1	Year 2	Year 3
Sunnova			
Unit Costs	\$300/device	\$270/device	\$255/device
Projected Enrollments	400	1,000	1,500
Projected Total	\$120,000	\$270,000	\$382,500
ecobee			
Unit Costs	\$10,000 + \$15/dev	\$10,000 + \$15/dev	\$10,000 + \$15/dev
Projected Enrollments	1,000	1,650	1,550
Projected Total	\$25,000	\$34,750	\$33,250
Emerson			
Unit Costs	\$13/dev	\$13/dev	\$13/dev
Projected Enrollments	0	450	450
Projected Total	\$0	\$5,850	\$5,850
Google Nest			

Unit Costs	\$15/dev	\$15/dev	\$15/dev
Projected Enrollments	100	625	1000
Projected Total	\$1500	\$9,375	\$15,000
ChargePoint			
Unit Costs	\$36	\$36	\$36
Projected Enrollments	100	100	200
Projected Total	\$3,600	\$3,600	\$7,200
Total (Not to Exceed)	\$148,600	\$317,725	\$437,950

* Trade Ally projected enrollments and projected totals specified in Table 4 are based on projections of program participation. CPA agrees that incentive payments may transfer from one Trade Ally into another depending on actual enrollments. AutoGrid agrees that the total costs per year may not be increased without the written approval of CPA.

** The device fees paid to Trade Allies, with exception of Sunnova, are subject to change by the Trade Allies from one year to the next.

III. Customer Incentives

A. Payment of Customer Incentives

AutoGrid will manage the direct payment of customer incentives from Trade Allies to customers on CPA's behalf, including tracking of total customer incentive spend.

CPA has budgeted \$805,125 for direct customer incentive payments for the complete term, some or all of which may be deployed by AutoGrid and Trade Allies, at CPA's direction. Customer incentives are only to be paid upon successful enrollment, and CAISO registration, of customers into the Power Response program. Additional budget for BDR customer incentives, if any, will be determined before Jan-1-2022.

AutoGrid shall establish an escrow account ("Escrow Account"). The Escrow Account will be held at a nationally recognized bank in the name of Clean Power Alliance. AutoGrid will provide monthly bank statements pertaining to the Escrow Account upon request by CPA. AutoGrid will invoice CPA a prepayment amount of \$100,000 ("Prepaid Balance") at the time of contract signing for eligible customer incentives, rebates, and reimbursement of direct customer installation costs (Customer Payments). Eligibility for purposes of incentive payment is to be defined for each Trade Ally and jointly with CPA.

AutoGrid shall submit to CPA on a monthly basis an invoice for any Customer Payments, supporting invoices detailing funds transferred to customers to pay Customer Payments,

and other supporting documentation reasonably requested by CPA. AutoGrid to invoice CPA for (a) any amounts drawn down from the Prepaid Balance; or (b) in the event that the Customer Payments exceed the Prepaid Balance, the full amount of the Prepaid Balance plus the amount of such excess. Notwithstanding anything to the contrary in this agreement, if CPA (i) fails to pay an invoice to replenish the Prepaid Balance as and when due or (ii) otherwise breaches its obligations or defaults under this agreement, then AutoGrid will have no obligation to pay any Customer Payments unless and until (x) CPA has replenished the full amount of the Prepaid Balance and paid any other amounts due, and (y) any such breach or default has been cured.

AutoGrid acknowledges and agrees that the funds in the Prepaid Balance are property of CPA, not AutoGrid, and the transfer of funds to the Prepaid Balance does not constitute a payment from CPA to AutoGrid; provided that, notwithstanding the foregoing or anything to the contrary in this agreement, (a) ownership of the funds in the Prepaid Balance will transfer from CPA to AutoGrid on a dollar-for-dollar basis as Customer Payment obligations accrue to AutoGrid, and (b) until the earlier of (x) the expiration or earlier termination of this agreement and (y) the date when no future Customer Payments are contemplated by this agreement to be paid by AutoGrid, CPA shall have no right to withdraw funds from the Prepaid Balance.

Since the incentives amounts are projections, AutoGrid, in consultation with CPA, may rebalance the payments between customers of various Trade Allies. In addition, AutoGrid, upon CPA’s agreement (which shall not be unreasonably withheld), may be entitled to customer incentives above the budgeted amount when AutoGrid enrolls the full 6 MW of program capacity.

Table 3: Projected Customer Incentives			
	Year 1	Year 2	Year 3
Sunnova Customers	\$40,000	\$100,000	\$150,000
Google Nest Customers		\$46,875	\$50,000
ecobee Customers	\$17,500	\$14,000	\$10,500
Emerson Customers (multifamily)	\$105,000	\$170,000	\$31,250
ChargePoint Customers	\$10,000	\$2,500	\$5,000
C&I Customers		\$14,000	\$38,500
Total	\$172,500	\$347,375	\$285,250

The costs specified in Table 3 include all customer recruitment costs and costs associated with Wi-Fi installations in identified multifamily thermostat pilot projects.

IV. Transition Costs

AutoGrid to invoice CPA \$45,000 upon completion of all transition services as specified in Exhibit A, Section V.

V. Costs for C&I Telemetry

AutoGrid to invoice CPA upon proof of installation of telemetry equipment to perform meter data management services as needed. These costs include labor and equipment.

Table 4: C&I Site Telemetry Equipment Costs			
	Year 1	Year 2	Year 3
Install 4-second telemetry equipment in 3 to 5 C&I sites	\$0	\$10,000	\$30,000

V. Additional Costs

Any travel, administrative, and materials (“Expense”) will be billed at cost, as a pass through, and shall not to exceed \$10,000.00 per year. AutoGrid shall obtain written approval from CPA prior to incurring any Expense. CPA reserves the right to reject and may not reimburse any Expense that was not approved in compliance with this provision.

Any changes or adjustments to this Exhibit A must be memorialized in a writing that is approved by both Parties.

The Total Maximum Amount, that CPA shall pay Contractor for all Services throughout the entire Term of the Agreement shall not exceed \$1,300,200, inclusive of any direct payments to AutoGrid as well as funds that CPA will provide to AutoGrid for payment of Trade Allies and Subsidiary Energy AI Systems, and Expense that Contractor may incur subject to CPA’s approval (“Total Maximum Amount”). The Total Maximum Amount does not include Customer Incentives or Trade Ally Device fees. See Section II., Trade Ally Device Fees, and Section III., Customer Incentives, above in this Exhibit C.

Contractor shall perform and complete all required Services in accordance with Exhibit A notwithstanding the fact that total payment from CPA shall not exceed the Total Maximum Amount. If an increase in the NTE is otherwise required, Contractor and CPA shall reasonably cooperate to amend the Agreement. Contractor shall provide CPA with monthly invoices, outlining deliverables completed. CPA shall pay approved invoices within 30 days of receipt.

Schedule C-1
Summary of Payments

The payments in Exhibit-C have been summarized below for ease of reference and categorizations. For the avoidance of doubt, the payment amounts in Exhibit C will take precedence in case of any inconsistencies.

	Category	2021	2022	2023	Total	
1	Pre-implementation (including BDR)	Upfront AG services	\$115,000			\$115,000
2	Program Implementation (including BDR)	AG Software Platform (amortized)	\$54,200	\$158,400	\$182,600	\$395,200
3	Trade Ally Network Dev (setup fees)	Upfront Trade Ally passthrough	\$65,000			\$65,000
4	BDR Management	AG Software Platform (amortized)		\$25,000	\$50,000	\$75,000
Implementation subtotal			\$234,200	\$183,400	\$232,600	\$650,200
5	Telemetry (hardware for C&I)	AG Professional Services		\$10,000	\$30,000	\$40,000
6	Marketing Activities	AG + Trade Ally services	\$100,000	\$75,000	\$50,000	\$225,000
7	CAISO Scheduling Coordinator	AG SC Services	\$80,000	\$120,000	\$120,000	\$320,000
8	Program Evaluations and misc.	AG Professional Services	\$100,000	\$20,000	\$40,000	\$160,000
9	Transition Costs	AG Professional Services			\$45,000	\$45,000
Services subtotal			\$280,000	\$225,000	\$285,000	\$790,000
10	Trade Ally Device Fees	Passthrough to Trade Allies	\$148,600	\$317,725	\$437,950	\$904,275
11	Customer Incentives (all devices)	Passthrough to Customers	\$172,500	\$347,375	\$285,250	\$805,125
Passthrough subtotals			\$321,100	\$665,100	\$723,200	\$1,709,400
Total			\$835,300	\$1,073,500	\$1,240,800	\$3,149,600

In case of termination according to Section 7(a) of the Agreement, the Termination Fee is calculated as the sum of the following:

- a) Implementation: For each item 1, 2, 3, and 4 in the table in this Schedule C-1 above pro-rated through the ninety (90) calendar day notice period after delivery of Notice of Termination from CPA minus any portions of such amounts then already paid by CPA, and
- b) Services: For each item 5, 6, 7, 8, and 9 in the table in this Schedule C-1 above pro-rated through the ninety (90) calendar day notice period after delivery of Notice of Termination from CPA, less any portions of such amounts previously paid by CPA, and
- c) Passthrough: Any amounts in items 10 and 11 in the table in this Schedule C-1 above that AutoGrid has then already paid, or any amounts approved and committed through the enrollment process to a homeowner but not yet paid to the homeowner or Trade Ally, prior to the ninety (90) calendar day notice period after delivery of Notice of Termination from CPA, less any portions previously paid by CPA.



**DEMAND RESPONSE PROGRAM IMPLEMENTATION SERVICES
REQUEST FOR PROPOSAL**

RFP SUBMITTED 05/10/2021



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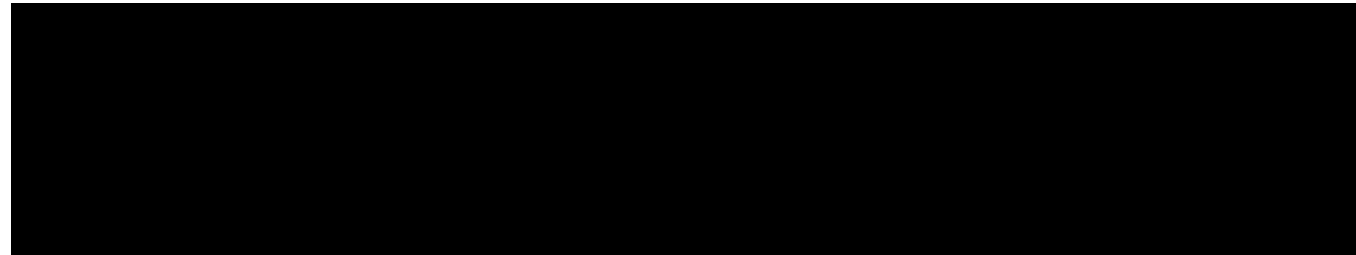
May 8, 2021

To: Clean Power Alliance Evaluation Team
RE: RFP for DR Program Implementation Services

Dear CPA Review Team,

AutoGrid and our partner Sunnova are pleased to submit this proposal in response to CPA's Demand Response Program RFP. Our proposal consists of the following that will reach 6MW by 2023:

1. A significant load shed contribution from **Sunnova's** behind the meter storage assets. Sunnova already has hundreds of installed battery storage assets within SCE territory and is poised to grow significantly.
2. Well-proven DLC collaboration with AutoGrid's smart thermostat partners: **Google Nest** and **ecobee**, that allow continuity with CPA's current Power Response pilot program. Should CPA be interested we can also add **Emerson Sensi** and **Honeywell** thermostats.
3. Advanced services from AutoGrid's DLC integration with EV charger vendors **ChargePoint** and **Flo**.



Since 2010, AutoGrid has been in the forefront of Demand Response programs, starting with the first pilot with Nest and Austin Energy many years ago continuing to today's customers throughout the US that rely on AutoGrid for dispatching tens of thousands of thermostats. Since that time, AutoGrid has expanded its technology to include the world's most sophisticated virtual pilot plant software which is used by Sunnova and others globally to manage nearly 10,000 residential batteries.

In addition to our software services, AutoGrid now offers turnkey grid services in many regions of the US, including in CAISO where we will be a scheduling coordinator later this year. We are a DRP in PG&E's DRAM program, a participant in PG&E's CBP program, and are providing grid services to SCE starting this summer.

We thank you for your consideration and look forward to discussing our offer further at your convenience.

Best regards,

Farshid Arman

Farshid Arman
Sr. Director, AutoGrid

Table of Contents

Proposer’s Qualifications and Experience	6
AutoGrid’s Qualifications and Experience	6
Sunnova Qualifications and Experience	11
ecobee’s Qualifications and Experience	15
Google Nest’s Qualifications and Experience	15
ChargePoint’s Qualifications and Experience	16
Approach to Scope of Services	17
Proposed Timeline	18
Task 1: Pre-Implementation Planning	19
1A - Recruitment and Enrollment of BTM Storage Customers	22
1B - Recruitment and Enrollment of Legacy Thermostats form the current program	23
1D - Recruitment and Enrollment of Additional Thermostats	24
1E - Recruitment and Enrollment of Residential EV Chargers	25
1F - CAISO Services	26
Task 2: Marketing	26
BTM Residential Storage	26
C&I Asset Owners	27
Task 3: Trade Ally Network Development	27
3A - Trade Ally Network for BTM Storage	27
3B - Trade Ally Network for Thermostats	27
Task 4: Program Implementation and Operations	29
4A - Device Enrollments	30
Enrollment of BTM Storage	30
Enrollment of Thermostats	31
Enrollment of EV Chargers	32
4B - Dispatch	33
4C - Event Notifications	36
Notification of BTM Residential Customers	36

Notification of Thermostat Customers	36
Notification of Residential EV Customers	36
Notification of Commercial Customers	37
4D - Meter Data	37
4E - Event Performance Monitoring	38
Task 5: Demand Response Provider and Distributed Energy Resource Provider Services	42
Task 6: Scheduling Services for Demand Response Resource	42
Task 7: Overall Program Performance Tracking	43
Proposer’s Pricing	44
References Form	46
AutoGrid Project Reference #1: CPS	46
AutoGrid Project Reference #2: BC Hydro	47
Sunnova Project Reference: Connected Solutions Demand Response	49
T&C Review	50
Campaign Contributor Form	50
Appendix A - Biographies of Key Staff for AutoGrid	51
Appendix B - Biographies of Leadership and Key Staff for Sunnova	53
Appendix C - AutoGrid Processes	55
Project Implementation - Ensuring Customer Success	55
Scope & Change Management	56
Ongoing Support for Flex™	56
Support & Up-time	57
AutoGrid Flex™ Training	61
Appendix D - Letters of Support	62
ChargePoint Letter of Support	62
ecobee Letter of Support	63
Emerson Letter of Support	64
Sunnova Letter of Support	65

Proposer’s Qualifications and Experience

AutoGrid’s Qualifications and Experience

AutoGrid Corporate Overview

Founded in 2010, AutoGrid’s mission is to accelerate access to clean, affordable, and reliable energy for everyone. AutoGrid builds software applications that enable a smarter distributed energy world. AutoGrid’s suite of flexibility management applications allows utilities, electricity retailers, and energy service providers to deliver cheap, clean, and reliable energy by managing networked distributed energy resources (DERs) in real-time and at scale. AutoGrid applications are all built on the AutoGrid Flex™ Platform, with patented Predictive Controls™ technology that leverages petabytes of smart meter, sensor, and third-party data, along with powerful data science and high-performance computing algorithms to monitor, predict, optimize, and control the operations of millions of assets connected across global energy networks.

With over 5,000 megawatts (MW) of DERs under contract with more than 40 global energy companies around the world, AutoGrid Flex™ will meet CPA’s needs now and in the future. The deep investment that continues to be made in the AutoGrid Flex™ platform is supported by a range of investors including National Grid, Total, Shell, China Light and Power, and Schneider Electric. As the requirements of the new energy world evolve, only AutoGrid has the depth of resources and experience to ensure that it can keep CPA ahead of the evolutionary curve.

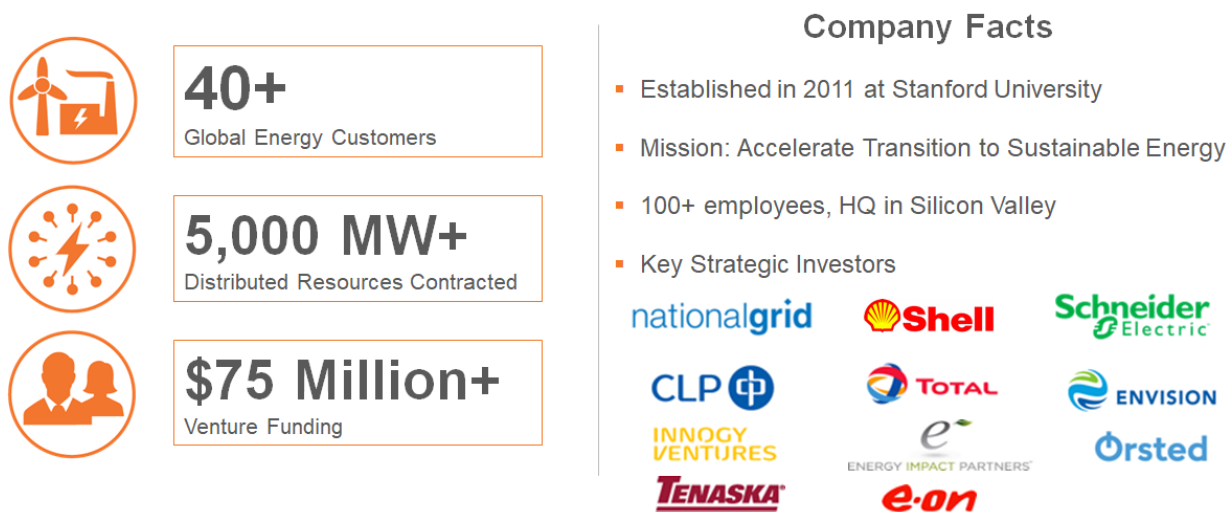


Figure 1: AutoGrid Financial Strength and Global Reach

Energy AI System Corporate Overview

Energy AI Systems is a wholly owned subsidiary of AutoGrid and was founded in 2020 as a Delaware C-Corporation. Energy AI Systems maintains a 24x7 trading and operations team in its operation center in Lexington, Virginia. This office will perform the following:

- Operational interactions
- Dispatch
- Settlements (telemetry, M&V, reporting)
- Monitoring (device level online status, fleet response when dispatched)
- Forecasting (weather, asset capacity)
- Emergencies and escalations

Industry Leading Experience

Spanning more than 40 global utilities and energy companies and over 5,000 MW of DER assets under contract, AutoGrid leads the industry in terms of experience in deployment of an energy flexibility management platform and in DER optimization. Many of the world's leading energy companies operating in both regulated and deregulated retail markets are using AutoGrid's software to integrate FTM and BTM DER assets and drive deeper engagement with their customers. AutoGrid Flex™ is globally battle tested and production proven in many regulatory environments with use cases including:

- Direct Load Control (DLC)
- Residential Demand Response (DR) - both Behavioral and Device-based
- C&I Demand Response (DR)
- Industrial Load Curtailment
- Managed Electric Vehicle Charging (EVSE)
- Energy Storage Optimization - both Behind the Meter (BTM) and Front of the Meter (FTM)
- DER Ancillary Services
- DERMS (Distribution Flexibility)
- Renewables Firming
- Virtual Power Plants (VPP)

Consequently, key operational learnings, data handling, control mechanisms and M&V have been hardened through repeated testing and eventual dispatch for grid services and/or market participation. The figure below highlights sample projects deployed that drive business value for AutoGrid's customers across the world, spanning multiple solutions, technologies, and use cases.

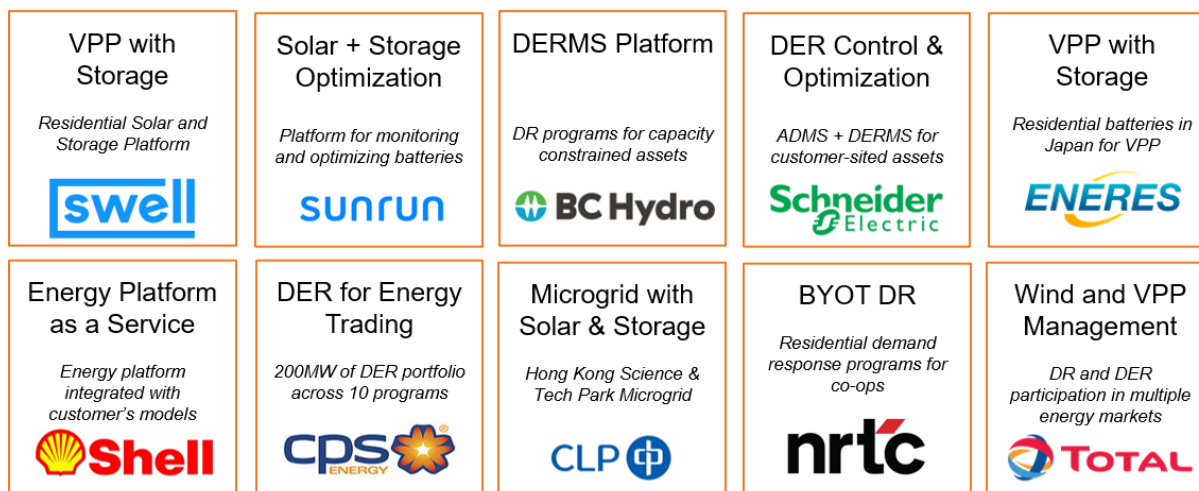


Figure 2: Sample AutoGrid Customers and Use Cases

Award Winning Platform

Navigant Consulting, a leading independent 3rd party consulting firm, has named AutoGrid as the only company to be ranked consistently in top 3 across all three flexibility management categories - DERMS, DRMS and VPP for 4 years running. Most recently, in 2020 AutoGrid was named the #1 VPP provider in the industry. AutoGrid has also been recognized for a number of industry awards, most notably, AutoGrid has been awarded the Global Top 100 List from Cleantech for 7 years in a row. For further details about AutoGrid's awards please refer to <https://www.auto-grid.com/awards/>.

Introduction to the AutoGrid Flex™ Platform

The Flex™ platform is the industry's most advanced energy management platform for applications such as Distributed Energy Resources Management System (DERMS), Demand Response Management System (DRMS), and Virtual Power Plant (VPP). As illustrated in the Figure below, AutoGrid Flex™ supports the widest variety of program types, asset classes, and customer segments.

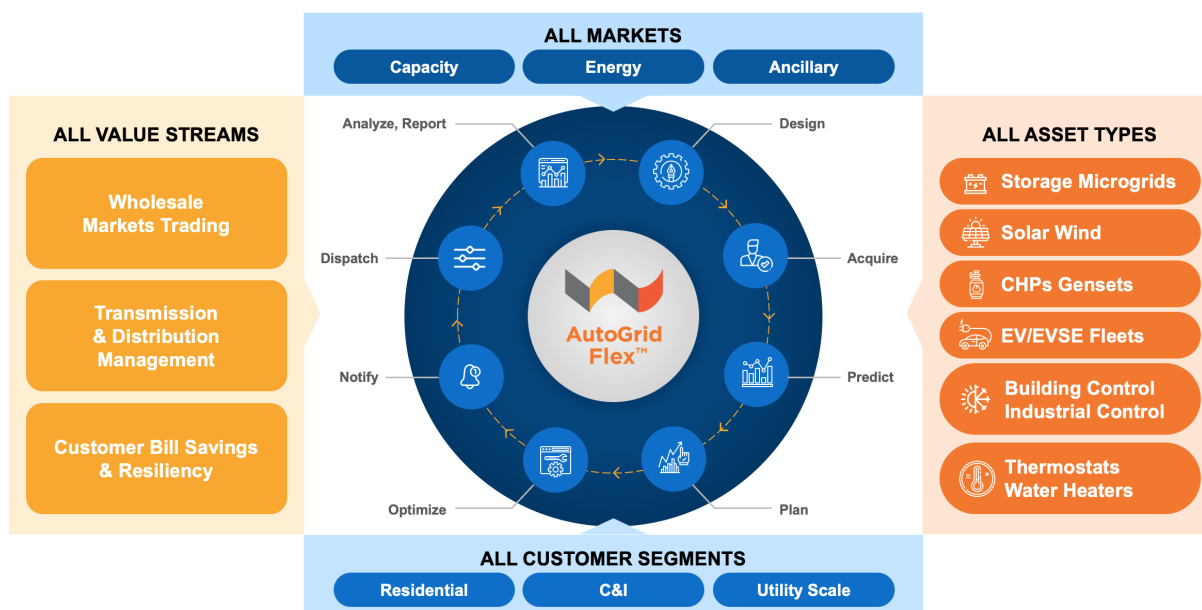


Figure 3. AutoGrid Flex Platform

For CPA, we are proposing a combination of Demand Response and VPP. The demand response components will coordinate the dispatch of all thermostats and EV chargers. The VPP component will manage Sunnova’s BTM storage assets in a coordinated approach that uses battery SOC, current and forecasted weather, current and forecasted PV out, and historical home loads in order to assure battery dispatches are successful without affecting the homeowners experience. Our VPP technology is currently being used by several customers for a variety of applications and asset classes, including residential energy storage in California, Hawaii, and in Japan, industrial DR in North American ISO markets and Australia’s AEMO market, and direct marketing and balancing of renewables and CHPs in European markets.

AutoGrid has architected Flex™ to be able to integrate with broad sets of backend systems, markets, external data feeds, and broad classes of DERs. AutoGrid leverages standard protocols to the extent possible and includes a set of standard APIs that can be used by vendors to interact with the system.

AutoGrid Implementation Team

The AutoGrid implementation team will be structured to support and complement the CPA team. The list below outlines the roles and high-level responsibilities of a strong implementation team. Exact personnel may be subject to change based on availability since AutoGrid typically assigns project execution personnel post contract award. At that time, AutoGrid will appoint a dedicated project manager and assign additional team members who will implement the project under the direction of the project manager.

The team will be multidisciplinary, and the team members will specialize in different applications, subsystems, and project phases. AutoGrid commits that all assigned personnel will retain the necessary skills and experience required to implement the solution as agreed. Please see the proposed implementation and

account team below for this project with CPA. AutoGrid has provided an organization chart and bios. All partners will roll up to Farshid Arman, AutoGrid's Partner Lead.

Amit Narayan
CEO

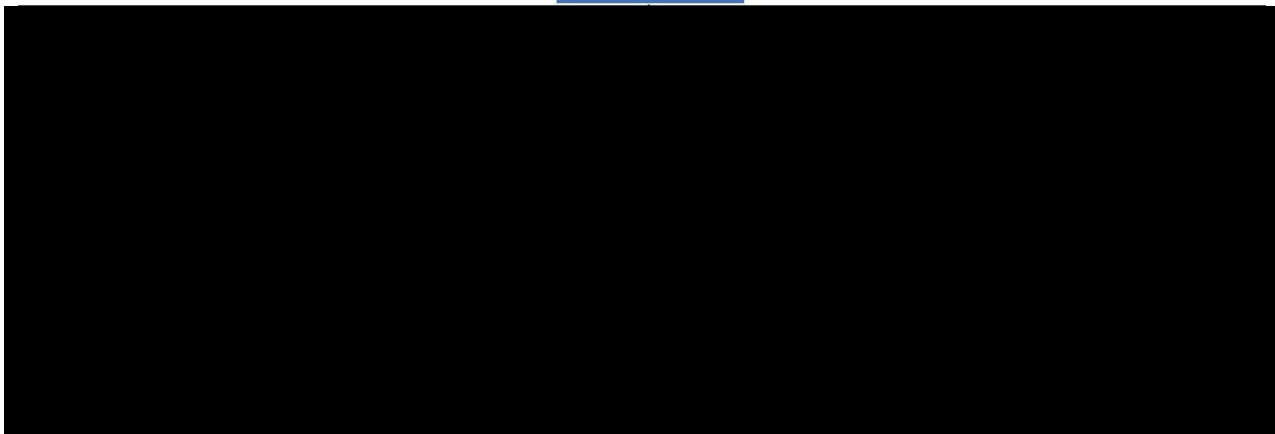


Figure 4. Proposed AutoGrid Implementation Team

The biographies of AutoGrid's executives and key staff members is attached as Appendix A.

Sunnova Qualifications and Experience

Sunnova Corporate Overview

Sunnova Energy Corporation is a leading solar and energy storage service provider, serving more than 116,000 customers across 25 U.S. states and territories, resulting in 861MWs deployed as of March 31, 2021. Our goal is to be the leading provider of clean, affordable and reliable energy for consumers. We were founded to deliver customers a better energy service at a better price; and, through our solar and solar plus energy storage service offerings, we are implementing the change from the traditional energy landscape for the 21st century customer and modern power grid.

Sunnova has been an active participant in California's grid transformation and, in response to the ongoing wildfire impacts, has strengthened its commitment to providing reliable power in the state. Sunnova's customer originations within California have grown 40% from 2019 to 2020 and our company remains committed to finding ways for Clean Power Alliance to transform the energy landscape and transition to a clean, resilient, distributed, and cost-effective power grid.

Sunnova is highly qualified and capable of providing aggregated residential energy services for Clean Power Alliance. Our track record of success within other competitive procurements, such as the largest competitive auction award for distributed energy resources in ISO-NE, are a testament to our abilities to execute on our visions and commitments. Sunnova has built multiple partnerships, including with AutoGrid, that allow us to scale our efforts and achieve meaningful value for power grids when aggregated into a virtual power plant.

Not only is Sunnova capable of building out the aggregated adaptive homes that we envision, our financial strength and ability to raise capital to execute on our vision is leading the industry. Distributed residential solar power is a capital-intensive business that relies heavily on the availability of debt and equity financing sources to fund solar energy system purchase, design, engineering and other capital expenditures. From our inception through December 31, 2020, we have raised more than \$6.7 billion in total capital commitments from equity, debt and tax equity investors.

The technical expertise of Sunnova's operations, trusted suppliers, and local installer partners is the standard for the industry. Our company places a top priority on standing behind the integrity of our assets over the many decades we expect them to be operating. As such, service is an integral part of our agreements and includes operations and maintenance, monitoring, repairs and replacements, equipment upgrades, on-site power optimization for the customer (for both supply and demand), the ability to efficiently switch power sources among the solar panel, grid and energy storage system, as appropriate, and diagnostics. Sunnova ensures that every component that we install is reliable, backed by a bankable manufacturing partner, and best in class for our industry.

Leading the Distributed Energy Transition

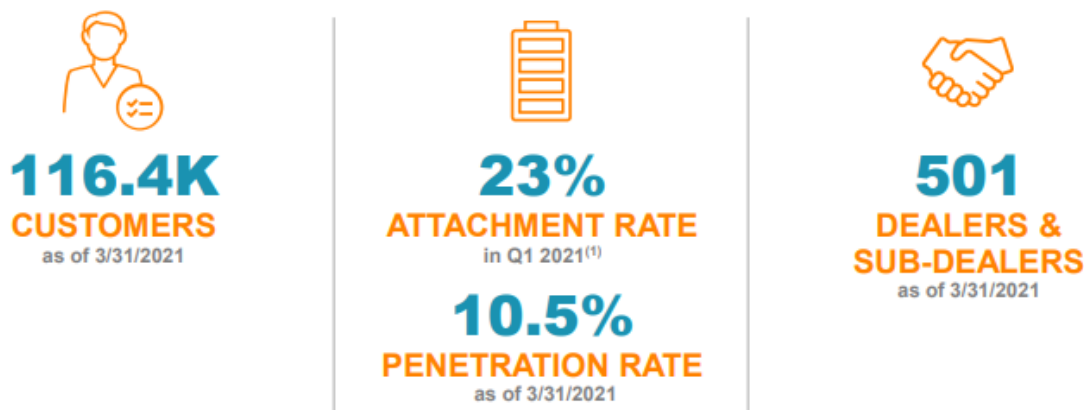


Figure 5: Overview of Sunnova Stats

Sunnova offers customers products to power their homes with affordable solar energy paired with battery storage. Our agreements take the form of a lease, power purchase agreement (a “PPA”) or loan and is typically 25 years, or in the case of standalone energy storage services, 15 years. Our service offerings are best in the industry and an integral part of our agreements and includes operations and maintenance, monitoring, repairs and replacements, equipment upgrades, onsite power optimization for the customer (for both supply and demand), the ability to efficiently switch power sources among the solar panel, grid and battery, as appropriate, and diagnostics. During the life of the contract, we have the opportunity to integrate related and evolving home servicing and monitoring technologies to upgrade the flexibility and reduce the cost of our customers’ energy supply. This would include energy management, EV charging and flexible control capabilities, and generators and fuel cells.

We have a differentiated residential solar dealer model in which we partner with local dealers who originate, design, and install our customers' solar energy systems and energy storage systems on our behalf. Our focus on our dealer model enables us to leverage our dealers' specialized knowledge, connections, and experience in local markets to drive customer origination while providing our dealers with access to high quality products at competitive prices and technical oversight and expertise. Sunnova works with leading local solar installers in California and seeks to establish long term partnerships with local small businesses whenever possible.

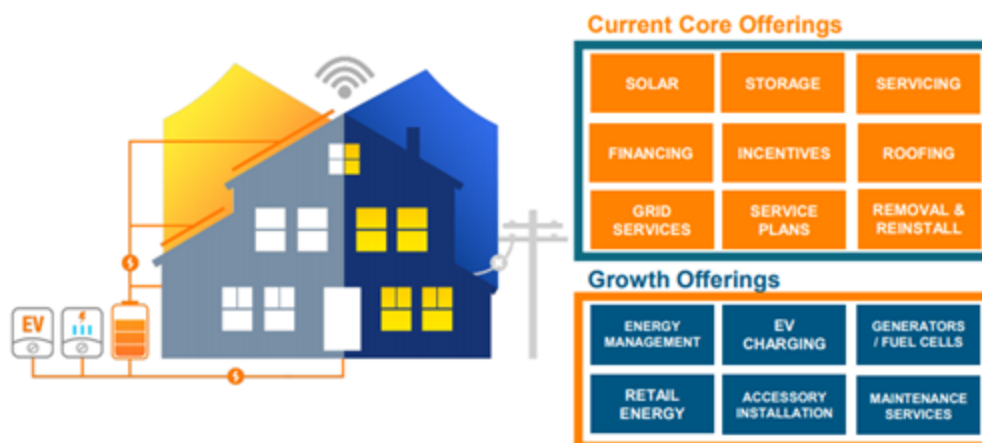


Figure 6: Key Sunnova Offerings

Sunnova’s core product and service offerings include residential rooftop solar PV, battery energy storage systems, and the financing and servicing to complement our product plans. Sunnova remains committed to our customers over the life of our agreements. We believe the quality and scope of our comprehensive energy service offerings, whether to customers that obtained their solar energy system through us or through another party, is a key differentiator between us and our competitors

We commenced operations in January 2013 and began providing solar energy services under our first solar energy system in April 2013. Since then, our brand, innovation and focused execution have driven significant rapid growth in our market share and in the number of customers on our platform. We operate one of the largest fleets of residential solar energy systems in the U.S., comprising more than 860 megawatts of generation capacity and serving more than 116,000 customers.

The Sunnova Network

Sunnova’s software and services enable aggregation capabilities to create additional value for our customers, dealers and equipment partners. By partnering with leading vendors, equipment partners, and our local dealers, Sunnova is able to deliver more value for our customers through the integration of the best and latest technologies, competitive pricing, long term savings and support, and a single point of contact for service. Service is key for our dealers, equipment partners, and core to our customers’ experience.

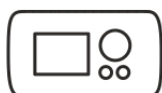


Figure 7: Sunnova Network

The biographies of Sunnova’s executives and key staff members are attached as Appendix B.

Ecobee's Qualifications and Experience

ecobee, a smart home technology company, was founded in 2007 to provide people with smart home solutions that allow a transition to carbon neutral, planet positive buildings. ecobee has been delivering demand flexibility across North America through intelligent applications of strategies that provide grid impacts while maintaining customer comfort and control. Since then ecobee has taken strides towards that goal as shown below.



2007: ecobee releases the world's first smart thermostat, helping millions of people live more comfortably and sustainably.



2014: ecobee3 launches with remote temperature sensor that automatically adjusts for comfort and energy savings using occupancy.



2015: An internal study shows that ecobee smart thermostats pay for themselves, offering users up to 23%* savings on heating and cooling.



2016: ecobee thermostats are some of the first to be ENERGY STAR® certified, meaning they are guaranteed to provide energy savings.



2017: One-of-a-kind Donate Your Data program lets ecobee users share anonymized thermostat data with scientists building the clean energy grid and homes of tomorrow.



2019: Subsidized ecobee smart thermostats are helping more than 34,000 families lower their energy bills and fight energy poverty.



2020: eco+, a major software update, works with all ecobee thermostats released since 2014, allowing millions of users to participate in the green energy revolution.



Onward: Our goal is to remove the complexity of running a modern home with smart devices that automatically save energy and positively impact the environment.

To date, ecobee thermostats have delivered over 17.6 TWh of energy savings. That's like taking all the homes in Las Vegas off the grid or 2.7 million cars off the road for a year.

ecobee and AutoGrid have been partners for over 6 years.

Google Nest's Qualifications and Experience

Nest was founded in 2010 to provide smart thermostats that were easy to use and would self-program using artificial intelligence. Nest and AutoGrid tested the first demand response program based on thermostats in Austin, Texas in 2013. The next year, Google bought Nest Labs and has expanded Nest to include many other devices, such as smoke detectors, cameras and door bells. Today, Google Nest is the leader in smart thermostats and their use in demand response programs in the US.

Nest and AutoGrid have been partners for over 8 years.

ChargePoint's Qualifications and Experience

Founded in 2007, ChargePoint is the world's leading EV charging network, providing scalable solutions for every charging scenario from home and multifamily to workplace, parking, hospitality, retail and transport fleets of all types. ChargePoint's smart residential solution leverages the established network that connects over 100,000 charging points across North America - including 1000s in the CPA territory. ChargePoint's network software enables utilities and any authorized 3rd party, such as AutoGrid, to manage each element of the program, including station activation, program enrollment, communication, data, and the load control features necessary to ensure success of the home charging offering.

ChargePoint and AutoGrid have been partners for over 8 years.

Approach to Scope of Services

This proposal consists of six components, which are detailed below, and when combined will offer CPA 6MW of DR (1 MW from disadvantaged communities) using BTM storage, thermostats, and EV chargers (residential and commercial). In addition, AutoGrid is offering scheduling coordinator services in CAISO.

As requested, there will be a pre-implementation planning meeting with CPA in order to deliver the detailed implementation plan for all components of our proposal.

The project team will be as follows:

Components of the Program		Responsible Personnel
	Overall program administration	AutoGrid executive sponsor AutoGrid program manager
A	BTM storage program by Sunnova	Sunnova program manager
B	Thermostats in legacy program	AutoGrid program manager in coordination with ecobee
C	Thermostats for disadvantaged communities	AutoGrid program manager in coordination with ecobee
D	Residential EV charging program	AutoGrid program manager in coordination with ChargePoint
E	Commercial EV charging and storage	AutoGrid program manager
F	All CAISO related activities	Energy AI System which is a wholly owned subsidiary of AutoGrid

Proposed Timeline

AutoGrid and partners propose the following approximate timeline for the proposed program with CPA:

Event	Date	Involved Parties
Contract Signing	Jul-1-2021	AutoGrid
Pre-Implementation Planning	Jul-2021	AutoGrid
Marketing Studies	Q4-2021	AutoGrid, Sunnova
Setup of AutoGrid Flex tenant for CPA including interfaces to Sunnova, Google, ecobee, and ChargePoint	Q4-2021	AutoGrid
Program recruitments for all thermostats, batteries, and EV chargers (includes transferring existing participants)	Q1-2022	AutoGrid, Sunnova, ecobee, ChargePoint, Google
Device Enrollments	Continuous starting from Q1-2022	
Dispatches start for the summer season	May-2022	AutoGrid and its subsidiary Energy AI Systems

AutoGrid and CPA will sign a comprehensive statement of work (SOW) that will detail all the above steps. The above is based on our understanding of CPA's needs and our prior deployment experiences. If CPA wishes to start dispatch prior to summer of 2022, we can incorporate that into the SOW.

AutoGrid will use its project management process which is detailed in Appendix C.

Net benefit to CPA

We expect net benefits to CPA from the following

1. Lower cost of energy purchases at peak times; we anticipate this to be from 200MWh to 400 MWh in each summer season starting in 2022
2. Higher revenue from participation in CAISO markets
3. Net energy savings by CPA’s customers
4. Playing an active role in grid reliability
5. Lowering of greenhouse gases

Task 1: Pre-Implementation Planning

Table below outlines our broad approach to reach 6MW by 2023 while meeting the following mandates from CPA:

1. 6 MW total load shed
2. 1 MW of participation from disadvantaged communities
3. Participation from storage, thermostats, EV charging at residential and commercial sites
4. Below budget.

The breakdown of 6MW by year 3 of the program will be as follows:

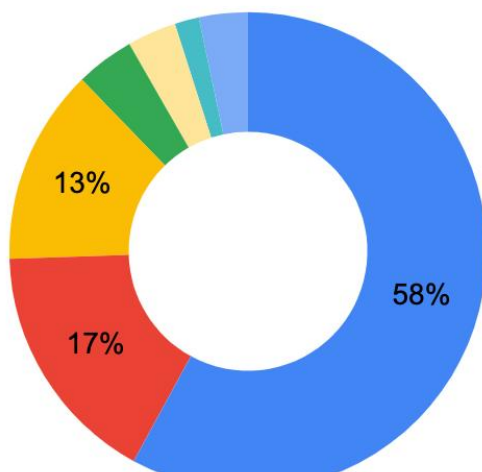


Figure 8:MW Breakdown in Year 3 of AutoGrid’s Proposal



The annual breakdown of our proposed program is as follows¹:

	MW per year		
	2021	2022	2023
BTM Storage (Residential - Sunnova)	0.7	2.5	3.5
EV charging (Residential - ChargePoint)	0.1	0.1	0.2
EV charging (Commercial)	0.0	0.1	0.1
BTM Storage (Commercial)	0.0	0.1	0.2
TOTAL MW per year	1.6	4.6	6.0

¹ Proposal based on delivering load reduction only, energy storage assets can contribute considerably more to the grid should they be allowed to discharge into the grid.

Our team will work closely with CPA staff to finalize this approach while considering program details and program incentives (below).

Components of the Program	Program Design	Customer Incentives
BTM storage program by Sunnova	[Redacted]	[Redacted]
ecobee thermostats in current/legacy program		
Thermostats for disadvantaged communities		
Thermostats (new recruits)		
Residential EV charging program		
C&I DR	[Redacted]	[Redacted]

Table 1: Proposed program constraints and customer incentives.

The subsections below highlight the approach the team is taking to assure success of the above programs.

1A - Recruitment and Enrollment of BTM Storage Customers

Sunnova utilizes a network of local, independent dealers to market, sell and install solar energy systems and energy storage systems on our behalf. Our dealers typically reside and work within the markets they serve and provide a localized, customer-focused marketing, sales and installation experience. These dealers are often leading local solar installation companies who work with customers that are actively searching for solar power or who were referred by Sunnova.

Through our dealer network model, we provide a streamlined approach for the origination of solar service agreements and the installation of solar energy systems and energy storage systems. Sunnova's contracts include the rights to the capacity and energy of our systems for the purposes of aggregating our fleet and providing additional value to the Sunnova network through Grid Services.

The principal elements of our origination, installation, monitoring and servicing processes are described below:

- 1) **Customer Origination and Consultation.** Our dealers serve as a local, direct-to-home sales force providing in-person consultations to source potential customers in each geographic market where we operate. Our dealers reach potential customers through various means, including online, telemarketing, in-store sales, cross-marketing with complementary products and door-to-door canvassing. Using our technology platform and proprietary pricing tool, the dealer and the customer select one of our standard-form solar service agreements for the relevant market and the dealer submits its proposal to us for approval. Before proceeding to the design phase, we call every customer to validate the customer understands the terms of their contract with us as well as the expected benefits of the system.
- 2) **Design and Engineering.** Prior to the dealer's purchase and installation of the equipment, we and the dealers work together to design each solar energy system and, if applicable, energy storage system. All of our solar energy systems and energy storage systems are designed with equipment from a pre-approved list of manufacturers. We utilize our extensive tools and services platform, standardized procedures and existing databases to help our dealers comply with our pricing requirements, residential solar best practices, contract terms, and state, territorial and local regulations. For each solar service agreement, an individualized power production estimate is created by analyzing geographic, solar and weather data with the design's proposed orientation, components and shading. We continue to pursue technological innovation to streamline our review of design and engineering, to expedite installation and to lower costs for our dealers.
- 3) **Installation, Commissioning and Interconnection.** The installation and commissioning phase requires the dealer to obtain all necessary permits for installation and complete our commissioning process for the solar energy system and energy storage system (if applicable), which entails submitting supporting documentation and photographs illustrating the installation of the solar energy system and energy storage system (if applicable) to our engineering team for review. Following completion of these steps and our approval of these materials the dealer submits required paperwork to the applicable electric distribution utility to obtain permission to operate the equipment, schedule required regulatory inspections and arrange for interconnection of the solar energy system to the

electrical grid. The customer's billing begins at the earlier of (a) 90 days after installation or (b) completion of interconnection.

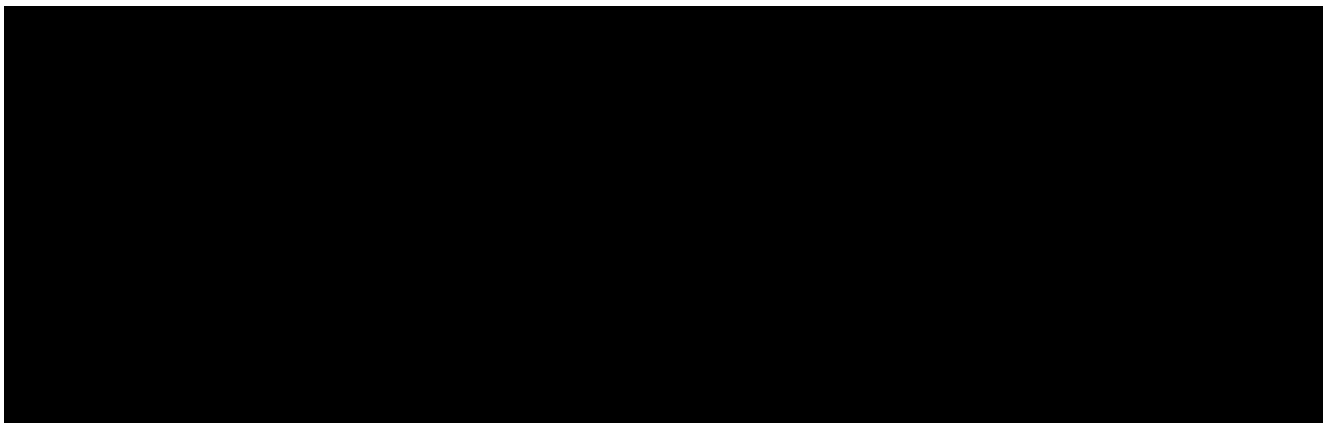
- 4) **Monitoring and Servicing.** Our monitoring systems utilize cellular connections that allow us to confirm the continuing operation of the solar energy system and energy storage system (if applicable) and identify and solve maintenance issues through our dealers, third-party service providers or our own personnel. We also collect performance data to improve our pricing, generation estimates and services for our customers.

Critical note: Sunnova’s standard contracts for our SunSafe® customers automatically enables our access to the customer’s battery storage system to be used for the purposes of Grid Services when aggregated into our Virtual Power Plant. Registration and enrollment into Grid Services programs will occur directly with Sunnova’s Grid Services team and not require additional customer action provided that CPA has visibility to customer meter data through existing agreements with Southern California Edison.

1B - Recruitment and Enrollment of Legacy Thermostats form the current program

AutoGrid and ecobee have a longstanding relationship both in terms of technology and commercial projects. We will jointly work towards transferring all existing ecobee customers into the AutoGrid Flex platform. The existing homeowners will not need to re-enroll or re-accept program terms and conditions. Once transferred, ecobee thermostats become a program in the AutoGrid system and can be dispatched per program plans using AutoGrid’s operator portal. ecobee will send notifications to their smartphone app and to the thermostats.

1C - Recruitment and Enrollment of thermostats in the Disadvantaged Communities



1D - Recruitment and Enrollment of Additional Thermostats

AutoGrid and Google Nest have been partners since the inception of thermostat-based demand response in Austin, Texas. Today, we jointly manage over ten thousand thermostats across the US for summer and winter programs. For CPA, we suggest a recruitment program by Google where homeowners are notified of their eligibility to participate in CPA’s program via Nest app and via Google’s emails. AutoGrid and Google have streamlined the enrollment process where homeowners can seamlessly join the program. User’s steps are depicted below:

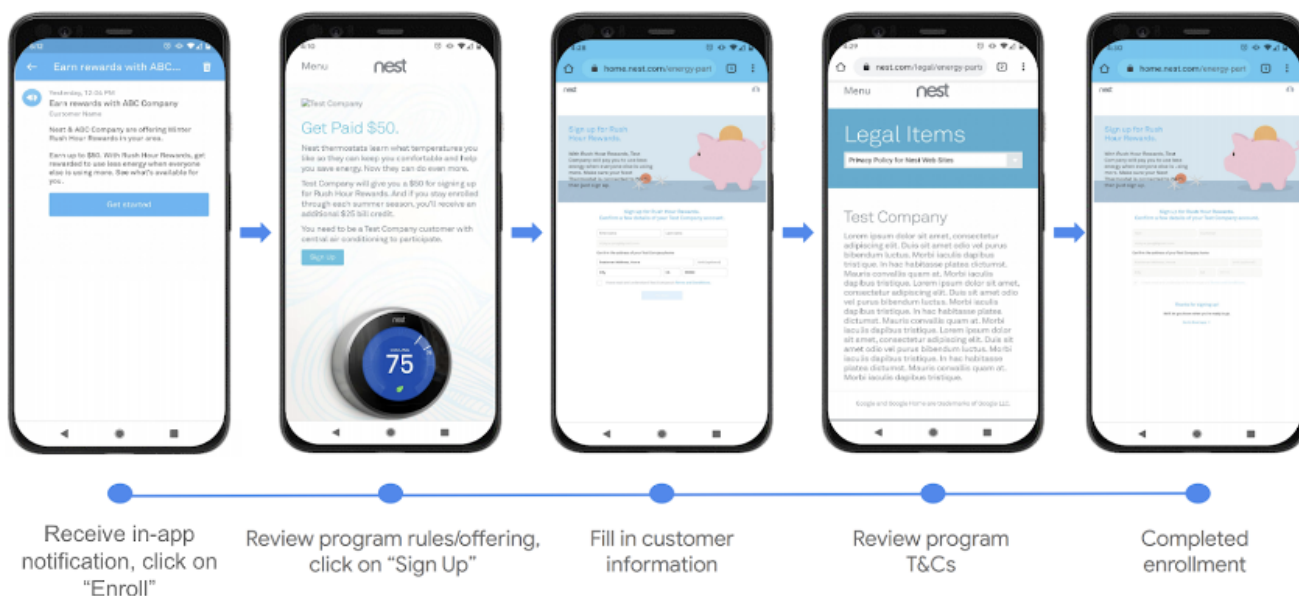


Figure 9: Enrollment Steps for Google Nest

Our experience with similar-sized utilities assures us that we can reach the program goals. In addition, AutoGrid has similar integrations with Emerson Sensi and Resideo’s Honeywell should CPA be interested.

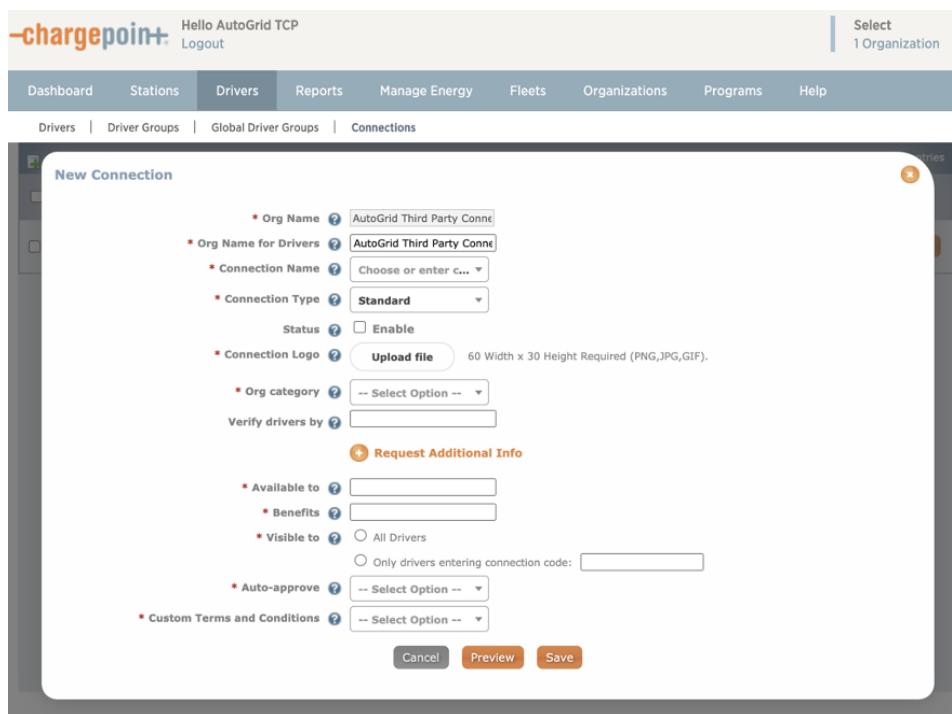
1E - Recruitment and Enrollment of Residential EV Chargers

AutoGrid and ChargePoint have been partners since the initial testing of EV charging for demand response programs by San Diego Gas & Electric many years ago. Our companies enjoy CEO-level interfaces, as well as exchanges at commercial and technical levels. CPA will benefit from this integration by relying on sophisticated recruitment techniques of ChargePoint and advanced capabilities, such throttling of the charging level (between 0kW to 6kW) and the ability to shift charging start times.

The following is the sequence of steps to enroll ChargePoint residential customers:

1. CPA may send email notifications to all customers informing them of the EV-based demand response program and its incentives. This email will contain a ChargePoint enrollment link (setup by AutoGrid and ChargePoint) along with other important program information as CPA sees fit. CPA can also provide information for customers that do not have ChargePoint chargers but would like to purchase one (ChargePoint may consider discounts for new customers).
2. Customers with ChargePoint chargers and ChargePoint accounts will visit the enrollment link and complete the enrollment steps required by ChargePoint.
3. After the customer has completed the ChargePoint enrollment, AutoGrid will have access to customer provided information via the ChargePoint API. ChargePoint charger information can also be exported from the ChargePoint Utility portal and uploaded into AutoGrid Flex with information in the AutoGrid standard CSV format

Figure below shows the portal for managing the ChargePoint enrolled users that CPA or AutoGrid may use:



The screenshot shows the 'New Connection' form in the ChargePoint portal. The form is titled 'New Connection' and has a 'Request Additional Info' button. The fields are as follows:

- Org Name: AutoGrid Third Party Conne
- Org Name for Drivers: AutoGrid Third Party Conne
- Connection Name: Choose or enter c...
- Connection Type: Standard
- Status: Enable
- Connection Logo: Upload file (60 Width x 30 Height Required (PNG,JPG,GIF))
- Org category: -- Select Option --
- Verify drivers by: [Empty field]
- Available to: [Empty field]
- Benefits: [Empty field]
- Visible to: All Drivers, Only drivers entering connection code: [Empty field]
- Auto-approve: -- Select Option --
- Custom Terms and Conditions: -- Select Option --

Buttons: Cancel, Preview, Save

Figure 10: ChargePoint Portal for Enrolled Users

1F - CAISO Services

AutoGrid has been a CAISO DRP since 2017 and its wholly-owned subsidiary, Energy AI Systems, is in the process of becoming a CAISO Scheduling Coordinator. Energy AI Systems is a market participant (QSE) in ERCOT and is in the process of becoming a PJM market participant as well. AutoGrid has program management experience in both residential and C&I demand response program design, both in California and world-wide. AutoGrid will bring all of this experience to bear on CPA's program design as well as the CAISO market participation strategy and technology options.



Task 2: Marketing

BTM Residential Storage

In addition to Sunnova's ability to seamlessly integrate the Power Response program into our customer experience and journey, Sunnova regularly conducts market and customer research that informs its go to market strategy which CPA will benefit from. This research and on the ground survey work helps inform Sunnova on key insights about our customers and informs new product development. This work leads to high customer satisfaction rates for Sunnova's customer base and will drive higher adoption rates for CPA in its demand response programs.

Sunnova utilizes best marketing practices and learnings from other Demand Response programs it participates in, notably the Connected Solutions program in New England, to assist CPA in designing a marketing plan to target high adoption rates. Sunnova's team of account managers and local dealers can provide valuable feedback about best practices to CPA throughout the program implementation.

In each program year, Sunnova will provide the following services as part of the marketing plan for Power Response:

- 1) Summary of results and analysis of annual customer survey of at least 500 customers in CPA's service territory.
- 2) Summary of results and analysis for up to two focus groups of up to 20 participants, with CPA providing input on the questions.
- 3) Input to the program's market plan for behind the meter battery deployment, including:
 - a) Battery storage penetration rates in the year preceding the start of the program
 - b) Identification of program audiences within CPA's territory

- c) Input and analysis on the Power Response marketing budget and spend rates based on Sunnova’s market knowledge and customer insights through shared annual customer insights
- d) Identification of key performance metrics and regular exchange on KPIs

C&I Asset Owners

Taking advantage of the lessons from CPA’s current pilot program and the significant underperformance of the C&I section, AutoGrid will create an outreach program to understand use case limitations, potential business justifications, and monetization scenarios for C&I customers. Using these insights, AutoGrid and CPA will jointly create demand response programs that fit the needs of the C&I customers.

Currently, AutoGrid is managing over 300MW of commercial DR programs for our utility customers globally. We believe we have the necessary tools to create the proper DR program once we have the insight. The programs can be deployed in year 2 and 3 of the program.

Task 3: Trade Ally Network Development

3A - Trade Ally Network for BTM Storage

Sunnova has a differentiated residential solar dealer model in which we partner with local dealers who originate, design and install our customers' solar energy systems and energy storage systems on our behalf. Our focus on our dealer model enables us to leverage our dealers' specialized knowledge, connections and experience in local markets to drive customer origination while providing our dealers with access to high quality products at competitive prices, as well as technical oversight and expertise.

We carefully recruit our dealers, who must meet and maintain our standards to be an approved dealer. Qualifications to be a dealer include: experience in the residential solar industry (or success in complementary industries such as home security, heating, ventilation and air-conditioning, electrical services, and satellite television), experienced and appropriately certified employees (including multiple installation teams) and possession of applicable licenses.

We require our dealers to choose all major components of the solar energy system or energy storage system from a pre-approved list of manufacturers and models. By allowing dealers to choose from several manufacturers and models without direct supplier obligations, we have greater flexibility to satisfy customer demand, ensure competitive pricing and adequate supply of components and reduce the concentration of warranty risks.

Sunnova’s approved products for battery storage include Tesla’s Powerwall 2, Generac’s PWRcell, and the Enphase Encharge system. Sunnova anticipates this list will continue to expand with growing supplier relationships.

3B - Trade Ally Network for Thermostats

AutoGrid will use installation services of two to three certified and insured local small businesses after consultation with CPA. The task for the small business would be to install all 1,250 thermostats in the selected apartments and assure that they are operational. Any post-install issues would also be



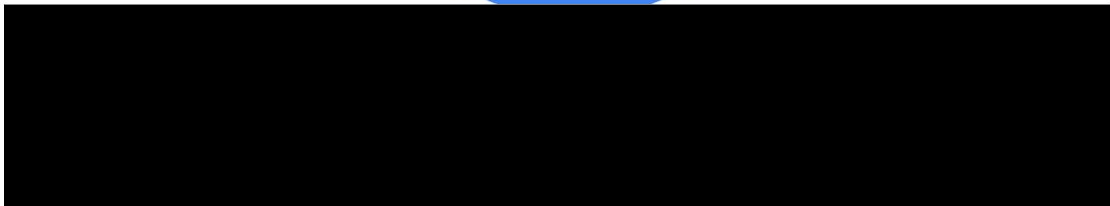
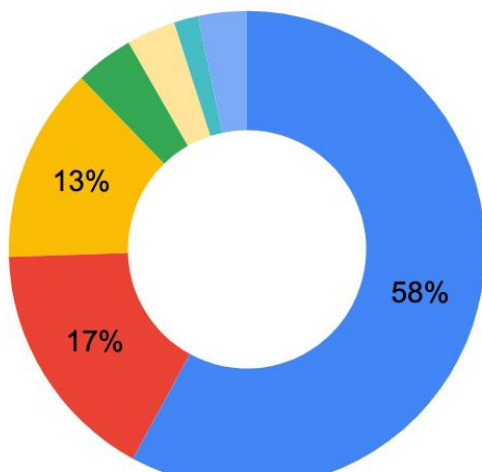


handled by the installation trade ally. We have identified Synergy Companies through their relationship with ecobee. Synergy Companies has presence throughout southern California and perform residential installations using their certified, insured, and trained staff.

In addition, AutoGrid, Sunnova, ecobee, and Google will consider cross promotion of programs. For example, each residential solar customer may receive a discounted smart thermostat that is pre-enrolled into the DR program.

Task 4: Program Implementation and Operations

As stated previously, AutoGrid and partners aim to provide 6MW by 2023 with the following breakdown of MWs load shed by category:



Enrollment is the key to achieving these goals. In this section, we detail enrollment steps per category.

4A - Device Enrollments

Enrollment of BTM Storage

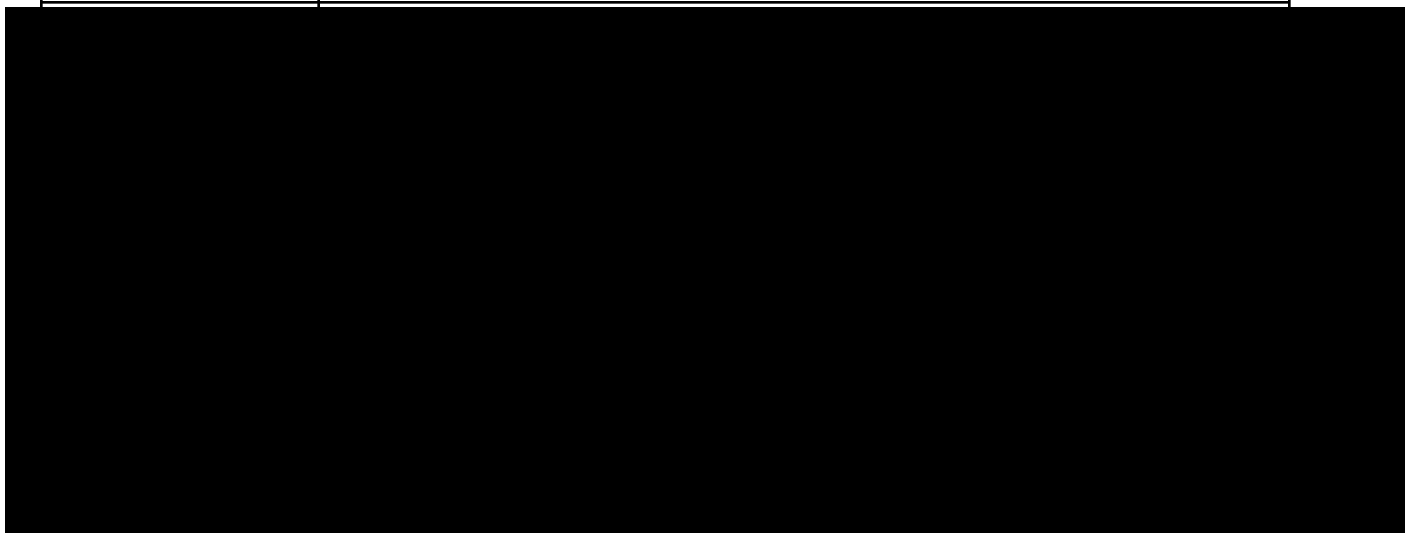
Sunnova’s standard contracts for our SunSafe® customers automatically enables our access to the customer’s battery storage system to be used for the purposes of Grid Services when aggregated into our Virtual Power Plant. Registration and enrollment into Grid Services programs will occur directly with Sunnova’s Grid Services team and not require additional customer action provided that CPA has visibility to customer meter data through existing agreements with Southern California Edison.

Legacy BTM Storage:	1 - Sunnova will use digital marketing campaigns to notify existing customers of the Power Response program and ability to earn incentives for participation and enrollment .
	2 - In instances where Sunnova does not have existing rights to enable participation from early SunSafe customers, Sunnova will directly market to and seek authorization.
	3 - Sunnova’s existing billing relationship with the customer allows for the seamless payment of the incentive through Sunnova.
	4 - Sunnova will work with CPA to create a specific program in AutoGrid Flex in order to enable dispatch that does not conflict with any of Sunnova’s contractual commitments with our customers.

New BTM Storage:	1 - Sunnova’s standard customer contracts allow for the registration and enrollment of customers into demand response programs through Sunnova’s Grid Services team.
	2 - Sunnova’s existing billing relationship with the customer allows for the seamless payment of the incentive through Sunnova. Additionally, Sunnova’s dealer teams will be educated on the Power Response incentive and will utilize marketing materials to educate and promote the program during the sales
	3 - Sunnova will work with CPA to create a specific program in AutoGrid Flex in order to enable dispatch that does not conflict with any of Sunnova’s contractual commitments with our customers.

Enrollment of Thermostats

Legacy ecobee thermostats:	1 - AutoGrid and ecobee use existing agreement to give AutoGrid access to existing legacy ecobee thermostats
	2 - Create program in AutoGrid Flex in order to enable dispatch



New Google Nest thermostats:	<p>1 - AutoGrid and Google use existing agreement to advertise CPA program to all of Nest users in CPA territory (advertisements happen twice via in app notifications and twice via emails from Google; CPA may also email its customers)</p> <p>2 - Customers simply follow a few steps on their Nest app to agree to participate</p> <p>3 - AutoGrid automatically extracts all enrollment information from Google and verifies customer data with CPA</p> <p>4 - Nest thermostats are ready for dispatch</p> <p>This sequence was also detailed in Section 1D and Figure 9.</p>
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² AutoGrid is currently engaged in a similar program with a Midwestern utility where renters are opted into a DR program involving ecobee thermostats.

Enrollment of EV Chargers

The following is the sequence of steps to enroll ChargePoint residential customers:

1. CPA may send email notifications to all customers informing them of the EV-based demand response program and its incentives. This email will contain a ChargePoint enrollment link (setup beforehand by AutoGrid and ChargePoint) along with other important program information as CPA sees fit. CPA can also provide information for customers that do not have ChargePoint chargers but would like to purchase one (ChargePoint may consider discounts for new customers).
2. Customers with ChargePoint chargers and ChargePoint accounts will visit the enrollment link and complete the enrollment steps required by ChargePoint.
3. After the customer has completed the ChargePoint enrollment, AutoGrid will have access to customer provided information via the ChargePoint API.
4. The same API will be used to throttle chargers and shift start times. There is more information on this step in the next section on dispatch.

4B - Dispatch

AutoGrid Flex provides multiple pathways for the CPA operators to schedule and dispatch events. The most common pathway is via the main operator portal which is depicted below:

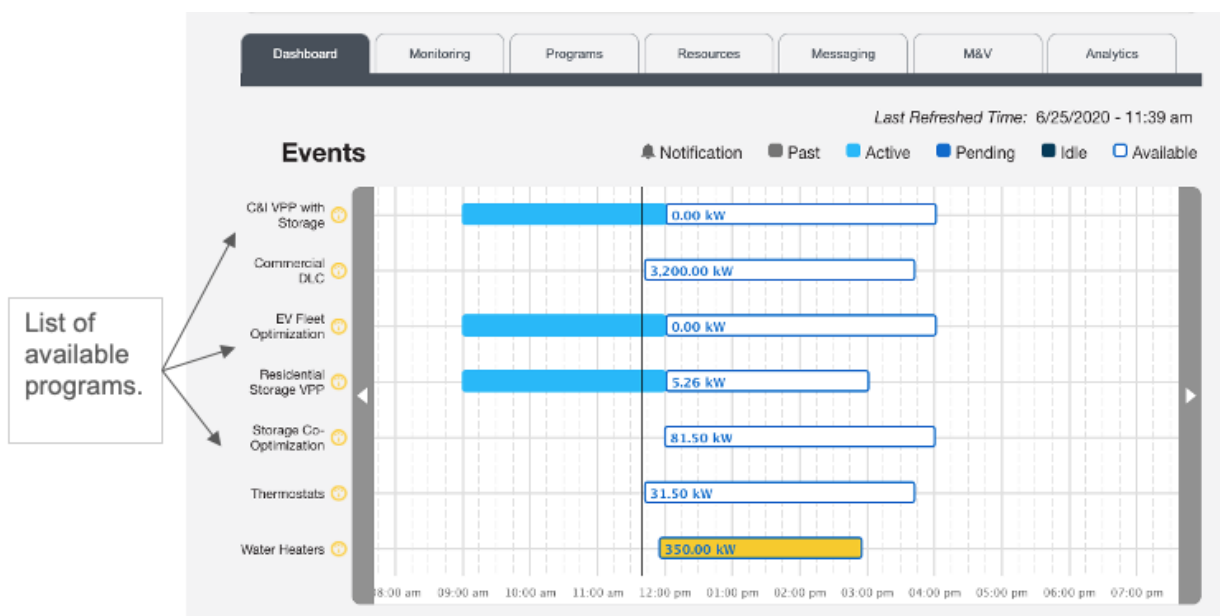


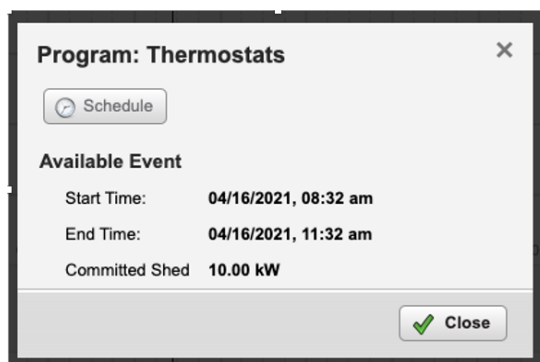
Figure 11: AutoGrid Flex - Events Dashboard

In the example above, there are 7 available programs; each bar indicates capacity that is available (in kW) and the times of that availability (start/end times). Programs that are active at the time are indicated by blue bars (3 are running in the above example).

For CPA we anticipate that there will be 4 or 5 programs depending on CPA's preferences. For example, the 4 programs would be residential storage, residential thermostat, residential EV, commercial EV. Programs can also be divided into geographies if desired. For example, residential EV north and residential EV south.

CPA staff can select any program from the list and schedule an event. As depicted to the right, AutoGrid Flex will let the operator know the available times (start and end times) and possible load shed (in kW). Once the operator decides to schedule an event, any default parameters can be modified, or the operator can select to dispatch without changing the default parameters.

For each program, AutoGrid's software will keep track and manage all applicable constraints (mostly contractual with OEMs or based on homeowners terms and conditions); during program scheduling all such



limitations are taken into account automatically. Examples of such constraints for CPA were listed in Table 1 in section that details pre-implementation planning tasks.

Figure below depicts the initial setup of the program constraints for sample thermostat which shows the high-level of customization available with AutoGrid Flex - constraints are events per week, hours per event, any opt-out policy, event window, weekend and grid emergency policies, season start/end dates, etc. Each program will have it's own constraints. Each dispatch is automatically verified against constraints to assure compliance. Similar constraints will be set up for storage and EV charging.

Thermostats

Events
Resources
Options

Program constraints
Click items in tables to edit

General

Dispatch Type	None	
Dispatch Granularity	Individual Resources	
Support for multi-day events	No	
Valid Dates +Date	Start Date	End Date
delete	01/01/2001	06/29/2020
Days of Week Available	<input checked="" type="checkbox"/> Monday	
	<input checked="" type="checkbox"/> Tuesday	
	<input checked="" type="checkbox"/> Wednesday	
	<input checked="" type="checkbox"/> Thursday	
	<input checked="" type="checkbox"/> Friday	
	<input checked="" type="checkbox"/> Saturday	
	<input checked="" type="checkbox"/> Sunday	
Canceled events will count against program's constraints	No	
Event Rescheduling	Yes	
Opt-Outs Allowed	Yes	
Blackout Dates +Date	Start Date	End Date
There are no blackout dates for this program		
Event Window +Window	Start Time	End Time
delete	12:00 am	11:59 pm

- Generic Options
- Subscription Rules
- Constraints**
- Event Templates
- Settlement Determinants
- Analytics Options
- Utility user notifications

Figure 12: AutoGrid Flex - Program Constraints

Once AutoGrid has sent a dispatch signal, the following behaviors will take place:

- **BTM residential storage:** All BTM storage devices will be taken off “local control” and put into “remote control” during each event. The batteries will then be dispatched in order to fulfill the entire load of the site (average site is assumed to be 2kW which could be more for sites with pool pumps and A/C and less with sites without an occupant). AutoGrid’s VPP software will assure batteries are prepared (have proper state of charge) ahead of predicated DR events.
- **Thermostats - ecobee and Nest:** Notices to ecobee and Nest thermostats are sent 2 hours prior to the start of the event (emergency dispatches are different). During this time, the thermostats pre-cool the site in order to assure the homeowners remain comfortable. The degree of change in the thermostat setting is controlled by ecobee and Nest and not by AutoGrid³. At the end of each event, thermostats resume their programmed condition. For example, if the homeowner has set the thermostat to be 76F at 8:30pm, when the DR event ends at 8:30pm, the thermostat will be set to 76F. Away mode and eco mode settings of these thermostats have been taken into account by AutoGrid. Based on our experiences with other utilities in climates similar to CPA, we expect a load of 1kW per house and slightly lower per apartment - which is why we assumed 1,250 thermostats to deliver 1MW in the disadvantaged communities.
- **EV chargers:** EV programs can be configured to either shift start of the charge time to an off-peak period or lower the power to the EV charger. AutoGrid and CPA can jointly design the behavior. We assume each charger can shed 6kW; however, only a fraction of the chargers (assumption is 1/10th) will be available during any one dispatch event.

³ For Emerson Sensi and Honeywell thermostats, AutoGrid does set the change in the thermostat temperature setting.

4C - Event Notifications

Notification of BTM Residential Customers

The joint approach to event notification will be discussed during pre-implementation planning stages, as Sunnova believes it is important to ensure that CPA, Sunnova, and our combined end users have a positive experience within the program that results in higher customer satisfaction across the board. As part of maintaining customer satisfaction, Sunnova proposes to collaborate with CPA to understand the most optimal strategy. Potential options include no notification, since the customers will not experience any effects, to text messages sent via AutoGrid Flex.

Notification of Thermostat Customers

Example homeowner notifications for ecobee thermostats and other OEMs supported by AutoGrid are displayed below; in all cases homeowner may opt out of the DR event via the app or thermostat.

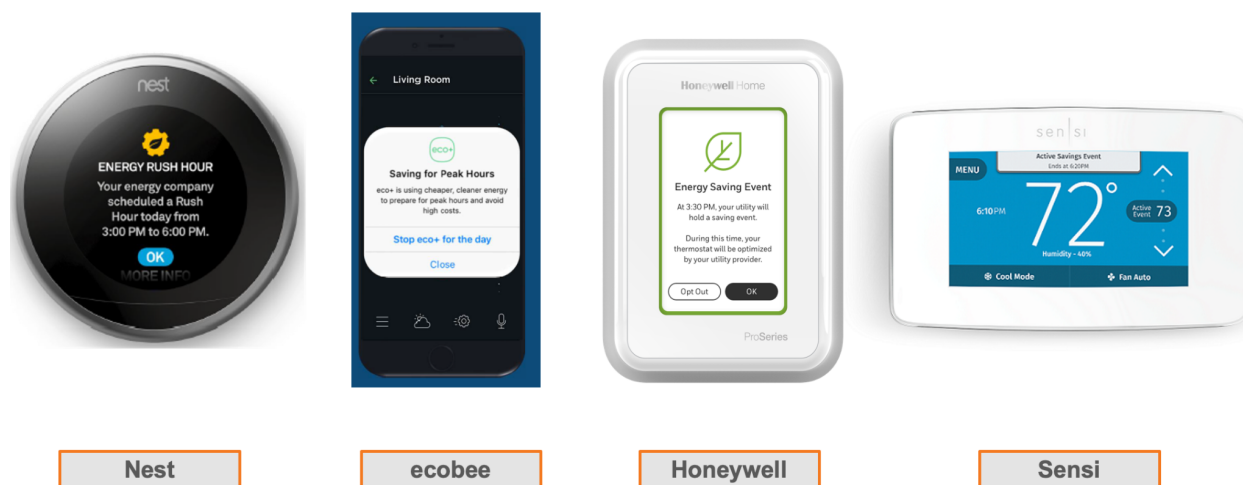


Figure 13: Notifications to thermostat customers; once an event is scheduled, the thermostat OEMs will notify their customers. Honeywell and Emerson Sensi are presented as optional.

Notification of Residential EV Customers

ChargePoint and Flo⁴ EV charging customers will receive text and email reminders that are sent by AutoGrid (messages are completely customizable and will be branded to appear as if they are from CPA). Customers may reply to opt-out of the event, should they choose to. The timing and frequency of messages is customizable. The messages will contain start, end, and event reason.

Notification of Commercial Customers

AutoGrid C&I DR program relies on email and text notifications to building / energy managers. In case of commercial EV charging involving ChargePoint, the integrated solution with ChargePoint will apply

⁴ Flo (also known as AddEnergie) is an EV charging vendor and a partner of AutoGrid as well; companies currently have programs running in BC Hydro which is listed as a reference customer.

(automatic dispatch to throttle EV charging rate). In advanced C&I programs, AutoGrid has integrated with building HVAC and refrigeration systems in order to provide significant load shed (100s of KWs per site). Should CPA be interested in such an approach, AutoGrid would be happy to provide the details.

Our current partners in this space are Emerson, Eaton, PlantPro, and IMS-Evolve. Certain systems are equipped with OpenADR interfaces as well.

4D - Meter Data

Meter data, assumed to be available via SCE, will be uploaded into AutoGrid Flex as soon as available or at a frequency desired by CPA (uploads are via SFTP). Since it is typical for meter data to be incomplete at times, AutoGrid allows multiple uploads of the meter data in order to complete the data set. Figure below visualizes the quality of the meter data (dark green signifies complete, lighter shades of green signifies some missing data, red would indicate no data).

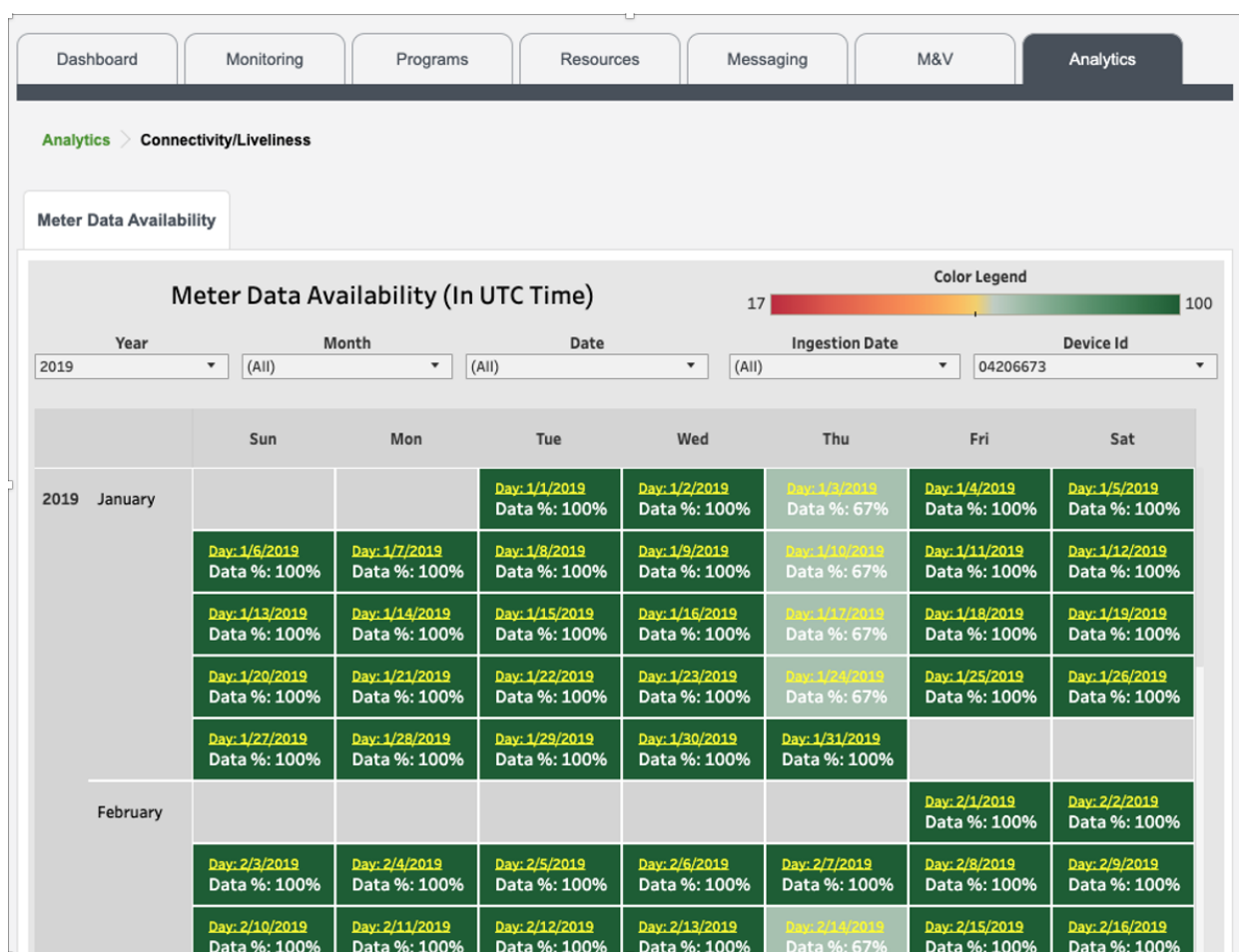


Figure 14: AutoGrid Flex - Meter Data Availability Heatmap

4E - Event Performance Monitoring

Regardless of the program (asset type used) in an event, AutoGrid Flex’s M&V module is able to calculate load shed using the imported meter data and the numerous options that are available for calculating the baseline. In the example below, M&V results show a total load shed of 306.57 kWh across the entire program for the event that was dispatched from 4pm to 8pm on May 5, 2020. The baseline (blue dotted line) is calculated based on a variety of information that is available to Flex. The actual data (red line) is from meter data. Green bars indicate the load shed during the event.

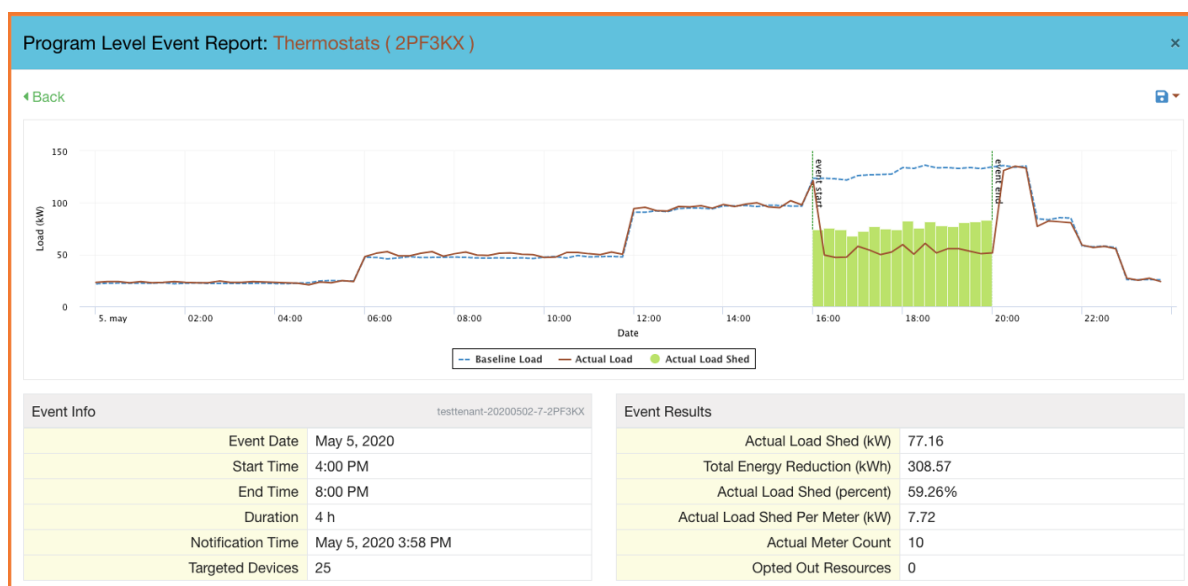


Figure 15: AutoGrid Flex - Program Level Event Report indicating load shed during an event vs baseline.

CPA can also choose to analyse the results per asset (per resource) for any given event. In the example below, the asset contributed over 27.22 kWh of load shed to the program

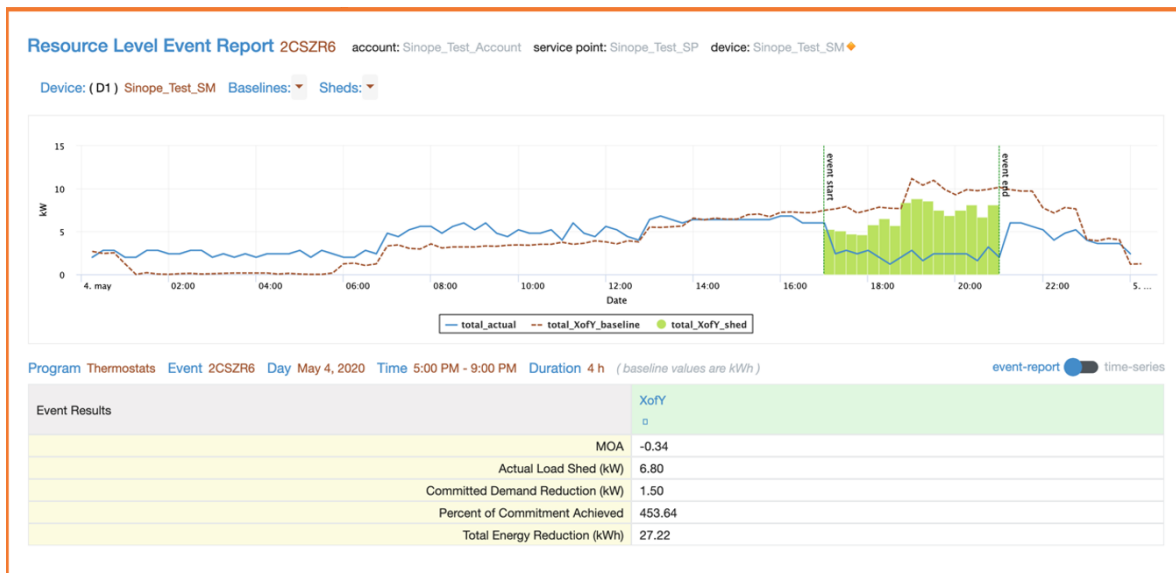


Figure 16: AutoGrid Flex - Resource Level Event Report for an DR event.

In addition to the above M&V tools, AutoGrid offers an extensive toolkit for analytics that can be used to modify programs and track performance. Sample reports, which are interactive, are shown below.

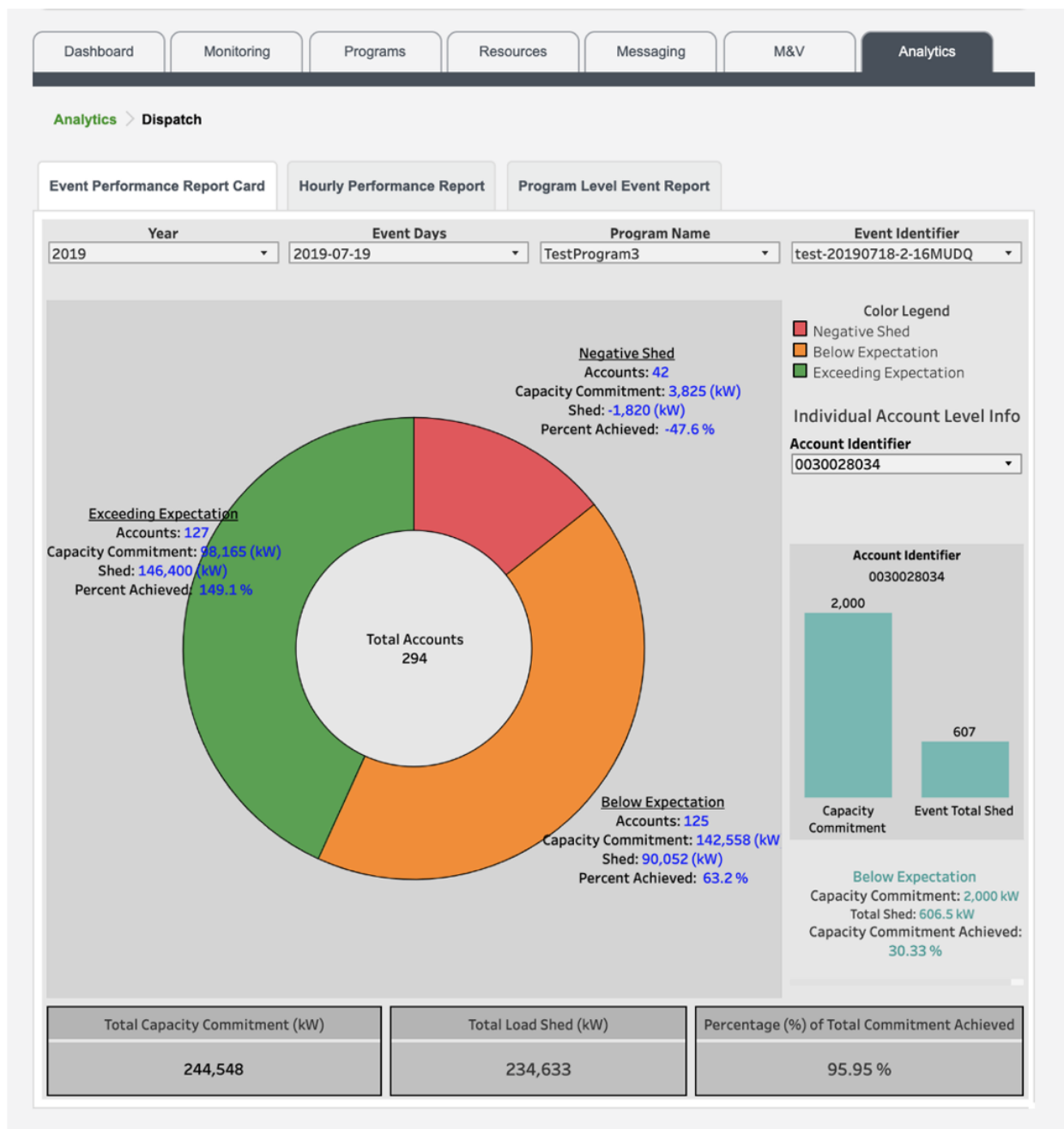


Figure 17: Example analytics toolkit showing underperforming groups, overperforming groups, and average performance.



Figure 18: Example analytics toolkit showing load shed performance of an event by the hour.

Given such toolkits, CPA can finetune its decision making on when to call various events.

Task 5: Demand Response Provider and Distributed Energy Resource Provider Services

AutoGrid has been a CAISO DRP since 2017 and its wholly-owned subsidiary, Energy AI Systems, is in the process of becoming a CAISO Scheduling Coordinator by Q4-2021. Energy AI Systems is a market participant (QSE) in ERCOT and is in the process of becoming a PJM market participant as well. Energy AI Systems will be prepared to operate as CPA's Scheduling Agent.

Enrolled Demand Response capacity will be evaluated for use to provide ancillary services including reserves and regulation as well as participation in the Energy Imbalance Market to generate additional revenue. There may be an opportunity to monetize the resources in other ways as well, the specifics will depend on the technical limitations of the resources themselves and available telemetry.

All enrolled demand response resources will be monetized as described above and can also potentially serve as a physical hedge against day ahead load bids which fall short and must be covered at potentially higher real time costs. The interplay and trade-offs of this strategy against selling ancillary services or participating in the Energy Imbalance Market will be weighed against CPA's tolerance for risk, financial objectives, and other considerations that can be discussed.

The full lifecycle of CAISO participation will be transacted on CPA's behalf by AutoGrid's Energy AI Systems subsidiary, including CAISO registration, bidding of demand response capacity into the CAISO markets per the strategy identified in consultation with CPA, supervising automated and handling verbal dispatch of the resource, performing performance calculations, performing settlements, and handling any other interactions with CAISO on the behalf of the resource.

Task 6: Scheduling Services for Demand Response Resource

Energy AI systems 24/7 desk will handle all of the Scheduling Coordinator's responsibilities to include the scheduling and bidding functions for the applicable markets for the demand response resource(s) on a flat fee basis. Utilizing Autogrid Flex, the 24/7 desk will monitor forecasting as well as market data to bid in the DRR and then execute the demand response when called upon to do so. This group will also perform shadow settlements and validate all CAISO invoices and report such to CPA in the mutually agreed upon format. They will also work with SCE and CAISO to import meter data and other pertinent information to generate reports for CPA as necessary. This will be handled on a daily basis in an accounting database with reports available on demand and standard reports, customized to CPAs needs, produced on a monthly basis. The market monitoring, bid functions and reporting will be handled by separate staff from the operators responsible for dispatch and asset monitoring. All assets will be scheduled into the CAISO market under CPA's SCID.

Task 7: Overall Program Performance Tracking

AutoGrid project manager will meet with CPA staff on a weekly basis in the setup phases of the project. Thereafter, AutoGrid's customer success manager and program manager will provide CPA with information on enrollment, budgets, marketing event, event performances, and revenue from CAISO trades.



Proposer's Pricing

	2021	2022	2023
Marketing	\$100,000	\$75,000	\$0
Marketing AutoGrid	\$50,000	\$25,000	\$0
Marketing Sunnova	\$50,000	\$50,000	\$0
Implementation for Setup	\$235,000	\$40,000	\$30,000
AutoGrid Fees			
Sunnova Fees			
ecobee Fees			
Nest Fees			
ChargePoint Fees			
Energy AI Systems			
Implementation / Administration (ongoing)			
AutoGrid Fees			
Sunnova Fees			
ecobee Fees			
Nest Fees			
ChargePoint Fees			
Scheduling Coordinator Fees			
Customer Incentives (initial enrollment and subsequent)	\$155,000	\$337,125	\$271,750
to Sunnova customers			
to Nest customers			
to legacy ecobee customers			
to ChargePoint customers			
cost to purchase and install ecobee in apartments			
Total	\$778,100	\$1,194,725	\$1,264,700

Assumptions on Pricing:

Implementation Setup fee - One time configuration and integration, as per SOW written for the project
Third party device fees - All such fees are based on the number of devices (counted in Sept-30 of each year) and are passed through without upcharge as indicated above. OEMs may change these fees in the future.
Deployment Model: One tenant on AutoGrid multi-tenant environment in the US
Dedicated environments (optional) \$250K/year per environment
Pricing does not include travel and associated expenses, all of which will be charged at cost, and in accordance with CPA's own expenses processes if so requested.
Pricing does not include applicable local or sales taxes.
Changes or additions to scope must be captured in a Change Order and approved by the Parties.
AMI and other necessary data will be provided to AutoGrid as a daily file in CSV format.
AutoGrid's platform is provided with a standard package of Amazon Web Services security. Additional security provisions can be provided, but at an additional cost.
All documentation, communication, and the Flex™ platform and UI will be in English only.
Access to AutoGrid's Engage portal is not currently in scope. Access to Engage can be provided, but for additional fees.

References Form

Proposer's completed Prospective Contractor References Form. See Attachment B.

AutoGrid Project Reference #1: CPS



Client: CPS Energy
Project Type: AutoGrid Flex™ for comprehensive DROMs
Project Location: Texas, USA
Project Start Date: 2016
Project End Date: (In Active Operation)

Client Profile

- Largest municipally owned utility in U.S. serving 765,000 electric and 335,000 natural gas customers in Texas

Client Challenge

- Existence of eight disparate, point solutions used to manage different DR programs
- Residential and C&I portfolio of 228 MW
- Lack of consolidated view of DR capacity available for dispatch
- Data collection, analysis and actionable DR responses all done manually
- Difficulty integrating customer on-site DERs

AutoGrid's Solution

- Comprehensively manages all DR programs, delivering unified view, making DR a strategic tool, while eliminating point solutions
- Provides accurate forecasts across millions of meters in minutes to system operators
- Aggregates and dispatches distributed energy resources including residential rooftop solar
- Very customer-friendly experience
- Easy customization, integration for rapid rollout

Benefits of AutoGrid's Solution

- Deployed to production in 10 weeks
- Increase peak demand savings by increasing number of customers and MW/customer
- Decrease administrative costs
- Lower marketing costs

Scope of Work

CPS Energy was struggling to manage eight disparate, point-DR programs for a 228 MW C&I and residential portfolio. The utility also faced the difficulty of integrating customer onsite DERs. As a result, CPS Energy selected AutoGrid Flex™ to manage all its programs via a single, integrated platform. AutoGrid's solution

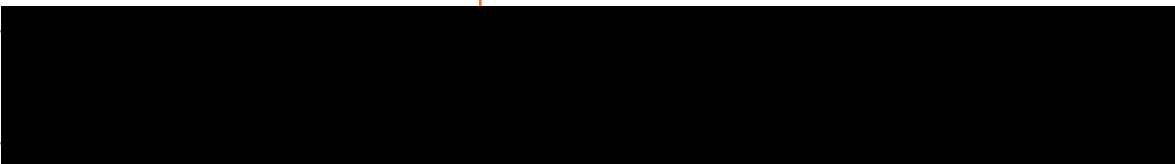
eliminated the point solutions, and it provides accurate forecasts to system operators—in minutes—increasing peak-demand savings, decreasing administrative costs, and lowering marketing expenses. Furthermore, as a testament to our ability to implement large projects in a short time, AutoGrid deployed the platform in only 10 weeks. AutoGrid is working with CPS Energy on the next phase of the project which includes the aggregation and dispatch of battery storage and smart inverters/solar to enhance grid efficiencies.

AutoGrid is pleased to note that CPS Energy won the PowerGrid International Project of the Year 2017 for their demand response management system (DRMS) project, built on the AutoGrid DROMS module of the AutoGrid Flex™ platform.

AutoGrid Project Reference #2: BC Hydro



Client: BC Hydro
Project Type: AutoGrid Flex™ for DRMS, DERs
Project Location: British Columbia, Canada
Project Start Date: January 2020



Client Profile

- Regulated utility service over 4M customers in British Columbia
- Third lowest residential rates in North America
- Operation of 30 hydro plants, contributing to 97.8% of electricity generation from clean sources in 2018/19

Client Challenge

- Winter peaking utility with winter peaking assets and strategies
- Wish to centralize existing DR programs on unified platform

AutoGrid's Solution

- Managing localized distribution issues: coordination of various DR programs targeting capacity-constrained distribution assets with an eye to deferring construction/upgrades
- Generation load sink / valley filling: strategic use of residential EV ownership and other device charging to utilize low cost market power or over-generation
- Alleviating system generation: managing system peaks
- Diverse list of DERs including EV chargers, smart thermostats, water heaters, heat pumps, and energy storage

Benefits of AutoGrid's Solution

- Unified management of unique DR programs
- Ability to target a subset of participants based on zip-code, feeder, zone, or substation for targeted dispatch to alleviate localized grid constraints

Programs

- Behavioral Demand Response
 - Industrial Curtailment BDR
 - Residential peak Saver BDR
- Direct Load Control
 - Residential Electric Vehicle charging with AddEnergie (also known as FLo) EV charging devices
 - Connected Home Program with Sinope devices
 - Heat Pumps connected through Nest thermostats

Scope of Work

This initiative helps BC Hydro better understand the benefits of centralized management of demand response programs as it relates to all customer classes (commercial, industrial, and residential), with the aim of evaluating a DRMS system through a pilot project.

More specifically, the pilot will inform future projects by determining what is required to "operationalize" (i.e. apply a systematic approach to tasks, ideally through automation, along with clearly defined operational processes, in order to meet measurable, defined goals that align with business priorities_ a DRMS at BC Hydro for the following scenarios:

- Planned Outage Support
 - Reducing load to allow for more customers to be transferred to alternate circuits in order to reduce the number of customers experiencing an outage
- Forced Outage Pick-Up
 - Reducing the occurrence of an extended outage due to cold load pick-up (increase in current drawn by loads when distribution is re-energized after an extended outage) , by diversifying the return to service of specific loads
- Load Shifting
 - Moving demand from one time frame to another time frame to optimize use of the distribution

Sunnova Project Reference: Connected Solutions Demand Response



Client: Eversource and National Grid Utilities
Project Type: Battery Storage Demand Response
Project Location: ISO-NE
Project Start Date: December 2020
Project End Date: (In Active Operation)

Client Profile

- Utility service providers serving more than 25 million customers across New England

Client Challenge

- Implementing a cost effective solution for reducing peak energy usage, typically in summer months
- Enabling high adoption rates for distributed energy customers

Sunnova's Solution

- Integration with vendors already participating in the program
- Streamline customer enrollment process during sale and contracting to enable high adoption rates
- Provide single contact for disbursement of utility incentives directly to consumer

Benefits of Sunnova's Solution

- Enhanced customer education during point of sale for battery storage technologies
- Immediate increase in adoption rates due to standard contracting structures

Programs

- Load Curtailment
 - Receive signals through program administrator to dispatch battery assets
 - Works with AutoGrid to manage the battery dispatch events within our fleet



T&C Review

Any required changes to CPA's Pro Forma Contract. See Attachment D.

AutoGrid and Sunnova have provided a cursory review of the contract and provided initial redlines in the attached document. The responding partners will conduct a more thorough and final redlining of the contract upon selection during contract negotiations.

Campaign Contributor Form

Proposer's completed Proposer's completed Campaign Contribution Form. See Attachment E.

This is not applicable.

Appendix C - AutoGrid Processes

The AutoGrid implementation methodology follows a framework of four phases: Requirements, Design, Develop, and Test. The AutoGrid team utilizes several project management best practices to implement and deploy successful projects on-time and within budget. The initial configuration of the software will be performed as part of the Requirements Phase as a basis for input and feedback to refine and iterate, as shown in the figure below.

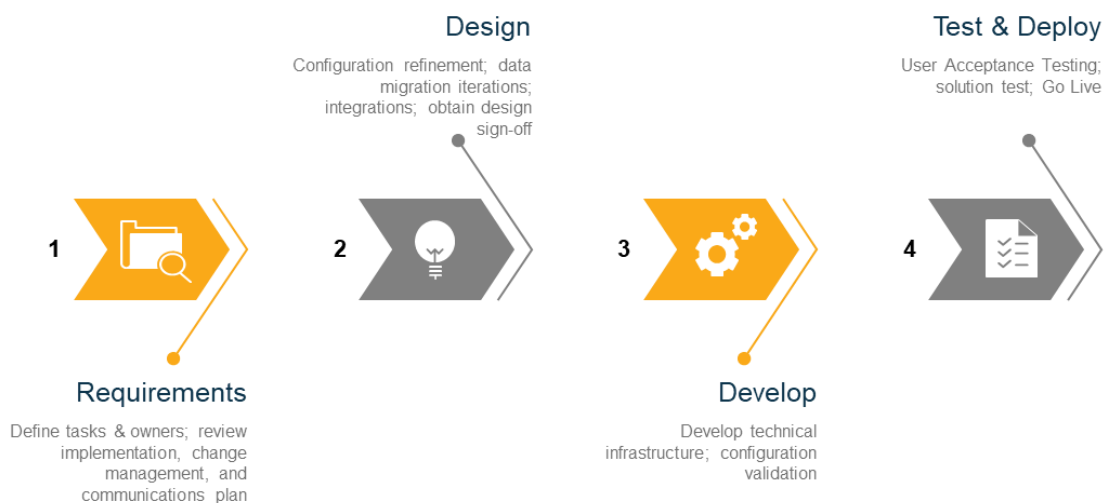


Figure 2. Project Implementation Framework

Project Implementation - Ensuring Customer Success

AutoGrid’s professional services team provides best-in-class support throughout the entire deployment, which is denoted by the implementation process shown in the Figure below. A dedicated AutoGrid Project Manager (PM) will work closely with the customer’s technical staff to confirm platform requirements, define technical details, and execute on the implementation plan. The PM will conduct regular check-ins and quarterly business reviews, building relationships and identifying where communication with departments outside of the project team can provide additional benefit.

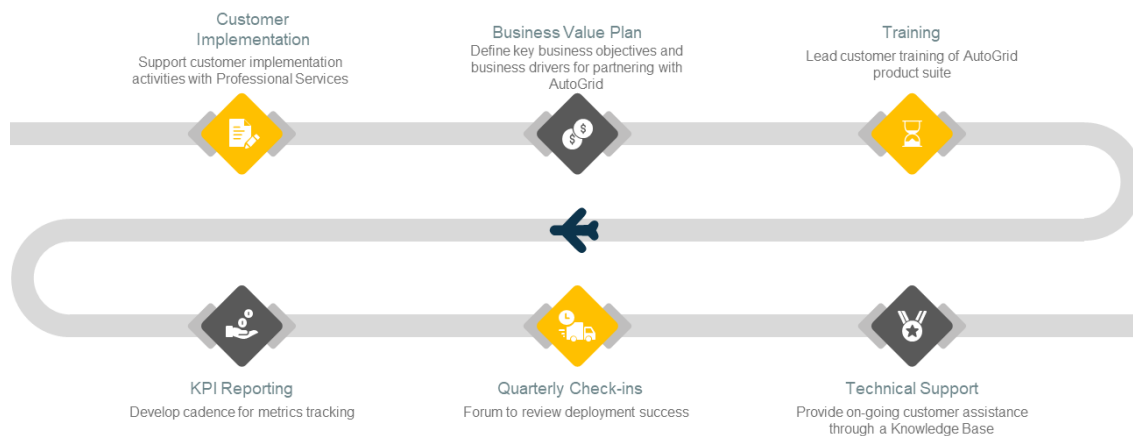


Figure 3. High-Level Implementation Process

During project implementation, the AutoGrid Professional Services team will work with CPA to guide them through the activities and tasks outlined in the project plan. The Project Kick-off process will begin with a project plan review to ensure agreement on the deliverables and deployment schedule. The AutoGrid PM provides the following core project management processes and tools to ensure the success of the implementation:

- Project Charter/Plan and Schedule
- Roles and Responsibilities Matrix (Responsible, Accountable, Consulted, Informed (RACI))
- Project Communications and Escalation Processes
- Weekly Project Status Meetings
- Progress Tracking & Management
- Risk and Issue Management
- Scope Management including a Change Request Process

Scope & Change Management

To support the management of the project scope and changes, AutoGrid Project Managers utilize a change control process. This process ensures baseline traceability for all changes, from initiation through authorization, and work completion. These changes may include:

1. Internal changes: changes to the program baseline (affecting technical, cost, or schedule) within a specific scope of the contract/program (e.g., additional testing with current test scope)
2. Customer-directed: changes received from Customer program manager with specific direction to proceed, including preparation of a change proposal
3. Over-target baseline: changes resulting in formal re-planning of in-scope work to meet contract/program objectives
4. Internal re-planning: revisions to work packages or conversion of planning packages to detailed work packages as part of rolling wave planning.

Detailed plans and resource estimates are developed for each identified change, in addition to the effects to the overall cost and schedule baseline. Alternative options such as not implementing the change will also be assessed. When a change is approved, the schedule and plan are updated to incorporate the change.

Ongoing Support for Flex™

AutoGrid's Customer Support Line is available 24x7 and can be reached at +1-833-275-8855. Additionally, after AutoGrid Flex™ is in production and CPA staff members are trained on the system, AutoGrid will provide access to the JIRA Service Portal, a support interface to track and resolve ongoing issues. This web-based application is available 24x7. Within the application, issues will be categorized as:

1. Questions – about the functionality of the solution
2. Bugs – These can be one of four priorities
 - a. P0 – Production down
 - b. P1 – Production down, workaround exists
 - c. P2 – major annoyance, affects user satisfaction
 - d. P3 – nice-to-have

3. Enhancements

Once an issue is received within JIRA, applicable SLO metrics will route the request to a support resource who will triage the issue and either close the issues or create tickets for our Professional Services team (Tier 2) or Engineering Team (Tier 3) to ameliorate the issue. Critical bugs requiring coding will be prioritized in our weekly sprints and a hot patch issued if necessary or if a production system is deemed to be in danger of not performing to the Service Level Objectives (SLO). Throughout this period, AutoGrid’s Professional Services team will keep CPA apprised of the status of the issue either via email or on the weekly calls.

The JIRA Service Portal also includes access to Customer Support Knowledge Base (CSKB). The CSKB is a comprehensive resource for our customers to find product related information, frequently asked questions, and how-to’s. The CSKB is updated as each version of Flex™ becomes generally available and contains information on the most up-to-date product features. A screenshot of the JIRA Customer Service Desk is included in the Figure below.

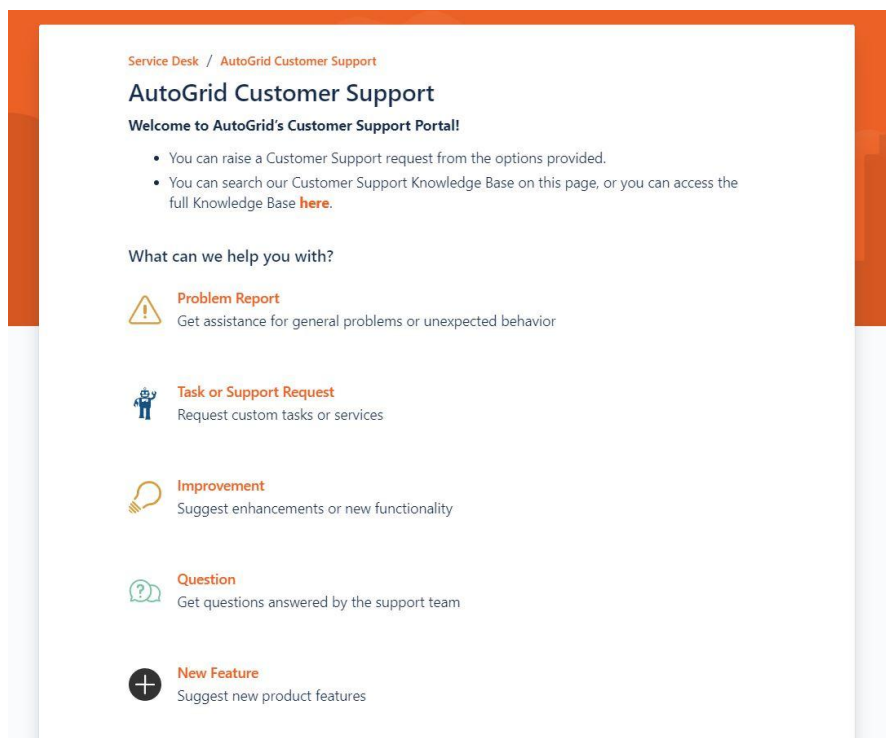


Figure 4. Screenshot of AutoGrid’s Customer Support Portal

Support & Up-time

AutoGrid software is provided via a SaaS (subscription) model, which includes ongoing system support and maintenance. AutoGrid provides a Service Level Objective (SLO) outlining our commitment to system uptime as well as our responsiveness and resolution plan as issues are identified. Screenshots of our SLO have been included below, for full details, please refer to the SLO attachment.



	Channel	Contact	Provided From	Time
Primary	Service Desk	JIRA or Email	Redwood City, CA, USA and Bangalore, India	8am-8pm Pacific Time (Mon - Fri) 8pm-8am Pacific Time (Sun - Fri)

Reported issues will be triaged and routed according to their priority, as defined in the AutoGrid Standard SLO. Outside of the above specified Service Desk hours, AutoGrid will have an on-call representative available to respond to and triage incoming issues. General Service levels (including system availability) and maintenance response times are based on the priority of the incident, as described below.

Incident Categories and Incident Service Levels

Priority	Definition	Initial Response Time	Update Frequency	Remedy Time
P0	<p>A Priority 0 Incident means AutoGrid software issue with significant business critical impact without an agreed suitable workaround requiring highest priority resolution.</p> <p>Qualification Criteria:</p> <ul style="list-style-type: none"> • Problem impacts a complete business function. • Critical application or service is not functional • Emergency situations, as declared by management 	4 Customer Service Hours	Every 8 Working Hours	2 working days
P1	<p>A Priority 1 Incident means that individual functions of AutoGrid software work defectively or not at all. The functionalities required for the day-to-day business operations are partially or completely missing. The user has work-around options.</p> <p>Qualification Criteria:</p> <ul style="list-style-type: none"> • Major business impact - reduced functionality or capacity for critical application or service. • Work around are difficult and time consuming • The issue is significant enough that it requires altering configurations or reboots 	8 Working Hours	Every 16 Working Hours	4 working days
P2	<p>A Priority 2 Incident indicates an AutoGrid software with moderate business critical impact. One or more functions of AutoGrid software fail to operate in an optimal manner. There is no significant impairment of the day-to-day business.</p>	24 Working Hours	NA	5 working days
P3	<p>A Priority 3 Incident indicates a non-functional issue or system query: All functions of AutoGrid software are operable and error-free, but the system has some purely aesthetic defects (e.g. layout, text or formatting errors excluding those legally required)</p>	40 Working Hours	NA	10 working days

3.1 General Service Levels

Service Level Description	Service Level Objective
Production System Availability	<p>99.5% availability per quarter, excluding planned and correctly notified Maintenance and Upgrade Windows (in accordance with Section 3.3 below, based on a 7 day x 24 hour calculation).</p> <p>Planned downtime will be notified by AutoGrid as described below in Section 3.3 (“Maintenance and Upgrade Windows”).</p>
Disaster Recovery, if applicable	<p>AWS Multi Region implementation, supported by a geographically separated environment, with data replication. In the case of failure of an entire AWS Region (e.g. Ohio) the Disaster Recovery site (e.g. Oregon) can be made functional within 8 hours.</p> <p>Note: Disaster Recovery is not included in a standard AutoGrid software license. It can be enabled for additional fee as it involves provisioning of an additional “warm” standby environment.</p>
Backups	<p>Backups performed nightly onto systems that are stored separately from the production instance at an offsite location.</p> <p>Backups are stored by default for the past seven calendar days however can be increased to a maximum of thirty-five calendar days upon customer request.</p>
Data Recovery	<p>Max of 24 hours if recovery using previous database backup is required.</p> <p>1 hour recovery time in the extreme case if Disaster Recovery environment was purchased and configured</p>

Note: The general service levels reflect AutoGrid’s third-party vendor’s uptime (e.g. AWS, Cloudera, etc.)

AutoGrid Flex™ Training

AutoGrid Flex™ training is typically arranged in a series of standalone modules as follows:

- Module 1: System Overview and User Management
- Module 2: Participant Management
- Module 3: System Operator Dashboard
- Module 4: Event Management
- Module 5: Program Configuration and Management
- Module 6: Group Management
- Module 7: Messaging Templates
- Module 8: Reporting and Analytics
- Module 9: AutoGrid Service Desk and Support

These modules can be mixed and matched depending on the roles and objectives of the audience. The specific training plan will be developed in coordination with CPA, but general AutoGrid supports Flex™ deployments with two standard training sessions: 1) AutoGrid Flex™ for Program Administrators and 2) AutoGrid Flex™ for operators.

Note that on-site training is subject to COVID related travel restrictions and health considerations.

Appendix D - Letters of Support

ChargePoint Letter of Support



ChargePoint, Inc.
254 East Hacienda Avenue | Campbell, CA 95008 USA
+1.408.841.4500 or US toll-free +1.877.370.3802

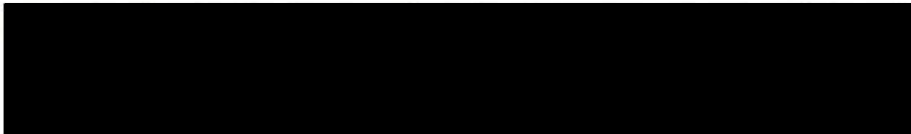
May 7, 2021

Attn: Clean Power Alliance
RE: CPA RFP for Demand Response Services

Subject: Letter of Support for AutoGrid Submission

To Whom It May Concern:

I am writing to state ChargePoint's support for AutoGrid's proposal to CPA regarding Demand Response Services.



ChargePoint is a world leading electric vehicle ("EV") charging network, providing scalable solutions for every charging scenario from home and multifamily to workplace, parking, hospitality, retail and transport fleets of all types. ChargePoint's smart residential solution leverages on the established network that connects over 100,000 charging points across North America. ChargePoint's network software enables utilities and any authorized 3rd party, such as Itron, to manage each element of the program, including station activation, program enrollment, communication, data, and the load control features necessary to ensure success of the home charging offering.

I understand that through this demand response program, CPA is seeking innovative and new programs that represent new offerings designed to help customers save electricity costs, earn rebates for adopting new technology, lower carbon emissions, and remove participation barriers. The joint solution from ChargePoint and AutoGrid will be part of the large and technically advanced demand response offering which we are confident will assist CPA to achieve these goals.

If you or your staff have any further questions regarding our support for the project, please feel free to contact us.

Sincerely,

ecobee Letter of Support

ecobee

May 7, 2021

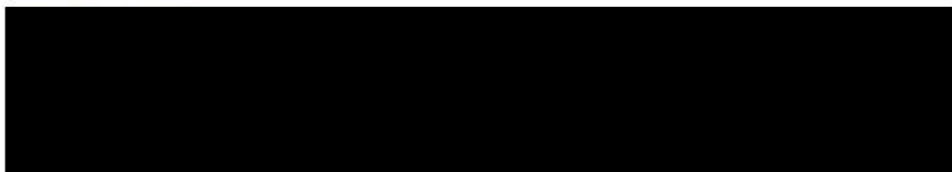
Attn: Clean Power Alliance

RE: CPA RFP for Demand Response Services

Subject: Letter of Support for AutoGrid Submission

To Whom It May Concern:

I am writing to state ecobee's support for AutoGrid's proposal to CPA regarding Demand Response Services.



ecobee, a smart home technology company, was founded in 2007 to provide people with smart home solutions that allow a transition to carbon neutral, planet positive buildings. ecobee has been delivering demand flexibility across North America through intelligent applications of strategies that provide grid impacts while maintaining customer comfort and control.

I understand that through this demand response program, CPA is seeking innovative and new programs that represent new offerings designed to help customers save electricity costs, earn rebates for adopting new technology, lower carbon emissions, and remove participation barriers. The joint solution from ecobee and AutoGrid will be part of the large and technically advanced demand response offering which we are confident will assist CPA to achieve these goals.

If you or your staff have any further questions regarding our support for the project, please feel free to contact us.

Sincerely,



25 Dockside Drive, Suite 700
Toronto, ON M5A 0B5
ecobee.com

Emerson Letter of Support



May 7, 2021

Attn: Clean Power Alliance

RE: CPA RFP for Demand Response Services

Subject: Letter of Support for AutoGrid Submission

To Whom It May Concern:

I am writing to state Emerson's support for AutoGrid's proposal to CPA regarding Demand Response Services.



I understand that through this demand response program, CPA is seeking innovative and new programs that represent new offerings designed to help customers save electricity costs, earn rebates for adopting new technology, lower carbon emissions, and remove participation barriers. The joint solution from Emerson and AutoGrid will be part of the large and technically advanced demand response offering which we are confident will assist CPA to achieve these goals.

If you or your staff have any further questions regarding our support for the project, please feel free to contact us.

Sincerely,



Sunnova Letter of Support



Sunnova Energy Corporation
20 Greenway Plaza, Suite 475
Houston, TX 77046
sunnova.com

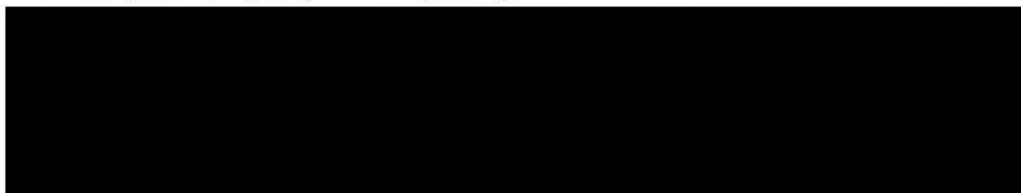
May 7, 2021

Attn: Theodore Bardacke, Executive Director
Clean Power Alliance of Southern California
801 S Grand, Suite 400
Los Angeles, CA 90017

Letter of Support and Partnership for Demand Response Program Implementation Services

To Theodore Bardacke,

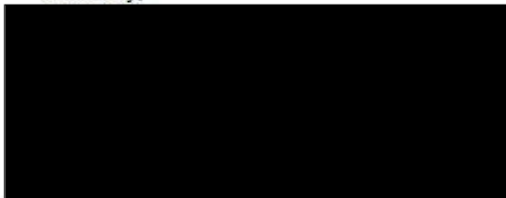
I am writing to state Sunnova Energy Corporation's ("Sunnova") support and intention to partner with AutoGrid to market, implement, and scale a comprehensive Distributed Energy Resources-based demand response program – the Clean Power Alliance of Southern California ("CPA") Power Response Program ("Power Response").



I understand that through Power Response, CPA is seeking to partner with industry leaders to utilize energy storage systems for demand response, reliability, and/or resiliency, while helping customers adopt new technology, lower carbon emissions, and remove participation barriers. The joint solution from Sunnova and AutoGrid will be part of the large and technically-advanced VPP offering which we are confident will assist CPA to achieve these goals.

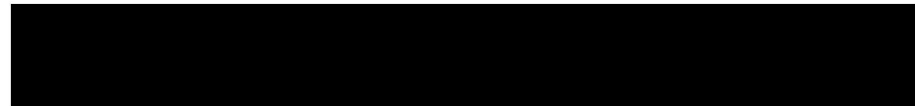
If you or your staff have any further questions regarding our support for the project, please feel free to contact me.

Sincerely,



DR Implementation Services BAFO

Jun-3-2021

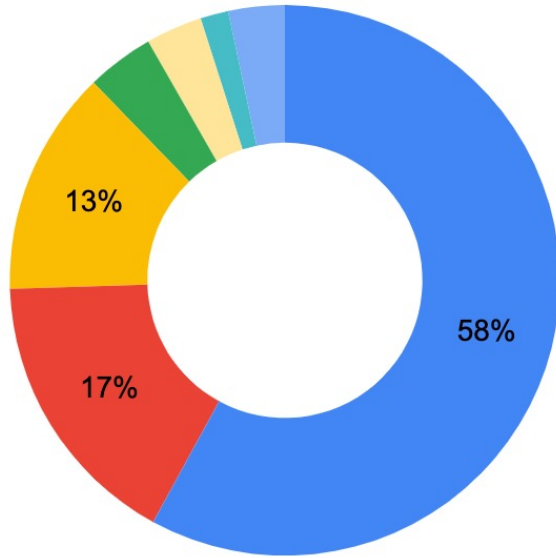


Outline

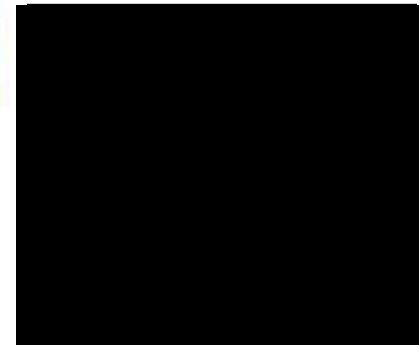
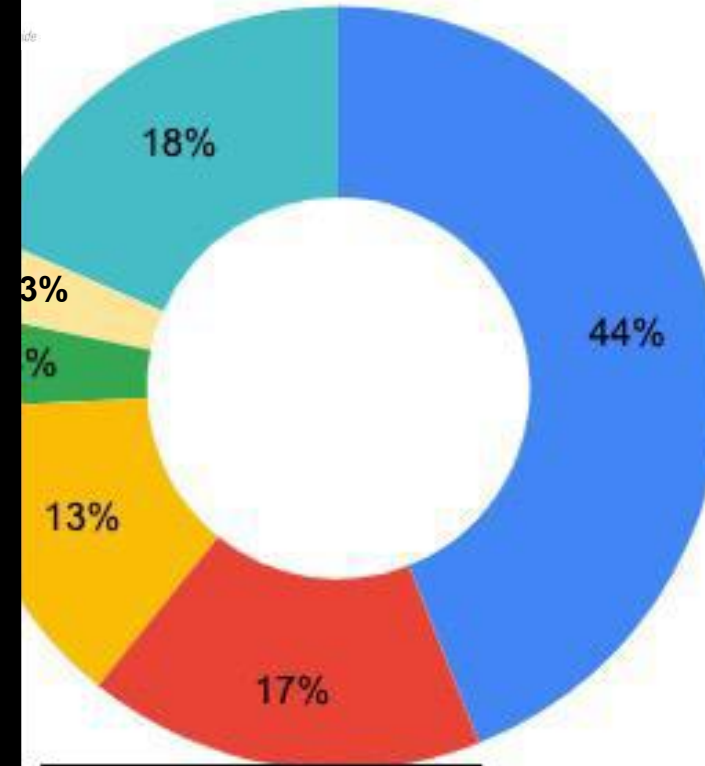
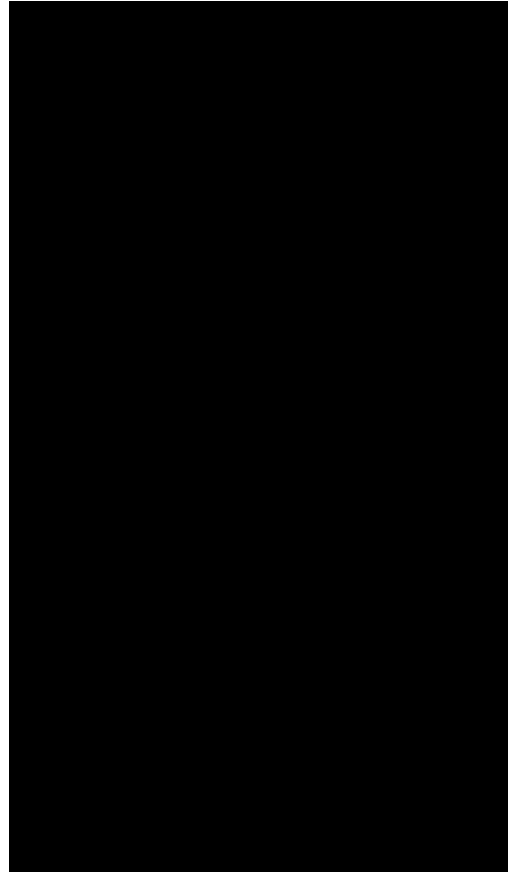
- **Revisions to Capacity Mix (Question 3)**
- **Revisions to Budget (Question 1)**
- **Trade Allies**
 - For Solar/Battery Installations (Questions 2 and 4)
 - For EV Charging (Question 5)
 - For Power Response Program (Question 7)
- **CAISO Market (Question 6)**

Program Modified to Increase C&I; Reduce Cost

6MW by Year 3



Previous offer of Capacity Mix



Changes Introduced to Reduce Budget by Over 10%

- Reduced the reliance on residential battery
 - Reduced per battery fee charge
 - Increased reliance on C&I demand response
-
- More advanced telemetry for CAISO trading
 - More details later in this presentation

New BAFO Budget

- Budget remains below \$1.2M per year
- Includes all recruitment costs
- Includes all customer incentives
- Includes all installation costs
 - Thermostats
 - Storage
 - Telemetry for CAISO
- Price assumptions as presented in the original response (pg. 45)

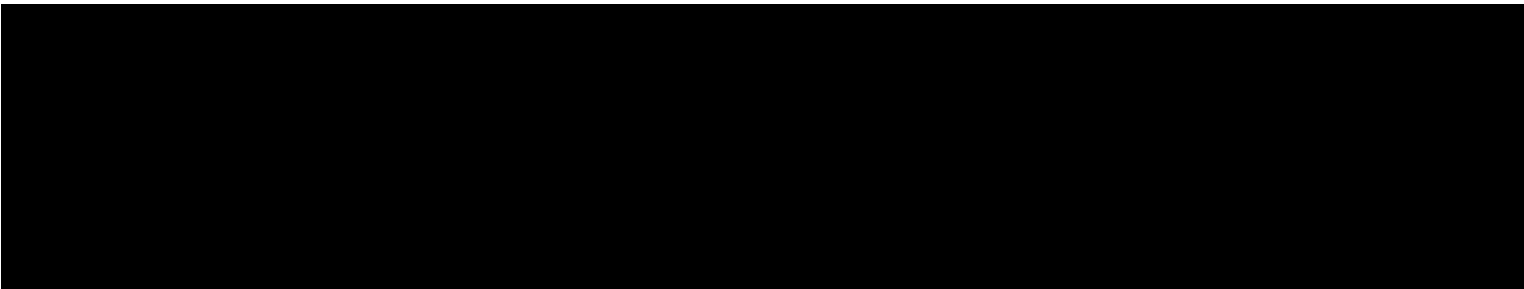
	2021	2022	2023
Marketing	\$100,000	\$75,000	\$0
Marketing AutoGrid	\$50,000	\$25,000	\$0
Marketing Sunnova	\$50,000	\$50,000	\$0
Implementation for Setup (one-time)	\$235,000	\$50,000	\$60,000
Implementation / Administration (ongoing)			
AutoGrid Fees			
Sunnova Fees			
ecobee Fees			
Nest Fees			
ChargePoint Fees			
Scheduling Coordinator Fees			
Customer Incentives (initial enrollment and subsequent)	\$172,500	\$347,375	\$285,250
to Sunnova customers			
to Nest customers			
to legacy ecobee customers			
to ChargePoint customers			
cost to purchase and install ecobee in apartments			
Incentive to C&I customers			
Total	\$790,300	\$1,048,500	\$1,065,800



Outline

- Revisions to Capacity Mix (Question 3)
- Revisions to Budget (Question 1)
- **Trade Allies**
 - For Solar/Battery Installations (Questions 2 and 4)
 - For EV Charging (Question 5)
 - For Power Response Program (Question 7)
- **CAISO Market (Question 6)**

Trade Ally – Sunnova

- Sunnova's fees include two components
 - Annual customer incentive of \$100
 - 
 - Sunnova will use these fees in reducing homeowner's financial barrier to entry
- Marketing of the program is included (no cost in year 3)
- Sunnova fees per battery (or per MW) are reducing each year. Since number of batteries are increasing, the cost is increasing.
 - The same is true for thermostat and EV charging partners

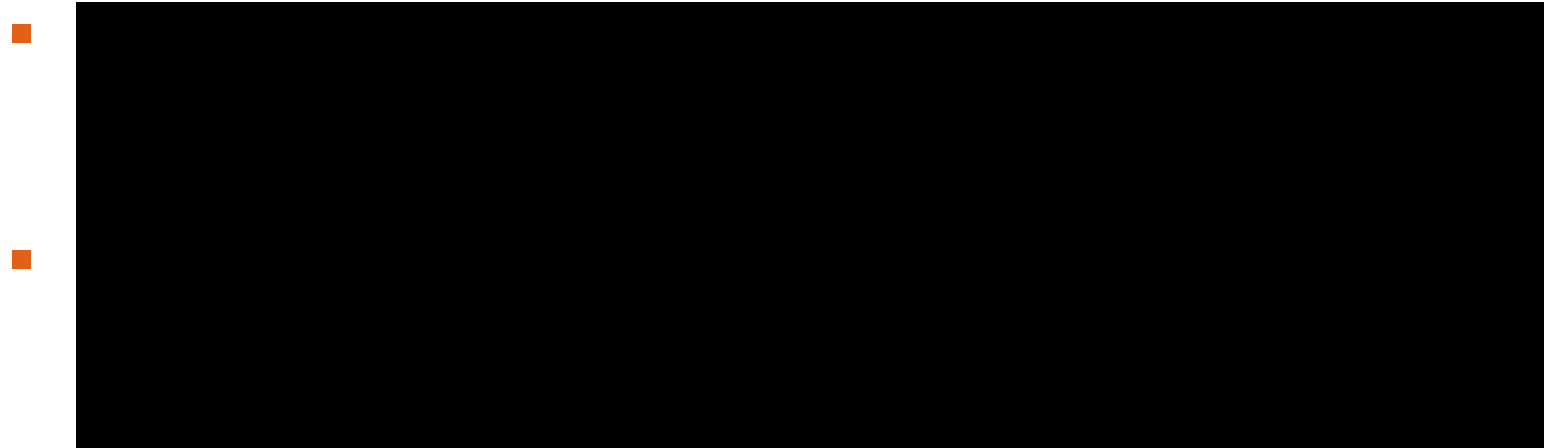
Other Trade Allies for Storage

- AutoGrid has the option to include the following trade allies
 - **Sunrun** – already integrated with AutoGrid
 - **SolarEdge** – Integrated with AutoGrid as of Jul-2021
 - **Schneider** residential solar – Integrated with AutoGrid as of Q3-2021
- All of the above allies have existing installations and installers in CPA
- Steps to incorporate SolarEdge
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- Incorporating Sunrun and Schneider
 - AutoGrid will discuss and devise a plan that would fit within the same per-battery budget already set
 - High likelihood steps would be very similar to SolarEdge
 - Note: Schneider is an investor and board member of AutoGrid

Trade Allies for EV Chargers

- In addition to ChargePoint, AutoGrid has partnership with Flo
 - Offering both residential and commercial chargers
- Flo and AutoGrid have
 - Technical integration
 - Already executed master services agreement
 - [REDACTED]

Home charger



Trade Allies for Power Response Program

Residential

Current OEMs uses thermostats and storage:

- Nest, ecobee, Honeywell, Sensi are fully integrated with AutoGrid already
- [REDACTED]
- Storage vendors as discussed earlier

Commercial

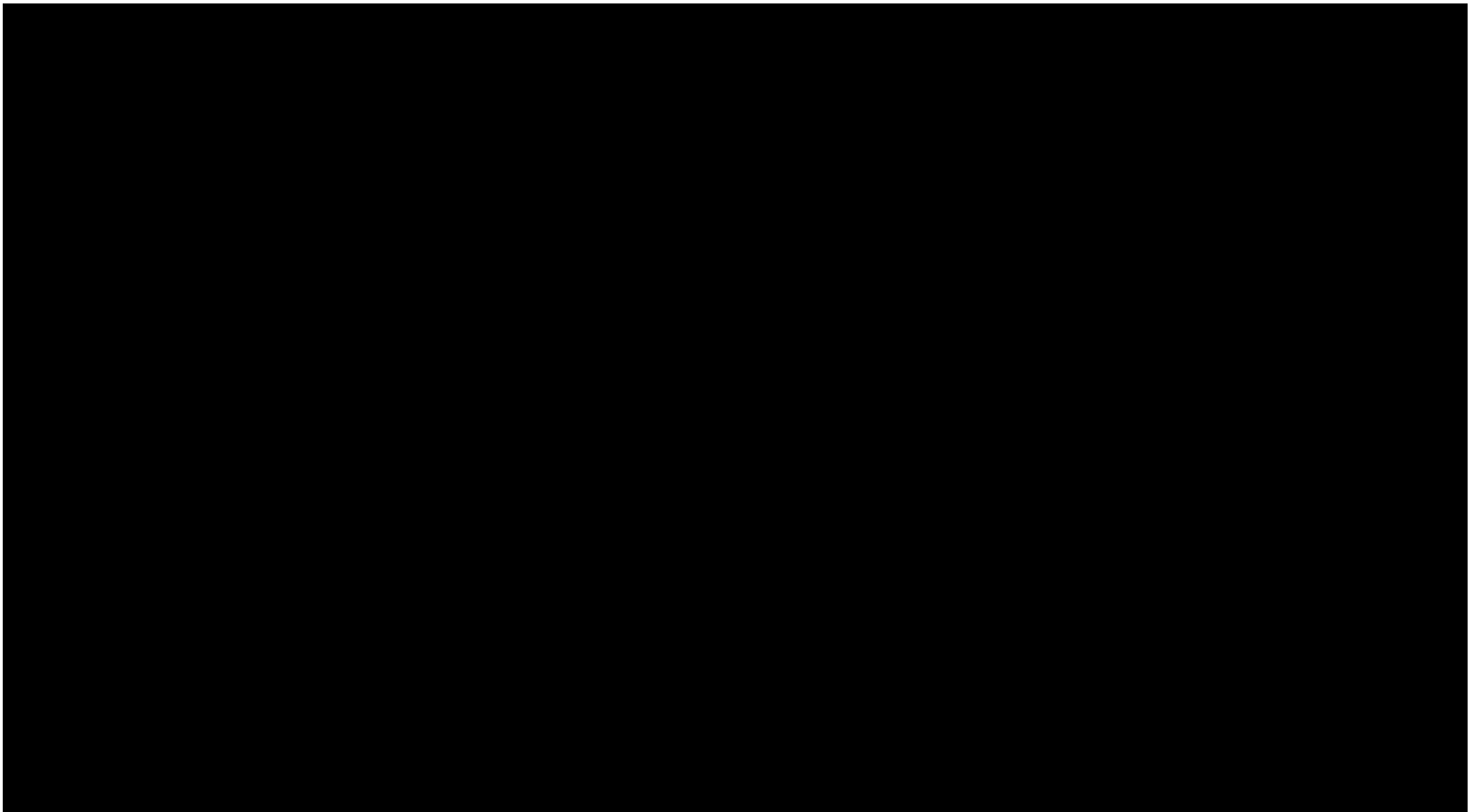
Current OEM program uses EV chargers and Storage:

- ChargePoint and AutoGrid have a long-standing relationship
- Technical integration available now
- Deployed with customers
- Other EV options as discussed earlier

Outline

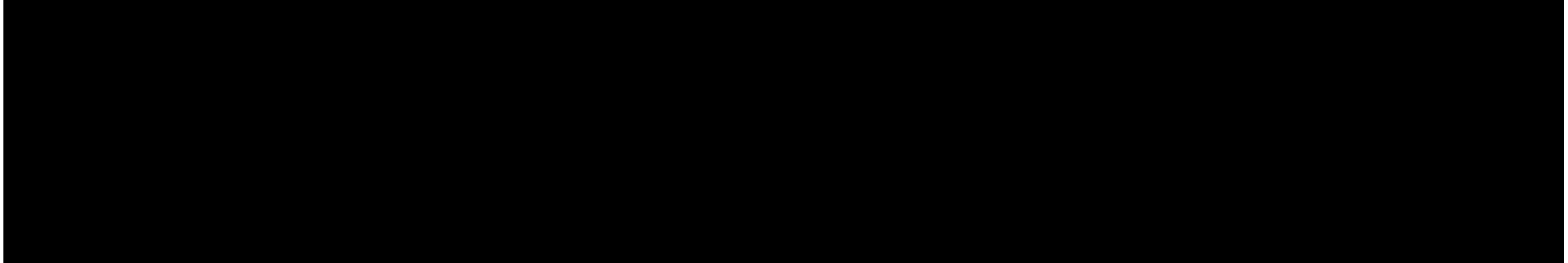
- Revisions to Capacity Mix (Question 3)
- Revisions to Budget (Question 1)
- Trade Allies
 - For Solar/Battery Installations (Questions 2 and 4)
 - For EV Charging (Question 5)
 - For Power Response Program (Question 7)
- **CAISO Market (Question 6)**

AutoGrid's Existing CAISO/SCE Setup (RIG)



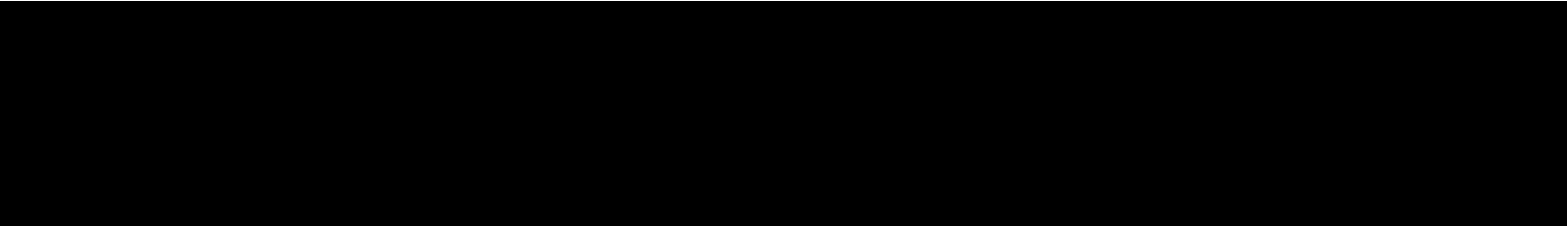
Trading Revenue to Reduce Wholesale Energy Costs

-



- Residential assets, PDRs, are designed to be dispatchable at critical/valuable periods as detailed previously (slide 28 in this presentation)

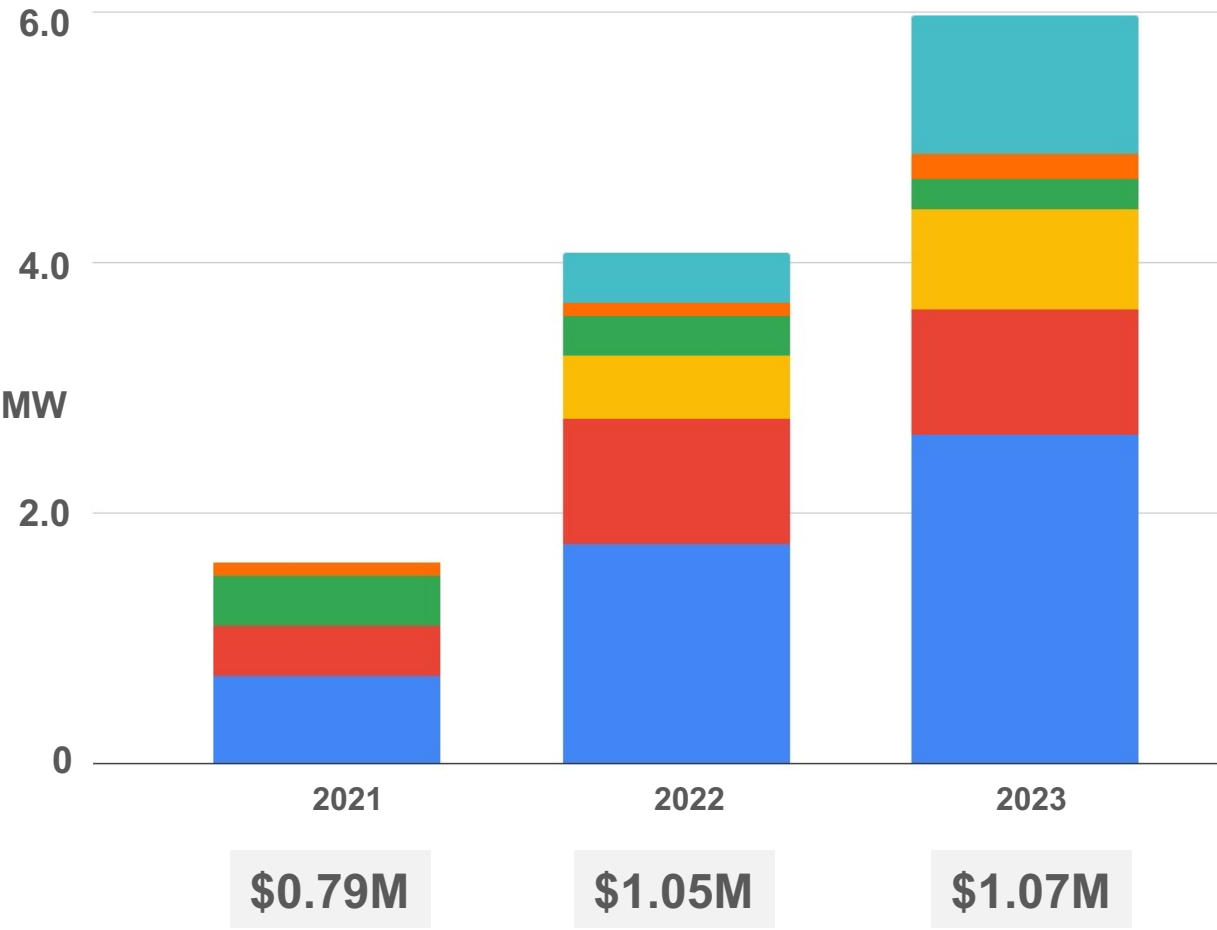
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-

- AutoGrid VPP optimizations maximize the value captured from ancillary and imbalance revenue streams using the PDRs (slide 33 in this presentation)

Summary of the Program



- C&I Program
- EV charging
- Thermostat
- Theremosta
- Thermostats
- BTM Storage

Customer Incentives (at signup + annual thereafter)

EXHIBIT E
INSTRUCTIONS TO AUTOGRID REGARDING SCHEDULING DUTIES AND
RESTRICTIONS IN CALIFORNIA

AutoGrid and its subsidiaries take seriously their legal and compliance obligations and maintain a risk policy manual that instructs AutoGrid and its subsidiary's traders as to what activities are allowable or not allowable due to either AutoGrid's and its subsidiaries' own internal policies or its external compliance obligations.

All AutoGrid and its subsidiary's traders with access to Confidential Information as defined above must follow all of the following directives immediately upon commencement of service to CPA:

- AutoGrid and its subsidiary has begun providing distributed energy services, including the scheduling of demand response capacity into the California Independent Systems Operator's system, on behalf of CPA. AutoGrid and its subsidiary's traders are to treat CPA as a valued customer.
- AutoGrid and its subsidiary's traders will respect the confidentiality of the Confidential Information.
- AutoGrid and subsidiary traders shall not use any Confidential Information to either support transactions with Third Parties, to manage the resources of other customers, or to benefit AutoGrid's and subsidiary's own trading portfolio.
- This directive will be added as an operational control limit to AutoGrid's risk policy, and therefore is subject to the same requirements as the AutoGrid risk policy.

Any failure by a trader or other AutoGrid or its subsidiary's personnel to follow the requirements stated in AutoGrid's risk policy manual, which includes the directives in this Exhibit E, may be cause for disciplinary action by AutoGrid management, which may include written reprimands, docking of wages, loss of trader bonus eligibility, suspension, and/or termination of employment.

Traders who have questions about the applications of these instructions should contact their supervisor.

Item 8

CPA Power Response

September 2, 2021

Power Response

1. Pilot Program History
2. Program Pillars
3. Current State
4. Scaling Power Response
5. Lessons Learned
6. Implementation services RFP
7. Selection Process
8. AutoGrid
9. Timeline and Next Steps

Action Requested:

Authorize agreement for Demand Response Implementation Services with AutoGrid

Program History

- In October 2019, the CPA Board approved a service agreement with Calpine and Olivine, Inc. for the implementation of a 12-18 month DER demand response pilot program (Power Response)
 - DERs are local, geographically dispersed energy resources or technologies that enable customers to increase, shift or reduce load during certain times of the day. Load reductions from DERs can be aggregated and sold as a resource in the CAISO market
- The pilot program launched in February of 2020 for customer enrollment
- The Board received a comprehensive update on the Power Response program in November 2020
- Staff has completed negotiations to bring on a new implementor and seeks Approval to execute the Demand Response Implementation Services Agreement

Power Response Program Pillars

	<u>Description</u>	<u>Target Segment</u>
EV Charging	Pays customers to allow CPA to reduce EV charging levels during events	Commercial & Municipal
Solar + Storage	Pays customers with onsite solar and battery to discharge batteries during events and help CPA shift load	Commercial & Residential
Smart Thermostat	Pays customers who manually reduce their A/C load during events or allow CPA to control smart thermostats remotely	Residential

All three pillar have specific low-income/DAC sub-targets

Current State

- Pilot program is scheduled to end in November 2021
- Steady enrollment growth has occurred throughout 2021 in the residential smart thermostat segment of the program. Current enrollment numbers:
 - Residential: 618 (83 located in DACs)
 - Commercial: 3
- CPA made its first successful CAISO market bid of aggregated program load reduction on May 11, 2021, and continues to earn revenues from the five monthly demand response “events” allowed under the program
- Revenues from CAISO help offset program costs, making Demand Response a win-win for CPA and its customers
- The program is also activated during CAISO Flex Alert and Grid Alert events to help with grid reliability and reducing demand from dirty supply resources

Lessons Learned

- Customer acquisition challenges have been significant during the pilot, especially for commercial
 - Access to information regarding existing installed customer DER technology is limited, making targeted outreach challenging
 - Customers with previously installed technologies were less likely to participate in Demand Response by adding to existing agreements
 - Negotiating trade ally partnerships on an ad hoc basis was complicated and inefficient
- Direct Device Control through technology relationships with trade allies is key to maximizing program performance, rather than relying solely on behavioral response

Scaling Power Response

- Demand Response is an important tool to realize CPA's policy/procurement/program objectives identified in the Local Program Plan
- Robust Demand Response programs can help contribute to grid resiliency and reliability
- Power Response can continue to leverage and build upon existing DER market activity by working with a program implementer and a trade ally* network to more efficiently reach our customer acquisition goals at the point of installation
- Trade allies have experience targeting multifamily buildings and pilot program for that building type is included in the proposed agreement

*Trade ally refers to industry partners such as DER installers and vendors that can help deliver CPA programs to customers in course of their existing activities

Initial Trade Allies

 sunnova

 -chargepoint+

 AutoGrid

 ecobee

 Nest

Goals and Metrics

- AutoGrid will be working to enroll 10,025 residential customers, as well as additional Behavioral Demand Response, and Commercial & Industrial program participants
- Metrics for success will include tracking to the 6 MW target, program participant acceptance rates, and spending per resource
- Achieve procurement goals including DR wholesale market participation, avoid RA and wholesale market purchases, and earn revenue from bidding event capacity into wholesale market

Implementation Services RFP

- CPA released an RFP in April 2021 seeking a partnership with a Demand Response implementer to scale the Power Response program.
- RFP required that implementer must have experience developing networks of trade allies for direct device control and customer acquisition
- In the RFP CPA asked for an implementer to significantly scale up the capacity of the program to 6MW of aggregated demand response over 2.5 years. The proposal also required:
 - Residential and commercial opportunities to participate
 - \$1.2 million maximum budget per year, inclusive of customer incentives.
 - 1 MW must be attributed to customers living or located in DACs or taking service on CARE

Selection Process

- CPA received 5 proposals to the RFP. Staff selection committee conducted interviews with 4 of the 5 proposers.
- Based on interviews, cost, and the quality of the proposal, staff elected to enter into negotiations with AutoGrid.
- Feedback from Community Advisory Committee on 8-19-21:
 - Particular customer segment targeting
 - Emerging technologies we should contemplate in further expansion
 - Communicating the benefits of demand response beyond financial savings

AutoGrid

Established in 2011, AutoGrid offers a powerful suite of proprietary DER management software that allows them to optimize and dispatch flexible capacity from DERs in real time. They bring technology partnerships with trade allies that have deep market reach in CPA's territory to drive customer acquisition, as well as experience delivering flexible capacity at scale. They have implemented DER flex capacity programs for major national utilities and are bringing a network of trade allies to augment implementation of the next phase of Power Response.

Timeline and Next Steps

- Staff is requesting the Board to approve and authorize the execution of the Demand Response Implementation Services Agreement with AutoGrid.
- Upon execution of the agreement, pre-launch activities will commence, including transitioning of existing pilot participants and program implementation planning.

Staff Report – Agenda Item 9

To: Board of Directors

From: David McNeil, Chief Financial Officer

Approved By: Ted Bardacke, Executive Director

Subject: Adopt Resolution No. 21-09-018 Authorizing and Approving Entry into A Revolving Credit Agreement and Fee Agreement (“Agreements”) with JPMorgan Chase Bank, Terminating Credit Agreement and Related Documents with River City Bank, and Delegating Authority to CPA Authorized Representatives to Execute and Deliver the Agreements

Date: September 2, 2021

RECOMMENDATION

Adopt Resolution No. 21-09-018 Authorizing and Approving Entry into a Revolving Credit Agreement, Fee Agreement and Other Related Documents (“JPM Agreements”) with JPMorgan Chase Bank (JPM), Terminating Credit Agreement with River City Bank, and Delegating Authority to CPA Authorized Representatives to Execute and Deliver Such Agreements or Documents

CPA’s Finance Committee discussed the terms of proposed JPM Agreements at its August 25, 2021 meeting and expressed consensus support for moving the item to the full Board for consideration.

BACKGROUND

CPA uses a bank credit facility to provide letters of credit and to borrow funds to provide working capital. Maintaining a credit facility is important to meet the following objectives:

- Demonstrate financial strength to market participants
- Provide additional liquidity and support the days liquidity on hand target described in CPA’s Reserve Policy
- Support an eventual investment grade credit rating

In the spring of 2018 CPA undertook a request for proposal (RFP) process to select a bank to provide a credit facility and commercial banking relationship. River City Bank was selected from among respondents to the RFP and in May 2018 CPA's Board of Directors approved Credit Agreements (Original RCB Agreements) of up to \$31 million with River City Bank, of which \$20 million was made available in August 2018. The Original Agreements were renewed by the Board on April 4, 2019 for a two-year term expiring on March 31, 2021 (Expired RCB Agreements), the amount of the credit facility was increased to \$37 million and various fees were reduced. On April 1, 2021 the Board approved amended and restated credit agreements with RCB (Current RCB Agreements) in an amount of \$37 million for a one year term expiring March 31, 2022.

Following discussions with the Finance Committee in February, staff explored obtaining a larger credit facility to meet the objectives outlined above. Staff contacted Barclay's, RCB, and JPM, the three main providers of credit facilities to CCAs in California, about increasing its credit facility and negotiated terms of the proposed JPM Agreements.

A comparison of the JPM Agreements and Current RCB Agreements is presented in the following table:

	Current RCB Agreements	JPM Agreements
Amount	\$37 million	\$80 million
Expiry	3/31/2022	10/31/2023
Term	12 months	26 months
Borrowing Rate (1)	1.60%	1.90%
Letter of Credit Fee	1.5% per annum	1.65% per annum
Loan Fee	.15% of Amount	None
Non utilization fee	.1% of unused Amount	.45% of unused Amount
Annual cost before borrowing and LC Fees	\$92,500	\$360,000

The total estimated annual cost of the JPM Agreements is \$390,000 including interest and LC fees. The JPM Agreements include a one-time fee for legal services of \$37,500. Early termination of the Current RCB Agreements requires the one-time payment of the remaining non utilization fee, estimated to be \$20,000.

DISCUSSION

Staff recommends the proposed JPM Agreements for the following reasons:

- \$43 million increase in the size of the facility will add 21 days to the Days Cash on Hand ratio as described in CPA's Reserve Policy. CPA had 46 Days Cash on Hand as of March 31, 2021
- JP Morgan is investment grade rated (S&P A+, Moody's AA2). This rating is important as CPA seeks to get its own investment grade credit rating
- JPM has experience with CCAs and the California energy markets. JP Morgan currently provide credit facilities for Marin Clean Energy and San Francisco Public Utilities Commission, which runs San Francisco's CCA, Clean Power SF
- The increased credit facility will improve perception of CPA's financial strength by market participants, thereby lower energy costs
- The proposed agreements have an "adverse material" clause, which must be revised in order to support an investment grade credit rating for CPA. However, JP Morgan has agreed to revisit the provision once CPA receives feedback from credit rating agencies, likely in Q3 2022

There are no fees or penalties for early termination of the agreements after the midpoint of the proposed term (September 2022), providing CPA with more flexibility to negotiate new terms as needed.

Staff considered different loan facility amounts. The \$80 million loan facility amount was selected taking into consideration expected days liquidity on hand needs for an investment grade credit rating and "stress case" liquidity needs for CPA. S&P's rating methodology for US Municipal Electric and Gas Utilities states that 45-90 days liquidity is considered "adequate" and 90-15 days liquidity on hand is considered "strong". In determining stress cases, CPA considered multiples of CAISO payments that were

required during the heat waves of August and September 2020 and continued deterioration of customer payment behavior.

Staff considered delaying the start date of the JPM Agreements to a point in time nearer to the expiration of the Current RCB Agreements. Staff believe that it is prudent to move forward at this time as market conditions and banks' willingness to lend can change. Staff also believes that approving the JPM Agreements at this time will improve responses to CPA's 2021 long term renewable energy, storage and reliability Request for Offer(s) planned for later this fall.

FISCAL IMPACT

Total FY 2021/22 interest expense associated with the proposed JPM Agreements including interest and banking fees is \$390,000, higher than the \$287,000 than is currently budgeted. Staff plans to include interest costs associated with the proposed Agreement in a Budget Amendment that is traditionally presented to the Board for approval in the second half of the fiscal year. \$37,500 of legal fees associated with the JPM Agreements are included in the FY 2021/22 Budget.

ATTACHMENTS

1. [Resolution No. 21-09-018](#)
2. [Proposed Revolving Credit Agreement with JPMorgan Chase Bank](#)
3. [Proposed Fee Agreement with JPMorgan Chase Bank](#)
4. [Proposed Payoff and Termination Letter with River City Bank](#)
5. [Credit Agreement Presentation](#)

RESOLUTION NO. 21-09-018

RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (CLEAN POWER ALLIANCE) AUTHORIZING AND APPROVING ENTRY INTO A REVOLVING CREDIT AGREEMENT AND FEE AGREEMENT RELATED THERETO WITH JPMORGAN CHASE BANK, N.A. AND TERMINATION OF EXISTING CREDIT AGREEMENT AND RELATED DOCUMENTS WITH RIVER CITY BANK, AND DELEGATING AUTHORITY TO THE CLEAN POWER ALLIANCE AUTHORIZED REPRESENTATIVES TO EXECUTE AND DELIVER SUCH AGREEMENTS AND OTHER DOCUMENTS RELATED THERETO

THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, Clean Power Alliance of Southern California (formerly known as Los Angeles Community Choice Energy Authority) ("**Clean Power Alliance**") was formed on June 27, 2017 under the provisions of the Joint Exercise Powers Act of the State of California, Government Code section 6500 *et seq.*;

WHEREAS, Clean Power Alliance is duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California, is duly authorized to transact business, having obtained all necessary filings, governmental licenses and approvals in the State of California, and has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage;

WHEREAS, Clean Power Alliance maintains an office at 801 S. Grand Ave., Suite 400, Los Angeles, CA 90017, and this is the principal office at which it keeps its books and records;

WHEREAS, Clean Power Alliance and River City Bank previously entered into that certain Credit Agreement, including certain amendments thereto (the "**River City Credit Agreement**") and certain other related documents and agreements;

WHEREAS, the Board wishes to authorize and approve (a) the payoff by Clean Power Alliance of all amounts due under the River City Credit Agreement and the termination thereof as provided in a Payoff and Termination Letter (the "**River City Termination Letter**") from Clean Power Alliance to River City Bank, provided, however, that the Board further authorizes the Authorized Representatives, or any one of them, to elect to maintain outstanding the letter of credit issued by River City Bank in favor of Southern California Edison and to cash collateralize Clean Power Alliance's reimbursement obligations thereunder, and (b) the entry into by Clean Power Alliance of (i) a Revolving Credit Agreement (the "**JPM Credit Agreement**") with JPMorgan Chase Bank, N.A. (the "**Lender**") and (ii) a Fee Agreement with the Lender related thereto (the "**JPM Fee Agreement**") and, together with the JPM Credit Agreement, together, the "**JPM**

Agreements”), and to authorize the Authorized Representatives, specified below, to execute and deliver the River City Termination Letter and the JPM Agreements in substantially the forms presented to this Board, with such modifications as the Authorized Representatives shall approve as in the best interest of Clean Power Alliance;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED AS FOLLOWS:

- (1) **AUTHORIZED REPRESENTATIVES.** The following named individuals are the authorized representatives of Clean Power Alliance with the respective titles specified below (collectively referred to as “**Authorized Representatives**” and individually referred to as an “**Authorized Representative**”):

<u>NAMES</u>	<u>TITLES</u>
Diana Mahmud	Chair of the Board
Ted Bardacke	Executive Director
David McNeil	Chief Financial Officer
Nancy Whang	General Counsel

- (2) **ACTIONS AUTHORIZED.** Any one (1) of the Authorized Representatives are authorized and approved to execute and deliver the JPM Agreements and the River City Termination Letter, in substantially the forms presented in this meeting, with such modifications thereto as the Authorized Representative shall approve as in the best interest of Clean Power Alliance, such approval to be conclusively evidenced by the Authorized Representative’s execution and delivery thereof, and those JPM Agreements and River City Termination Letter will bind the Clean Power Alliance. The JPM Agreements and River City Termination Letter are incorporated herein by reference.

- (3) **FURTHER ACTIONS AUTHORIZED RELATING TO THE JPM AGREEMENTS.** Each of the Authorized Representatives is further authorized, approved, empowered, and directed to do any of the following for and on behalf of the Clean Power Alliance with respect to the JPM Agreements:

- (a) **Borrow Money.** To borrow and authorize advances, letters of credit and other lending accommodations from time to time from Lender under the JPM Credit Agreement, such sum or sums of money as in its judgment should be borrowed for the permitted purposes set forth in the JPM Credit Agreement, in the aggregate principal amount not to exceed \$80,000,000.
- (b) **Execute Notes and Other Documents.** To enter into, execute and deliver, in the name and on behalf of Clean Power Alliance, any promissory note or notes, letter of credit applications, borrowing requests, or other evidence of the Clean Power Alliance’s credit accommodations under the JPM Credit Agreement, in form and substance acceptable to Lender, at such rates of interest, not to exceed the maximum rate allowed by law, and on such terms

as are set forth in the JPM Credit Agreement, evidencing the sums of money so borrowed or any of the Clean Power Alliance's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, amendments, modifications, amendments and restatements, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

- (c) **Execute Financing Statements.** To execute and deliver to Lender any financing statements and other documents which Lender may require and which shall evidence the terms and conditions under and pursuant to which the lien on Net Revenues is given.
 - (d) **Further Acts.** In the case of the JPM Credit Agreement, to designate additional or alternate individuals as being authorized to request advances thereunder, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution relating to the JPM Agreements.
- (4) **FURTHER ACTIONS AUTHORIZED RELATING TO THE TERMINATION OF THE RIVER CITY CREDIT AGREEMENT.** Each of the Authorized Representatives is further authorized, approved, empowered, and directed to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution relating to the payoff and termination of the River City Credit Agreement and related documents.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Authorized Representatives are duly elected, appointed, or employed by or for the Clean Power Alliance, as the case may be. This Resolution now stands of record on the books of the Clean Power Alliance, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address set forth in the JPM Agreements. Any such notice shall not affect any of the Clean Power Alliance's agreements or commitments in effect at the time notice is given.

IT IS FURTHER DETERMINED AND ORDERED that this Resolution shall take effect upon its passage.

ADOPTED AND APPROVED this _____ day of _____ 2021.

Diana Mahmud, Chair

ATTEST:

Gabriela Monzon, Secretary

REVOLVING CREDIT AGREEMENT

Dated as of September 2, 2021

by and between

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,
as Borrower

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
as Lender

TABLE OF CONTENTS

SECTION	HEADING	PAGE
ARTICLE 1	DEFINITIONS	1
Section 1.1.	Definitions.....	1
Section 1.2.	Terms Generally.....	21
Section 1.3.	Accounting Terms; GAAP.....	22
Section 1.4.	Interest Rates; LIBOR Notification	22
ARTICLE 2	THE CREDITS	23
Section 2.1.	Commitments.....	23
Section 2.2.	Loans and Borrowings	23
Section 2.3.	Requests for Revolving Borrowings	23
Section 2.4.	Letters of Credit	24
Section 2.5.	Interest Elections.....	27
Section 2.6.	Termination and Reduction of Commitment	28
Section 2.7.	Repayment of Loans; Evidence of Debt	28
Section 2.8.	Prepayment of Loans	29
Section 2.9.	Fees	29
Section 2.10.	Interest.....	29
Section 2.11.	Alternate Rate of Interest; Illegality	31
Section 2.12.	Increased Costs	33
Section 2.13.	Break Funding Payments	34
Section 2.14.	Payments Free of Taxes	34
Section 2.15.	Payments Generally	35
Section 2.16.	Mitigation Obligation.....	36
Section 2.17.	Extension of Maturity Date.....	36
Section 2.18.	Pledge; Security of Obligations	36
ARTICLE 3	CONDITIONS.....	37
Section 3.1.	Conditions Precedent to Effectiveness.....	37
Section 3.2.	Conditions Precedent to each Credit Event	38
ARTICLE 4	REPRESENTATIONS AND WARRANTIES.....	39
Section 4.1.	Organization, Powers, Etc.....	39
Section 4.2.	Authorization, Absence of Conflicts, Etc	40
Section 4.3.	Binding Obligations.....	40
Section 4.4.	Governmental Consent or Approval	40
Section 4.5.	Absence of Material Litigation	40
Section 4.6.	Financial Condition.....	41
Section 4.7.	Incorporation of Representations and Warranties.....	41
Section 4.8.	Accuracy and Completeness of Information.....	41
Section 4.9.	No Default.....	41

Section 4.10.	No Proposed Legal Changes.....	41
Section 4.11.	Compliance with Laws, Etc.....	41
Section 4.12.	Environmental Matters.....	42
Section 4.13.	Regulation U.....	42
Section 4.14.	Liens.....	42
Section 4.15.	Sovereign Immunity.....	42
Section 4.16.	Usury.....	42
Section 4.17.	Insurance.....	42
Section 4.18.	ERISA.....	42
Section 4.19.	Sanctions Concerns and Anti-Corruption Laws.....	43
Section 4.20.	Secured Debt.....	43
ARTICLE 5	COVENANTS.....	43
Section 5.1.	Affirmative Covenants.....	43
Section 5.2.	Negative Covenants.....	49
ARTICLE 6	DEFAULTS.....	53
Section 6.1.	Events of Default and Remedies.....	53
Section 6.2.	Remedies.....	55
ARTICLE 7	MISCELLANEOUS.....	56
Section 7.1.	Amendments, Waivers, Etc.....	56
Section 7.2.	Notices.....	56
Section 7.3.	Survival of Covenants; Successors and Assigns.....	57
Section 7.4.	No Recourse Against Members.....	58
Section 7.5.	Liability of Lender; Indemnification.....	58
Section 7.6.	Expenses.....	59
Section 7.7.	No Waiver; Conflict.....	59
Section 7.8.	Modification, Amendment Waiver, Etc.....	59
Section 7.9.	Dealings.....	59
Section 7.10.	Severability.....	60
Section 7.11.	Counterparts; Integration; Effectiveness; Electronic Execution.....	60
Section 7.12.	Table of Contents; Headings.....	61
Section 7.13.	Entire Agreement.....	61
Section 7.14.	Governing Law Waiver of Jury Trial.....	61
Section 7.15.	Government Regulations.....	62
Section 7.16.	USA PATRIOT Act.....	62
Section 7.17.	Electronic Transmissions.....	62
Section 7.18.	Assignment to Federal Reserve Bank.....	62
Section 7.19.	Arm's Length Transaction.....	63

EXHIBITS

Exhibit A	—	Form of Opinion of Chapman and Cutler LLP
Exhibit B	—	Form of Compliance Certificate
Exhibit C	—	Form of Borrowing Request
Exhibit D-1	—	Form of Letter of Credit Request
Exhibit D-2	—	Form of Continuing Agreement for Commercial and Standby Letters of Credit
Exhibit E	—	Account Control Agreement
Exhibit F	—	Intercreditor and Collateral Agency Agreement
Exhibit G	—	Security Agreement

REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT, dated as of September __, 2021 (together with all amendments and supplements hereafter, this “*Agreement*”) is by and between CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (together with its successors and assigns, “*Borrower*” or “*CPA*”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the “*Lender*”).

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Borrower and the Lender agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

“*Account Control Agreement*” means the Account Control Agreement, dated as of April 16, 2018, entered into by and among (i) River City Bank, a California corporation, (ii) CPA and (iii) River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent, as amended and supplemented in accordance with the terms hereof, a copy of which is attached hereto as Exhibit E.

“*Act*” means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq.

“*Adjusted LIBO Rate*” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

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

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Annual Debt Service*” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including LC Facility Fees and Undrawn Fees) due and payable on the Loans, other Secured Debt and Unsecured Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) the quotient obtained by dividing the

average daily outstanding principal balance of the Loans, other Secured Debt and Unsecured Debt during such Fiscal Year or other designated four fiscal quarter period by 5.

“Annual Financial Statements” means, with respect to any completed Fiscal Year of the Borrower, the Financial Statements for such Fiscal Year.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“Applicable Margin” has the meaning set forth in the Fee Agreement.

“Authorized Representative” means an “Authorized Representative” as defined in the Resolution, and any other individual designated from time to time as an “Authorized Representative” in a certificate executed by the Borrower and delivered to the Lender.

“Availability” means, as of any date of determination, the Commitment minus the Revolving Credit Exposure, in each case as determined on such date.

“Availability Period” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (f) of Section 2.11.

“Bank Agreement” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to (x) make or provide funds to make payment of, or to purchase or provide credit or liquidity enhancement for, bonds or notes of the Borrower or (y) extend credit to the Borrower.

“Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.5% per annum, and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.0%; *provided* that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Base Rate due to a

change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the LIBO Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 hereof (for the avoidance of doubt, only until any amendment has become effective pursuant to Section 2.11(b)), then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than one percent (1.0%), such rate shall be deemed to be one percent (1.0%) for purposes of this Agreement.

“*Base Rate Borrowing*”, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest at a rate determined by reference to the Base Rate.

“*Basic Documents*” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto, (b) the Fee Agreement, and (c) and any other documents executed and delivered by Borrower in connection with this Agreement or the Fee Agreement, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“*Benchmark*” means, initially, LIBO Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBO Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) or clause (c) of Section 2.11.

“*Benchmark Replacement*” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Lender and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion; provided further that, notwithstanding anything to the contrary

in this Agreement or in any other Basic Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).

If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Basic Documents.

“*Benchmark Replacement Adjustment*” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Lender:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for dollar-denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Lender in its reasonable discretion.

“*Benchmark Replacement Conforming Changes*” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the

definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Lender decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Lender that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Basic Documents).

“*Benchmark Replacement Date*” means the earliest to occur of the following events with respect to the then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Borrower pursuant to Section 2.11(c); or

(4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Borrower.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Unavailability Period*” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.11 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.11.

“*Board*” means the Board of Directors of the Borrower.

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Borrowing*” means the making, conversion or continuation of a Loan.

“*Borrowing Request*” means a request by the Borrower for a Borrowing in accordance with Section 2.3 and in the form of Exhibit C hereto.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or the City of Los Angeles are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“*Cash and Cash Equivalents*” means, as of any date of determination, the Borrower’s cash on hand (other than Restricted Cash and other than borrowing availability under this Agreement), demand deposits and any of the following short-term investments, in each case as of such date: (a)

readily marketable obligations issued or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof; (b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 90 days from the date of acquisition thereof; (c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's Investors Service, Inc. or at least "A-1" (or the then equivalent grade) by Standard & Poor's Financial Services LLC, in each case with maturities of not more than 90 days from the date of acquisition thereof; (d) investments, classified in accordance with GAAP as current assets of the Borrower in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's Investors Service, Inc. or Standard & Poor's Financial Services LLC, and the portfolios of which are limited solely to investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition; and (e) investments in the Local Agency Investment Fund established pursuant to Section 16429.1 of the California Government Code and maintained by the Treasurer of the State of California.

"Cash Collateral Loan" means a Loan (or a portion of a Loan) the proceeds of which are deposited with a Person other than the Borrower in order to secure the Borrower's payment obligations under one or more PPAs or to make a termination payment under one or more PPAs.

"Change in Law" means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by the Lender (or, for purposes of Section 2.12(b), by any lending office of the Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Closing Date" means the first date on which the conditions precedent set forth in Section 3.1 hereof are satisfied and/or waived in writing by the Lender.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“Commitment” means the commitment of the Lender to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of the Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.6. The initial amount of the Commitment is \$80,000,000.

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, “Controlling” and “Controlled” have meanings correlative thereto.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“County of Los Angeles Funding Agreement” means that certain Funding Agreement between the County of Los Angeles and the Clean Power Alliance of Southern California entered into on August __, 2021.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which may include a lookback) being established by the Lender in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Lender decides that any such convention is not administratively feasible for the Lender, then the Lender may establish another convention in its reasonable discretion.

“Days Liquidity on Hand” means, as of any date of determination, the quotient, in number of days, obtained by dividing (i) sum of the Cash and Cash Equivalents and Availability on such date of determination by (ii) the product of (A) the sum of Operating Expenses and Interest Expense for the four consecutive fiscal quarter period ended immediately prior to such date of determination and (B) 1/365.

“Debt” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Agreement and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement,

liquidity facility or other instrument. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Debt Service Coverage Ratio” means, for any fiscal quarter of the Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter. The Debt Service Coverage Ratio shall be tested both on a rolling last four consecutive fiscal quarter basis and on a projected following four consecutive fiscal quarter basis, in each case as of the last day of each fiscal quarter.

“Debt Service Coverage Ratio Notice” has the meaning set forth in Section 5.1(q) hereof.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning set forth in the Fee Agreement.

“Direction Letter” has the meaning set forth in the Security Agreement.

“dollars” or *“\$”* refers to lawful money of the United States of America.

“EEI Master Agreement” means the EEI Master Power Purchase and Sale Agreement, version 2.1 (modified 4/25/00), created by the Edison Electric Institute and National Energy Marketers Association.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for the Borrower, and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Lender and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“Employee Plan” means an employee benefit plan covered by Title I of ERISA and maintained for employees of the Borrower.

“Enterprise” means the current operations of the Borrower related to the procurement of electric power for its customers from third parties, trading of energy and other electric power in the normal course of business, wholesale purchases and sales of energy, energy related programs including demand management, transportation and building electrification and energy efficiency, and related services and incentives to its customers, and shall include (i) all contractual rights to distribution, metering and billing services, energy procurement, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the purchase, generation, transmission or distribution of electric power, and (ii) facilities, properties and structures of the Borrower, wherever located. If Borrower acquires electric generating assets or is otherwise engaged in any business in addition to that described in the previous sentence, the term “Enterprise” shall include

all associated general plant facilities, works, properties and structures, wherever located and any associated contractual rights not otherwise included in the foregoing sentence.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“Eurodollar” when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan, or the Loan comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning set forth in Section 6.1 hereof.

“Excluded Taxes” means, with respect to the Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall set forth on NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, *provided* that if the Federal Funds Effective Rate as so determined would be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Fee Agreement” means the Fee Agreement of even date herewith between the Borrower and the Lender, as supplemented, amended, restated or otherwise modified from time to time.

“Financial Reserve Policy” means the Financial Reserve Policy (CPA 2019-09) of the Borrower, amended as of February 4, 2021, as further amended or modified to the extent permitted hereunder.

“Financial Statements” means, with respect to any completed fiscal period of the Borrower, the statements of net position of the Borrower at the last day of such fiscal period, the statements of revenues, expenses and changes in net position of the Borrower for such fiscal period, and the statements of cash flows of the Borrower for such fiscal period.

“Fiscal Stabilization Fund Policy” means the Fiscal Stabilization Fund Policy (CPA 2020-16) of the Borrower, as of September 3, 2020, as amended or modified to the extent permitted hereunder.

“Fiscal Year” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year, or such other twelve month period as may be determined by the Board as the Borrower’s fiscal year.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBO Rate.

“GAAP” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“Governmental Approval” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“Governmental Authority” means the government of the United States or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“Guarantees” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“Impacted Interest Period” has the meaning assigned to it in the definition of “LIBO Rate.”

“*Indemnified Taxes*” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“*Initial Borrowing*” means the initial Borrowing to be made under this Agreement on the Closing Date in the amount specified in the Borrowing Request provided by the Borrower on the Closing Date, the proceeds of which will be applied solely to pay amounts due to RCB under the RCB Credit Agreement as referenced in Section 3.1(i).

“*Intercreditor and Collateral Agency Agreement*” means the Intercreditor and Collateral Agency Agreement, dated as of April 16, 2018, entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely in its capacity as collateral agent, (ii) each of the creditors from time to time signatory thereto that are party to a Power Purchase Agreement (as defined in the Security Agreement), and (iii) CPA, as amended and supplemented in accordance with the terms hereof, a copy of which is attached hereto as Exhibit F.

“*Interest Election Request*” means a request by the Borrower to convert or continue a Revolving Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) in accordance with Section 2.5.

“*Interest Expense*” means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under capitalized leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower for such period.

“*Interest Payment Date*” means, (a) with respect to any Base Rate Loan, the first Business Day of the month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part.

“*Interest Period*” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Eurodollar Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months thereafter, as the Borrower may elect; *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“*Interpolated Rate*” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Lender (which determination shall be conclusive and binding absent manifest error) to be equal to

the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available that exceeds the Impacted Interest Period, in each case, at such time.

“Investment Policy” means the investment guidelines of the Borrower as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Joint Powers Agreement” means the Joint Powers Agreement of Borrower effective as of June 27, 2017, and as amended from time to time.

“Law” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“LC Collateral Account” has the meaning set forth in Section 2.4(h).

“LC Disbursement” means a payment made by the Lender pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

“Letter of Credit” means any letter of credit issued pursuant to a Letter of Credit Request provided by Borrower pursuant to this Agreement.

“Letter of Credit Fees” has the meaning set forth in the Fee Agreement.

“Letter of Credit Request” means a request by the Borrower for a Letter of Credit in accordance with Section 2.4(a) and in the form of Exhibit D-1 hereto.

“Lender” has the meaning set forth in the introductory paragraph hereof.

“Liabilities” mean all claims (including intraparty claims), actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

“*LIBO Rate*” means, with respect to any Eurodollar Borrowing for any applicable Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “*Impacted Interest Period*”) then the LIBO Rate shall be the Interpolated Rate.

“*LIBO Screen Rate*” means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate, for Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion, provided that if the LIBO Screen Rate as so determined would be less than zero basis points (0.00%), such rate shall be deemed to zero basis points (0.00%) for the purposes of this Agreement.

“*Lien*” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“*Loans*” means the loans made by the Lender to the Borrower pursuant to this Agreement, including, without limitation, Cash Collateral Loans, Working Capital Loans and Reimbursement Loans.

“*Lockbox Security Document(s)*” means, individually or collectively, as applicable, the Security Agreement, the Account Control Agreement, the Intercreditor and Collateral Agency Agreement and the Direction Letter.

“*Material Adverse Change*” means any material or adverse change in the business, operations, properties, assets, liability, condition (financial or otherwise) or prospects of the Borrower which, in the reasonable determination of the Lender, is reasonably likely to materially adversely affect Borrower’s ability to perform Borrower’s Obligations hereunder.

“*Material Adverse Effect*” means (a) a Material Adverse Change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower; (b) a material impairment of the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Obligations under this Agreement, any other Basic Document to which it is a party, or any Lockbox Security Agreement to which the Borrower is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement, any other Basic Document to which Borrower is a party, or any Lockbox Security Agreement to which the Borrower is a party.

“*Material Litigation*” shall have the meaning assigned to such term in Section 4.5.

“*Maturity Date*” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on October 31, 2023, or such later date to which the Maturity Date may be extended pursuant to Section 2.17 and, if any such date is not a Business Day, the next preceding Business Day.

“*Maximum Rate*” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“*Member*” or “*Members*” means, individually or collectively, as applicable, the public agencies that are, from time to time, party to the Joint Powers Agreement.

“*Net Revenues*” means, for any period and as of any date of determination, the amount obtained by subtracting Operating Costs from Revenues, in each case for such period as of such date. For the avoidance of doubt, “*Net Revenues*” does not include the “Collateral” (as defined in the Security Agreement).

“*NYFRB*” means the Federal Reserve Bank of New York.

“*NYFRB Rate*” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term “*NYFRB Rate*” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Lender from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*NYFRB’s Website*” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“*Obligations*” means all obligations of the Borrower to the Lender or any Participant or the Lender’s or any Participant’s Related Parties arising under or in relation to the Basic Documents, including all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees (including, without limitation, the Undrawn Fee and the LC Facility Fees) and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of the Borrower to the Lender or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Basic Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“Operating Costs” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs incurred by Borrower in connection with the operation and maintenance of the Enterprise, including the costs of Product purchased for resale to the Borrower’s customers pursuant to a PPA or, if applicable, generated by or from Property of Borrower, costs of transmission, distribution and fuel supply, all reasonable expenses of management and repair and other expenses necessary to maintain and preserve its Properties in good repair and working order, and all administrative costs of Borrower that are charged directly or apportioned to the Enterprise, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant, and including Borrower’s share of the foregoing types of costs of any electric generating properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor, interest charges including interest on Debt and principal repayment of Debt, amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature, and pass-through charges that are paid to or set aside for payment to third parties and which charges are not included as Revenues of the Enterprise. Operating Costs shall include all amounts required to be paid by Borrower under contracts for the purchase of Product.

“Other Connection Taxes” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Overnight Lender Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S. managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parity Debt” means any Secured Debt issued or incurred by the Borrower the payment of which and the security therefor is on parity with the Borrower’s payment Obligations and security therefor under this Agreement.

“Participant” has the meaning set forth in Section 7.3(b) hereof.

“Participation” has the meaning set forth in Section 7.3(b) hereof.

“*Person*” means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*PPA*” means an agreement for purchase of Product executed between the Borrower and a PPA Counterparty and includes (i) Power Purchase Agreements (as defined in the Security Agreement), (ii) EEI Master Agreements, and individual transaction confirmations executed under an EEI Master Agreement, and (iii) the WSPP Agreement.

“*PPA Counterparty*” means a party to a PPA other than the Borrower.

“*Prime Rate*” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Lender) or any similar release by the Federal Reserve Board (as determined by the Lender). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“*Product*” means any of the following: energy, renewable energy and renewable energy attributes, carbon free energy, capacity attributes, resource adequacy benefits, energy storage or any other similar or related products contemplated in the PPAs.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*Reference Time*” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBO Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not LIBO Rate, the time determined by the Lender in its reasonable discretion.

“*Reimbursement Loan*” has the meaning assigned to such term in Section 2.4(d).

“*Reimbursement Obligations*” means any and all obligations of the Borrower to reimburse the Lender for LC Disbursements under Letters of Credit and all obligations to repay the Lender for any Loan relating thereto, including in each instance all interest accrued thereon.

“*Related Parties*” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“*Relevant Governmental Body*” means the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB, or any successor thereto.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property is subject.

“Reserve” means, with respect to a policy established by the Borrower, the reserve(s) (if any) identified in such policy, and *“Reserves”* means any and all reserves established by the Borrower pursuant to any and all policies of the Borrower.

“Resolution” means Resolution No. 2021-09-018, adopted by the Board on _____, 2021.

“Restricted Cash” means, as of any date of determination, (a) cash and claims to cash that are restricted as to withdrawal or use for other than current operations, that are designated for disbursement in the acquisition or construction of noncurrent assets, or that are segregated for the liquidation of long-term debts; (b) receivables arising from unusual transactions (such as the sale of capital assets) that are not expected to be collected within 12 months; (c) cash surrender value of life insurance policies; (d) land and other natural resources; and (e) depreciable assets.

“Revenues” means, for any period, all revenues and charges received and accrued by the Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by Borrower from the Enterprise, together with income, earnings and profits therefrom, as determined in accordance with GAAP, for such period less the Borrower’s bad debt expense for such period.

“Revolving Borrowing” means a Loan hereunder other than a Reimbursement Loan.

“Revolving Credit Exposure” means, with respect to the Lender at any time, the sum of the outstanding principal amount of the Loans and its LC Exposure at such time.

“RCB” means River City Bank.

“RCB Credit Agreement” means that certain Amended and Restated Credit Agreement dated as of April 5, 2021 between RCB, as lender, and CPA, as borrower.

“Sanctioned Country” means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or

resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“*Sanctions*” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“*SCE Letter of Credit*” means that certain irrevocable standby letter of credit number SLCPPDX08099 issued by U.S. Bank National Association in favor of Southern California Edison Company in the initial stated amount of \$147,000 and expiring on December 7, 2021.

“*Secured Debt*” means all Debt of the Borrower other than Unsecured Debt.

“*Security Agreement*” means the Security Agreement, dated as of April 16, 2018, entered into by and among CPA, and River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent, for the benefit of each seller of Product (as defined in the Security Agreement) under a Power Purchase Agreement (as defined in the Security Agreement) that is made a party to the Intercreditor Agreement, and its respective successors and assigns, as amended and supplemented in accordance with the terms hereof, a copy of which is attached hereto as Exhibit G.

“*Senior Debt*” means any Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is senior to the payment in full in cash of the Borrower’s payment Obligations under this Agreement.

“*SOFR*” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“*SOFR Administrator*” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“*SOFR Administrator’s Website*” means the NYFRB’s Website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“*State*” means the State of California.

“*Statutory Reserve Rate*” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) established by the Federal Reserve Board to which the Lender is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “*Eurocurrency*”).

liabilities” in Regulation D). Such reserve percentage shall include those imposed pursuant to such Regulation D of the Federal Reserve Board. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Lender under Regulation D of the Federal Reserve Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“*Subordinate Debt*” means any unsecured Secured Debt issued or incurred by the Borrower, the payment of which is subordinate to the payment in full in cash of the Borrower’s payment Obligations under this Agreement and the payment in full of all Parity Debt.

“*Swap Agreement*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“*Swap Termination Value*” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements (if such Swap Agreements are required by GAAP to be marked-to-market), as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include the Lender or any Affiliate of the Lender).

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*2020 Audited Financial Statements*” means the Annual Financial Statements for the Fiscal Year ended June 30, 2020, together with unqualified audit opinion of Baker Tilly US, LLP.

“*Term SOFR*” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“*Term SOFR Notice*” means a notification by the Lender to the Borrower of the occurrence of a Term SOFR Transition Event.

“*Term SOFR Transition Event*” means the determination by the Lender that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Lender and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.11 that is not Term SOFR.

“*Type*”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Base Rate.

“*Unadjusted Benchmark Replacement*” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“*Undrawn Fee*” has the meaning set forth in the Fee Agreement.

“*Unsecured Debt*” means Debt of the Borrower that is not secured by Net Revenues or any other Property of the Borrower.

“*Working Capital Loan*” means any Loan other than a Cash Collateral Loan or a Reimbursement Loan.

“*WSPP Agreement*” means the WSPP Agreement created by WSPP Inc. and filed with the Federal Energy Regulatory Commission, as revised by the WSPP Inc. from time to time.

Section 1.2. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all

tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.3. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided* that, if the Borrower notifies the Lender that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.4. Interest Rates; LIBOR Notification. LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, the U.K. Financial Conduct Authority (“FCA”) publicly announced that, among other matters: (a) immediately after December 31, 2021, publication of the 1-week and 2-month U.S. Dollar LIBOR settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar LIBOR settings will permanently cease; and immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA’s consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this agreement should consult its own advisors to stay informed of any such developments. Public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, Section 2.11(b) and (c) provide the mechanism for determining an alternative rate of interest. The Lender will promptly notify the Borrower, pursuant to Section 2.11(e), of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Lender does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or other rates in the definition of “LIBO Rate” or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.11(b) or (c), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.11(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

ARTICLE 2
THE CREDITS

Section 2.1. Commitment. Subject to the terms and conditions set forth herein, the Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7) in the Revolving Credit Exposure exceeding the Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

Section 2.2. Loans and Borrowings.

(a) Subject to Section 2.4(d), Section 2.5(d) and Section 2.11, at the time of each Borrowing, the Borrower may elect to incur a Loan as a Base Rate Loan or a Eurodollar Loan.

(b) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000. At the time that each Base Rate Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$25,000 and not less than \$100,000; *provided* that a Base Rate Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.4(d). Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of five (5) Eurodollar Borrowings outstanding.

(c) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.3. Requests for Revolving Borrowings. To request a Borrowing, the Borrower shall notify the Lender of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 2:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 2:00 p.m., New York City time, one Business Day before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by electronic means to the Lender of a written Borrowing Request in a form attached hereto as Exhibit C and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the information set forth in Exhibit C hereto.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Subject to satisfaction of the terms and conditions of Section 3.2, the Lender shall make available to, or for the account of, the Borrower the amount of each Borrowing no later than 2:00 p.m., New York City time, on date of the applicable Borrowing.

Section 2.4. Letters of Credit.

(a) *General.* Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof in the form of a Letter of Credit Request set forth in Exhibit D-1 hereto at any time and from time to time during the Availability Period; *provided, however,* that prior to the issuance of the initial Letter of Credit hereunder, the Borrower and the Lender shall execute a Continuing Agreement for Commercial and Standby Letters of Credit in the form of Exhibit D-2 hereto. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Lender shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.* To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or fax (or transmit through an Electronic System, if arrangements for doing so have been approved by the Lender) to the Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than five (5) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the Revolving Credit Exposure shall not exceed the Commitment.

The Lender shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Lender from issuing such Letter of Credit, or any Requirement of Law relating to the Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Lender shall prohibit, or request that the Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Lender is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Lender any unreimbursed loss, cost or expense which was not

applicable on the Effective Date and which the Lender in good faith deems material to it, or

(ii) the issuance of such Letter of Credit would violate one or more policies of the Lender applicable to letters of credit generally.

(c) *Expiration Date.* Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) at or prior to the close of business on the date that is five (5) Business Days prior to the Maturity Date.

(d) *Reimbursement.* If the Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement not later than 11:00 a.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m., New York City time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such LC Disbursement is not less than \$100,000, and no Default or Event of Default shall have occurred, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 that such payment be financed with a Base Rate Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Base Rate Borrowing (such Base Rate Borrowing, a "*Reimbursement Loan*").

(e) *Obligations Absolute.* The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or any other Basic Document, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Lender; provided that the foregoing shall not be construed to excuse the Lender from liability to the Borrower to the extent of any direct damages (as opposed to special,

indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by the Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Lender (as finally determined by a court of competent jurisdiction), the Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) *Disbursement Procedures.* The Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Lender shall promptly after such examination notify the Borrower by telephone (confirmed by fax or through an Electronic System) of such demand for payment if the Lender has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Lender with respect to any such LC Disbursement.

(g) *Interim Interest.* If the Lender shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate per annum set forth in Section 2.10(d) for Base Rate Loans and such interest shall be due and payable on the date when such reimbursement is payable.

(h) *Cash Collateralization.* If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Lender demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Lender, in the name and for the benefit of the Lender (the "*LC Collateral Account*"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 6.01(e) or Section 6.01(f) hereof. The Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrower hereby grants the Lender a security interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Lender and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Lender for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for

the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Lender.

Section 2.5. Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) and the Loan comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Lender of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by electronic copy to the Lender of a written Interest Election Request in a form approved by the Lender and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Base Rate Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto; provided, however, that the actions specified in clauses (i) and (ii) immediately above shall apply automatically without notice from the Lender if the Event of Default that has occurred and is continuing is an Event of Default described in Section 6.1(e) or Section 6.1(f).

Section 2.6. Termination and Reduction of Commitment.

(a) Unless previously terminated, the Commitment shall terminate automatically on the Maturity Date.

(b) Subject to the provisions of the Fee Agreement, the Borrower may at any time terminate, or from time to time reduce, the Commitment; provided that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$500,000 and (ii) the Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.8, the Revolving Credit Exposure would exceed the Commitment.

(c) The Borrower shall notify the Lender of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Lender on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitment shall be permanent.

Section 2.7. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of each Loan on the Maturity Date.

(b) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from each Loan made by the Lender, the Type of each Loan and the Interest Period, if any, applicable thereto and

the amounts of principal and interest payable and paid to the Lender from time to time hereunder. The entries made in such account or accounts shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to the Lender a promissory note payable to the Lender and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3) be represented by one or more promissory notes in such form.

Section 2.8. Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section and in accordance with any amounts due and owing pursuant to Section 2.13 of this Agreement.

(b) The Borrower shall notify the Lender by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Lender, of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 10:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of a Base Rate Borrowing, not later than 10:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.6, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.6. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10.

Section 2.9. Fees. The Borrower agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee and the Letter of Credit Fees. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.10. Interest.

(a) The Loans comprising each Base Rate Borrowing (other than Reimbursement Loans) shall bear interest at the Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) The Reimbursement Loans shall bear interest at the Base Rate plus the Applicable Margin.

(d) Upon the occurrence and continuance of an Event of Default hereunder, the Default Rate shall apply to all Loans. Interest accruing at the Default Rate shall be payable on demand of the Lender. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder or under the Fee Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to the Default Rate.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed, except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 or 366 days, as applicable, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(g) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the Borrower shall pay to the Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.10(g) that has not previously been paid to the Lender in accordance with the immediately preceding sentence.

Section 2.11. Alternate Rate of Interest; Illegality.

(a) Subject to clauses (b), (c), (d), (e), (f) and (g) of this Section 2.11, if prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Lender determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the LIBO Screen Rate is not available or published on a current basis), for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time; or

(ii) the Lender determines that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans included in such Borrowing for such Interest Period;

then the Lender shall give notice thereof to the Borrower by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Eurodollar Borrowing shall be ineffective, and (B) if any Borrowing Request requests a Eurodollar Revolving Borrowing, such Borrowing shall be made as an Base Rate Borrowing.

(b) Notwithstanding anything to the contrary herein or in any other Basic Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the Business Day following the date the Lender and the Borrower reach agreement on such replacement Benchmark Replacement without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document.

(c) Notwithstanding anything to the contrary herein or in any other Basic Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Basic Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document; provided

that, this clause (c) shall not be effective unless the Lender has delivered to the Borrower a Term SOFR Notice. For the avoidance of doubt, the Lender shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(d) In connection with the implementation of a Benchmark Replacement, the Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Basic Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Basic Document.

(e) The Lender will promptly notify the Borrower of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Basic Document, except, in each case, as expressly required pursuant to this Section 2.11.

(f) Notwithstanding anything to the contrary herein or in any other Basic Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or LIBO Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Lender may modify the definition of “Interest Period” for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of “Interest Period” for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or

such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

Section 2.12. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate); or

(ii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by the Lender or any Letter of Credit or participation therein; or

(iii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) If the Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, as a consequence of this Agreement, the Commitment of or the Loans made by, or the Letters of Credit issued by, the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; *provided*

that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.13. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or any prepayment pursuant to Section 2.8 hereof), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto or (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.8(b) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to the Lender shall be deemed to include an amount determined by the Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 2.14. Payments Free of Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of the Borrower) requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.14) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Lender timely reimburse the Lender for, Other Taxes.

(c) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.14, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(d) The Borrower shall indemnify the Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable expenses actually incurred arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(e) If the Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender reasonably and actually incurred and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of the Lender, shall repay to the Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (e) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential in its sole discretion) to the Borrower or any other Person.

(f) Each party's obligations under this Section 2.14 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

(g) For purposes of this Section 2.14, the term "Applicable Law" includes FATCA.

Section 2.15. Payments Generally.

(a) The Lender shall calculate and use commercially reasonable efforts to notify the Borrower in writing not less than ten (10) Business Days before the due date of the amounts payable by the Borrower hereunder; provided, however, that the failure of the Bank to provide such notice or provide such notice on a timely basis shall not affect the obligation of the Borrower

to make any payments owed to the Lender hereunder when due. The Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 5:00 p.m., New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 7.5 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and unreimbursed LC Disbursements then due hereunder.

Section 2.16. Mitigation Obligation. If the Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.14, as the case may be, in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

Section 2.17. Extension of Maturity Date. The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.17. Upon receipt of written request of the Borrower to extend the Maturity Date, received no more than one hundred ninety (90) days and no less than sixty (60) days prior to the then current Maturity Date, the Lender will use its commercially reasonable efforts to notify the Borrower of its response within thirty (30) days of receipt of the request therefor (the Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the Borrower may agree); provided, however, that the failure of the Borrower to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the Borrower have entered into a written agreement confirming a change in any term of this Agreement.

Section 2.18. Pledge; Security of Obligations. The Net Revenues are hereby pledged by the Borrower to the payment of the Obligations without priority or distinction of one Obligation

over another Obligation. The pledge of Net Revenues is valid and binding in accordance with the terms of the Act, the Joint Powers Agreement and the Resolution, and the Net Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Net Revenues and be effective, binding, and enforceable against the Borrower, its successors, creditors, and all others asserting the rights therein, to the extent set forth in this Agreement, and in accordance with the Act, the Joint Powers Agreement and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full in cash and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. Notwithstanding any other provision of this Agreement to the contrary, all Obligations are limited obligations of the Borrower payable solely from Net Revenues. The pledge of the Net Revenues herein made shall be senior to any pledge of the Net Revenues made with respect to any Subordinate Debt.

ARTICLE 3 CONDITIONS

Section 3.1. Conditions Precedent to Effectiveness. The obligation of the Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions.* The Lender has received an opinion of Chapman & Cutler LLP, special counsel to the Borrower, dated the Closing Date and addressed to the Lender in the form attached hereto as Exhibit A.

(b) *Documents.* The Lender has received (i) executed copies of the Basic Documents and the Lockbox Security Documents executed by the Borrower on the Closing Date or prior to the Closing Date if certified by the Secretary of the Borrower, the Clerk of the Board or any Authorized Representative, as applicable, as being complete and in full force and effect on and as of the Closing Date, and (ii) a certified copy of the Joint Powers Agreement.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, (i) no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement, and (ii) the representations of the Borrower set forth in Article 4 hereof (A) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date, and (B) that are qualified by concepts of materiality are true and correct in all respects on and as of the Closing Date with the same force and effect as if made on and as of such date.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of the Borrower, threatened (i) in connection with the Basic Documents, the Lockbox Security Documents or any transactions contemplated thereby or (ii) against or

affecting the Borrower, the result of which could reasonably be expected to have a Material Adverse Effect.

(e) *No Material Adverse Change.* Since the date of the 2020 Audited Financial Statements, (i) no Material Adverse Change has occurred and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent the Lender from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* The Lender has received (i) certified copies of all proceedings of the Borrower authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by the Borrower pursuant hereto or thereto, on which certification the Lender may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees.* The Lender has received all fees and expenses due and payable to the Lender and/or its legal counsel pursuant to the Fee Agreement.

(h) *Financial Statements.* The Lender has received the 2020 Audited Financial Statements, internally prepared quarterly budget reports of the Borrower for the most recent fiscal quarter end for which quarterly budget reports are available, if not previously provided.

(i) *Repayment and RCB Debt Termination of RCB Credit Agreement.* The Lender shall have received a payoff letter from RCB to the effect that, upon application of the Initial Borrowing hereunder and receipt from the Borrower of cash in an amount sufficient to cash collateralize the Borrower's reimbursement obligations to RCB in respect of the SCE Letter of Credit, (i) all Debt in favor of RCB (if any) that is outstanding on the Closing Date under the RCB Credit Agreement will have been paid in full in immediately available funds; (ii) any commitment by RCB to provide future advances to, or to issue letters of credit on behalf of, the Borrower under the RCB Credit Agreement has been terminated in full as of the Closing Date; (iii) all fees and other amounts owing to RCB through the Closing Date under the RCB Credit Agreement and related documents have been paid in full in immediately available funds; (iv) all Liens in favor of RCB over Property of the Borrower (other than the aforementioned cash collateral) that secure Debt under the RCB Credit Agreement and related documents (which for the avoidance of doubt does not include the Collateral described in the Security Agreement) will be released (or provision for such release will be irrevocably made); and (v) all documents evidencing Debt under the RCB Credit Agreement and related documents will be terminated (other than those provisions set forth therein that expressly survive termination).

(j) *Other Matters.* The Lender has received such other statements, certificates, agreements, documents and information with respect to the Borrower and matters contemplated by the Basic Documents and the Lockbox Security Documents as the Lender may have requested.

The execution and delivery of this Agreement by the Lender signifies its satisfaction with the conditions precedent set forth in this Section 3.1.

Section 3.2. Conditions Precedent to each Credit Event. The obligation of the Lender to make a Loan on the occasion of any Borrowing, and of the Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) Solely with respect to the issuance of the initial Loan or Letter of Credit hereunder, that the Borrower shall have filed the necessary notices and filings with, and provided for payment of any fee related thereto to, the California Debt Issuance Advisory Commission.

(b) The representations and warranties of the Borrower set forth in this Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct in all respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, with the same force and effect as if made on and as of such date.

(c) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default shall have occurred and be continuing.

(d) It has provided the Lender with a completed Borrowing Request substantially in the form of Exhibit C hereto or a Letter of Credit Request substantially in the form of Exhibit D-1 hereto, as applicable.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (b) and (c) of this Section.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to make Loans and issue the Letters of Credit, the Borrower represents and warrants to the Lender as follows:

Section 4.1. Organization, Powers, Etc. The Borrower (a) is a public agency formed under the provisions of the Act that is qualified to be a community choice aggregator pursuant to

California Public Utilities Code Section 366.2 and; (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying. The Borrower has the agency power, and has exercised such agency power, to (i) execute, deliver and perform its obligations under the Basic Documents and the Lockbox Security Agreements; and (ii) grant the Lien over Net Revenues as security for the performance of the Obligations.

Section 4.2. Authorization, Absence of Conflicts, Etc. The execution, delivery and performance by the Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Borrower and its Members, (b) do not conflict with, or result in a violation of, the Act, the Joint Powers Agreement or the Resolution, (c) do not conflict with, or result in a violation of, any Laws (other than the Act) or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Borrower which conflict or violation could reasonably be expected to result in a Material Adverse Effect and (d) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Borrower is a party (other than the Joint Powers Agreement), or by which the Borrower or any of its Property is bound which, in any case, could reasonably be expected to result in a Material Adverse Effect.

Section 4.3. Binding Obligations. The Basic Documents are valid and binding obligations of the Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

Section 4.4. Governmental Consent or Approval. No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of the Borrower for execution, delivery and performance by the Borrower of the Basic Documents.

Section 4.5. Absence of Material Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by the Borrower of the Basic Documents or any proceeding taken or to be taken by the Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by the Borrower of the Basic Documents, or which could reasonably be expected to result in any Material Adverse Effect, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as "*Material Litigation*").

Section 4.6. Financial Condition. The most recent Annual Financial Statements delivered (or deemed delivered) to the Lender were prepared in accordance with GAAP and were subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Lender. The most recent unaudited Financial Statements of the Borrower delivered (or deemed delivered) to the Lender were prepared in accordance with GAAP. The data on which such Financial Statements are based (as modified or supplemented by additional data) were accurate in all material respects. Since the date of the most recent Annual Financial Statements delivered to the Lender, no Material Adverse Effect has occurred. The most recent budget report delivered to the Lender was prepared in good faith based upon assumptions believed to be reasonable by the Borrower at the time the budget was prepared.

Section 4.7. Incorporation of Representations and Warranties. The representations and warranties of the Borrower set forth in the Basic Documents (other than this Agreement and the Fee Agreement) and the Lockbox Security Documents are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. The Borrower makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, the Lender, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) and the Lockbox Security Documents will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of the Lender.

Section 4.8. Accuracy and Completeness of Information. The Basic Documents, the Lockbox Security Documents and all certificates, financial statements, documents and other written information furnished to the Lender by or on behalf of the Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give the Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

Section 4.9. No Default. No Default or Event of Default under this Agreement has occurred and is continuing. No “event of default” (after giving effect to applicable cure periods, if any) has occurred and is continuing with respect to the Borrower under any other material mortgage, indenture, contract, agreement or undertaking respecting the Enterprise (including, but not limited to, any PPA) to which the Borrower is a party or which purports to be binding on the Borrower or on any of the property of the Enterprise.

Section 4.10. No Proposed Legal Changes. There is no amendment or, to the knowledge of the Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect.

Section 4.11. Compliance with Laws, Etc. The Borrower is in material compliance with all Applicable Laws.

Section 4.12. Environmental Matters. In the ordinary course of its business, the Borrower conducts an ongoing review of Environmental Laws on the business, operations and the condition of its Property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Borrower does not believe that compliance by the Borrower with Environmental Laws is likely to have a Material Adverse Effect.

Section 4.13. Regulation U. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14. Liens. This Agreement creates a valid Lien on and pledge of the Net Revenues to secure the payment and performance of the Borrower's obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Borrower, the Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement and Liens over Net Revenues securing Parity Debt and Subordinate Debt permitted by this Agreement, there is no pledge of or Lien on Net Revenues. There is no pledge of or Lien on Net Revenues that ranks senior to the Obligations.

Section 4.15. Sovereign Immunity. The Borrower is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) with respect to itself or the Revenues (irrespective of their use or intended use) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or for recovery of property or (iii) execution or enforcement of any judgment to which it or the Revenues might otherwise be made subject in any action, suit or proceeding relating to this Agreement or any other Basic Document, and no such immunity (whether or not claimed) may be attributed to the Borrower or the Revenues.

Section 4.16. Usury. The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17. Insurance. As of the Closing Date, the Borrower maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18. ERISA. The Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

Section 4.19. Sanctions Concerns and Anti-Corruption Laws. Neither the Borrower nor, to the best knowledge of the Borrower, any director, officer, employee, or affiliate thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions or (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority. The Borrower has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977, other similar Anti-Corruption Laws in other jurisdictions, Sanctions and has instituted and maintained policies and procedures designed to promote and achieve compliance with such Laws. No transaction contemplated by this Agreement will violate Anti-Corruption Laws or Sanctions.

Section 4.20. Secured Debt. As of the Closing Date, the Borrower has no Debt for borrowed money other than Debt under the County of Los Angeles Funding Agreement, and no Debt secured by Property of the Borrower (including Revenues and Net Revenues). The Debt in favor of the County of Los Angeles under the County of Los Angeles Funding Agreement is not secured by any Property of the Borrower.

ARTICLE 5 COVENANTS

Section 5.1. Affirmative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full in cash and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed in full in cash, the Borrower covenants and agrees with the Lender that:

(a) *Accounting and Reports.* The Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to the Lender:

(i) as soon as available, and in any event within (A) sixty (60) days after the close of each of the first three fiscal quarters of each Fiscal Year and (B) one hundred twenty (120) days after the close of each of the fourth fiscal quarter of each Fiscal Year, unaudited Financial Statements for the quarterly period then ended, prepared in accordance with GAAP;

(ii) as soon as available, and in any event within six (6) months after the close of each Fiscal Year, a copy of the Annual Financial Statements at and as of the last day of the Fiscal Year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such Fiscal Year and the results of its operations and cash flows for the Fiscal Year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such

examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, could reasonably be expected to have a Material Adverse Effect or result in the occurrence of any Default or Event of Default hereunder;

(v) as soon as available, and in any event within 45 days of adoption, the Borrower shall provide the Lender its annual budget and all amendments and modifications thereof;

(vi) as soon as available, and in any event within 60 days of the end of each month, a copy of the Borrower's monthly "financial dashboard" or such other the monthly operating and financial information as may be requested by the Lender;

(vii) promptly after incurrence or issuance thereof by the Borrower, copies of each agreement in respect of Secured Debt;

(viii) promptly thereafter, and in any event within 10 Business Days of the occurrence thereof, any change in the Borrower's Fiscal Year together a written explanation of the rationale therefor;

(ix) promptly thereafter, and in any event within 10 Business Days of the occurrence thereof, (A) any change or modification in the Borrower's accounting methodology (including the basis on which accounting determinations are made) that, when applied to the Financial Statements to be prepared by the Borrower following such change or modification, would render such Financial Statements inconsistent with the Financial Statements prepared by the Borrower prior to such change or modification, and (B) a written explanation of the rationale for making such change or modification; and

(x) promptly after the request therefor, all such other information as Lender may reasonably request.

Each of the quarterly and annual Financial Statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.1 shall be accompanied by a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of

Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Borrower shall permit the Lender or any of its agents or representatives to visit and inspect any of the Properties of the Borrower, to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request.

(c) *Compliance with Basic Documents; Operation and Maintenance of Enterprise.*

(i) The Borrower shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing Debt of the Borrower, including Parity Debt or Subordinate Debt. By the terms of this Agreement, the Lender is hereby made a third-party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, the Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of the Lender, and the Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by the Lender to strictly enforce the obligations of the other parties to any of the Basic Documents, as well as each of the covenants set forth therein. The Borrower shall give prior written notice to the Lender of any action referred to in this subparagraph (i).

(ii) The Borrower covenants that it will maintain and preserve the Enterprise in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for community choice aggregators of like size and character. The Borrower will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the Properties of the Borrower, so that at all times business carried on in connection with the Enterprise shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the Enterprise in an efficient and economical manner and shall not commit or allow any waste with respect to the Enterprise.

(d) *Defaults.* The Borrower shall notify the Lender of any Default or Event of Default of which the Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which the Borrower has taken and/or proposes to take with respect thereto.

(e) *Compliance with Laws.* The Borrower shall comply in all material respects with all Laws binding upon or applicable to the Borrower (including Environmental Laws). The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Borrower will not use or allow any tenants or subtenants to use the Borrower's Property for any business activity that violates any Law or that supports a business that violates any Law.

(f) *Investment Policy.* The Borrower shall promptly notify the Lender in writing, not less than thirty (30) days after the Borrower receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase or modify the types of investments permitted thereby as of the Closing Date.

(g) *Notices.* The Borrower shall promptly give notice to the Lender of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, could reasonably be expected to materially adversely impair the ability of the Borrower to perform its obligations under any Basic Document.

(h) *Bank Agreements.* In the event that Borrower shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies ("*Improved Provisions,*" which for the avoidance of doubt does not include pricing, termination fees and provisions related to interest rates but does include improved term-out provisions), then the Borrower shall provide the Lender with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Lender shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Borrower shall promptly cooperate with the Lender to enter into an amendment of this Agreement to include such Improved Provisions.

(i) *Further Assurances.* The Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of the Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(j) *Notices.* The Borrower shall promptly furnish, or cause to be furnished, to the Lender (i) notice of the occurrence of any “default” or “event of default” or “termination event” under any Basic Document (other than this Agreement and the Fee Agreement), any Lockbox Security Document or any other agreement related to Secured Debt, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents, the Lockbox Security Documents or any other agreement related to Secured Debt which are not restricted or prohibited from being shared with the Lender under Applicable Law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed substitution of any Letter of Credit, and (iv) notice of the passage of any state or local Law relating to, or affecting, community choice aggregators which the Borrower, in its reasonable determination believes, could reasonably be expected to result in a Material Adverse Effect of the type described in clause (b) or (c) of the definition thereof.

(k) *Maintenance of Insurance.* The Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its Properties with responsible and reputable insurance companies; *provided, however,* that the Borrower may maintain self-insurance general liability on its Properties not covered by the public entity property insurance program policy, for worker’s compensation and vehicle liability and, with the consent of the Lender, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the Borrower. The Borrower shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or other funds of the Enterprise, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the Enterprise.

(l) *Preservation of Security.* The Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.

(m) *Rates.* The Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the Borrower (collectively, “*generation rates*”), which shall provide the Borrower with Revenues in each Fiscal Year sufficient to pay budgeted Operating Costs and Annual Debt Service for such Fiscal Year and, to the extent not paid from other available moneys, any and all amounts the Borrower is obligated to pay or set aside from Revenues by Applicable Law or contract in such Fiscal Year. If the Borrower increases or decreases its generation rates during such Fiscal Year by more than 5% from the generation rates assumption used in the preparation of the budget, the Borrower shall provide the Lender with a twelve (12) consecutive month forecast of estimated Net Revenues (giving effect to the adjustment to the generation rates), as soon as practicable

after such increase or decrease and in any event no later than ten (10) Business Days thereafter.

(n) *Budget.* The Borrower shall include in each annual budget of the Borrower all amounts reasonably anticipated to be necessary to pay all Operating Costs and Annual Debt Service at the time the budget is prepared, including debt service on all Secured Debt and Unsecured Debt, for the Fiscal Year to which such budget applies and to comply with the Financial Reserve Policy and the Fiscal Stabilization Fund Policy.

(o) *Payment of Taxes, Etc.* The Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Borrower on account of the Enterprise or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require the Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the Enterprise or any part thereof.

(p) *Lockbox Security Documents and PPAs.* The Borrower shall perform and comply with all its agreements and covenants set forth in the Lockbox Security Documents and all material PPAs. The Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing) any Lockbox Security Document in any manner that could reasonably be expected to expand the definition of “Collateral” set forth in the Security Agreement, change the definition of “Obligations” set forth in the Security Agreement or alter the distribution of the proceeds of Collateral set forth in Section 6.2 of the Security Agreement without, in each case, the prior written consent of the Lender, and the Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by the Lender to strictly enforce the obligations of the other parties to any of the Lockbox Security Documents, as well as each of the covenants set forth therein. The Borrower shall not revoke or attempt to revoke any Direction Letter (as defined in Security Agreement) without the prior written consent of the Lender. The Borrower shall not terminate any Lockbox Security Document without the prior written consent of the Lender. The Borrower shall give prior written notice to the Lender of any proposed action referred to in this subparagraph (p).

(q) *Debt Service Coverage.* The Borrower shall not permit the Debt Service Coverage Ratio to be less than 1.10 for any fiscal quarter of the Borrower, commencing with the fiscal quarter ended September 30, 2021; provided, however, in the event the Debt Service Coverage Ratio for any fiscal quarter is less than 1.10 but the Days Liquidity on Hand for such fiscal quarter equals or exceeds 50 days, then the Borrower shall not be considered to have breached this Section 5.1(q); provided, further, however, that the Borrower may only rely on the cure contained in the preceding proviso twice during any Fiscal Year. The Borrower shall determine the Debt Service Coverage Ratio and Days Liquidity on Hand at each fiscal quarter end and shall provide the Lender with written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the end of a fiscal quarter and in any event no later than sixty

(60) calendar days following the end of each of the first three fiscal quarters and one hundred twenty (120) calendar days following the end of the fourth fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

(r) *Policies.* The Borrower shall comply with the terms of the Financial Reserve Policy and the Fiscal Stabilization Fund Policy and shall not amend or modify the Reserve Policy without the prior written consent of the Lender if such amendment or modification could reasonably be expected to result in a Material Adverse Effect. The Borrower shall deliver to the Lender copies of all amendments of and modifications to the Financial Reserve Policy and the Fiscal Stabilization Fund Policy as soon as practicable following adoption and in any event no later than ten (10) Business Days after adoption.

Section 5.2. Negative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full in cash and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed in full in cash, the Borrower covenants and agrees with the Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of the Borrower to pay when due amounts owing to the Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues or the priority of payments from Net Revenues provided in this Agreement; or (iii) the rights or remedies of the Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its Property to any Person.

(c) *Abandon.* Take any action to abandon the Enterprise or any significant portion thereof.

(d) *Preservation of Existence, Etc.* Take any action to terminate its existence as a public agency under the Act or its rights and privileges as such an entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues or the proceeds thereof other than the Liens created (i) by this Agreement, (ii) or permitted by any agreement or instrument evidencing Parity Debt or Subordinate Debt issued or incurred in accordance with the terms of this Agreement, and (iii) by the Security Agreement.

(f) *Sovereign Immunity.* To the fullest extent permitted by Applicable Law, with respect to its obligations arising under this Agreement or any other Basic Document, the Borrower irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific

performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and the Borrower hereby irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues (irrespective of their use or intended use), all such immunity.

(g) *Enterprise.* Construct, operate or maintain any system or utility competitive with the Enterprise. The Borrower shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the Enterprise to pay the fees, rates and charges applicable to the services and facilities furnished by the Enterprise. The Borrower shall not provide any service of the Enterprise free of charge to any Person, except (i) to the extent that any such free use is required by the terms of any existing contract or agreement and (ii) for incidental insignificant free use so long as such free use does not prevent the Borrower from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the Enterprise with any other entity or enterprise, unless and until the Borrower has provided a method for segregating the Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the Net Revenues for the payment of the Obligations and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of Net Revenues set forth in this Agreement to be no longer valid. If the Borrower does effect such a merger, the Borrower shall provide written notice thereof to the Lender and shall deliver a copy of the aforementioned opinion and the merger documents to the Lender.

(i) *Use of Proceeds.* Use the Letters of Credit for any purpose other than to secure the Borrower's obligations (A) under PPAs, (B) to the California Public Utilities Commission, (C) to the California Independent System Operator and (D) to Southern California Edison. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure the Borrower's obligations under PPAs, (ii) to repay in whole or in part any LC Disbursement, (iii) for general corporate purposes, (iv) for capital expenditures related to the development or acquisition of new assets related to the Enterprise subject to prior written approval by the Lender, which such approval shall not be unreasonably withheld, or (v) to repay the Debt in favor of (1) the County of Los Angeles under the County of Los Angeles Funding Agreement, provided that no more than \$30,000,000 of Loan proceeds may be applied for such purpose, and (2) RCB under the RCB Credit Agreement with proceeds of the Loan made pursuant to the Initial Borrowing. For the avoidance of doubt, Loan proceeds may not be used (x) for other long-term expenditures, (y) for funding the Reserves, or (z) to make payments to Members

(except to the extent provided in clause (v)(1) immediately above and except to Members as part of the operation of the Enterprise (as long as such operation of the Enterprise is available to all similarly situated Members)). For the avoidance of doubt, the Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall cause its directors, officers, employees and agents not to use, the proceeds of any Borrowing or Letter of Credit (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(j) *Secured Debt.*

(i) Not issue, incur or assume to exist any (A) Senior Debt or (B) any other Secured Debt other than (I) the Obligations; (II) Parity Debt described in clause (ii) below; and (III) Subordinate Debt described in clause (iii) below;

(ii) Not issue, incur or assume to exist any Parity Debt except for Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Parity Debt;

(2) such Parity Debt does not exceed at any time any limitation set forth in the Constitution or other Laws of the State, the Joint Powers Agreement or any resolutions or ordinances adopted by the Borrower;

(3) the operating Reserve is funded in accordance with the Financial Reserve Policy immediately prior to the issuance or incurrence of such Parity Debt or will be funded in accordance with the Financial Reserve Policy after the issuance or incurrence of such Parity Debt and the application of the proceeds thereof; and

(4) delivery of a written certificate of the Borrower: (A) setting forth projected Net Revenues for the twelve consecutive month period immediately following the issuance or incurrence of such Parity Debt (in reasonable detail and with reasonable assumptions), (B) setting forth projected Annual Debt Service for the twelve consecutive month period immediately following the issuance or incurrence of such Parity Debt (inclusive of any additional Parity Debt and in reasonable detail and with reasonable assumptions), and (C) demonstrating that projected Net Revenues for the twelve consecutive month period immediately following the issuance or incurrence of such Parity Debt are expected to be at least equal to 1.30 times the projected Annual Debt Service for such period; provided, however, that for purposes of determining the projected Net Revenues for the twelve consecutive month period as set forth in the immediately foregoing clause

(B) and (C), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional Debt;

(iii) Not issue, incur or assume to exist any Subordinate Debt except for Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Subordinate Debt;

(2) such Subordinate Debt does not exceed at any time any limitation set forth in the Constitution or other Laws of the State, the Joint Powers Agreement or any resolutions or ordinances adopted by the Borrower;

(3) the operating Reserve is funded in accordance with the Financial Reserve Policy immediately prior to the issuance or incurrence of such Subordinate Debt or will be funded in accordance with the Financial Reserve Policy after the issuance or incurrence of such Subordinate Debt and the application of the proceeds thereof; and

(4) delivery of a written certificate of the Borrower: (A) setting forth projected Net Revenues for the twelve consecutive month period immediately following the issuance or incurrence of such Subordinate Debt (in reasonable detail and with reasonable assumptions), (B) setting forth projected Annual Debt Service for the twelve consecutive month period immediately following the issuance or incurrence of such Subordinate Debt (inclusive of any additional Subordinate Debt and in reasonable detail and with reasonable assumptions), and (C) demonstrating that projected Net Revenues for the twelve consecutive month period immediately following the issuance or incurrence of such Subordinate Debt are expected to be at least equal to 1.10 times the projected Annual Debt Service for such period; provided, however, that for purposes of determining the projected Net Revenues for the twelve consecutive month period as set forth in the foregoing clause (B) and (C), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional Debt; and

(iv) Not issue, incur or assume to exist any Unsecured Debt except for (A) \$30,000,000 of Debt under the County of Los Angeles Funding Agreement and (B) Unsecured Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Unsecured Debt;

(2) such Unsecured Debt does not exceed at any time any limitation set forth in the Constitution or other Laws of the State, the Joint Powers Agreement or any resolutions or ordinances adopted by the Borrower; and

(3) the operating Reserve is funded in accordance with the Financial Reserve Policy immediately prior to the issuance or incurrence of such Unsecured Debt or will be funded in accordance with the Financial Reserve Policy after the issuance or incurrence of such Unsecured Debt and the application of the proceeds thereof.

(k) *Available Net Revenues.* Not use Net Revenues for any purpose other than: (i) payment of Operating Costs; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, the Debt incurred under the County of Los Angeles Funding Agreement and other Parity Debt; (iv) funding and replenishment of the Reserves; (v) so long as no Event of Default has occurred and is continuing, payment of interest on, and fees associated with, Subordinate Debt and Unsecured Debt; (vi) capital expenditures in connection with assets that will become part of the Enterprise; (vii) rebates to Enterprise customers; and (ix) any other lawful purpose that inures to the direct benefit of the Enterprise.

ARTICLE 6 DEFAULTS

Section 6.1. Events of Default and Remedies. If any of the following events occur, each such event will be an “*Event of Default*”:

(a) the Borrower fails to pay, or cause to be paid, as and when due, (i) any principal of or any interest on any Loan or Reimbursement Obligation or (ii) any other Obligation hereunder or under the Fee Agreement and such failure continues for three (3) Business Days.

(b) (i) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder that is not qualified by the concept of “materiality” shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered; or (ii) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder that is qualified by the concept of “materiality” shall be incorrect or untrue in any respect when made or deemed to have been made or delivered;

(c) the Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.1(a) *Accounting and Reports*, 5.1(c) *Compliance with Basic Documents; Operation and Maintenance of Enterprise*, 5.1(d) *Defaults*, 5.1(g) *Notices*, 5.1(k) *Maintenance of Insurance*, 5.1(l) *Preservation of Security*, 5.1(m) *Rates*, 5.1(q) *Debt Service Coverage*, 5.1(r) *Policies* or 5.2 hereof;

(d) the Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any public agency action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) is instituted against the Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Secured Debt of the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Joint Powers Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Borrower, or the Borrower publicly contests the validity or enforceability of any obligation to pay Secured Debt, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this

Agreement, the Joint Powers Agreement, any other Basic Document or any operative document related to Secured Debt;

(i) dissolution or termination of the existence of the Borrower;

(j) the Borrower (i) defaults on the payment of the principal of or interest on any Secured Debt beyond the period of grace, if any, provided in the instrument or agreement under which such Secured Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Secured Debt, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Secured Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Secured Debt;

(k) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$2,000,000 are entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days; or

(l) the passage of any State Law has occurred which could reasonably be expected to (i) have a material adverse effect on the ability of community choice aggregators to continue operating within the State, (ii) have a material adverse effect on the Borrower's ability to timely pay payment Obligations when due or (iii) result in a material adverse effect on the enforceability or validity of this Agreement or any other Basic Document.

Section 6.2. Remedies. Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f)), and at any time thereafter during the continuance of such event, the Lender may by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) require cash collateral for the LC Exposure in accordance with Section 2.4(h) hereof and (iii) declare all Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under the Fee Agreement, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any Event of Default described in Section 6.1(e) or 6.1(f), the Commitment shall automatically terminate and the principal of the Loans then outstanding, and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

ARTICLE 7
MISCELLANEOUS

Section 7.1. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, or consent to any departure by the Borrower therefrom, will in any event be effective unless the same is in writing and signed by the Lender and an Authorized Representative of the Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2. Notices. All notices and other communications provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express, UPS or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Borrower:

Clean Power Alliance
801 S. Grand Ave., Ste. 400
Los Angeles, CA 90017
Attention: David McNeil, Chief Financial Officer
Email: dmcneil@cleanpoweralliance.org

with a copy to:

Chapman & Cutler LLP
1270 Avenue of the Americas, 30th Floor
New York, NY 10020-1708
Attention: Douglas A. Bird
Telephone: (212) 655-2519
Facsimile: (646) 362-8949
Email: doug.bird@chapman.com

(b) if to the Lender:

JPMorgan Chase Bank, National Association
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: Allyson Goetschius or Janice Fong
Telephone: (212) 270-0335 or (212) 270-3762
Facsimile: (917) 849-0272
Email: allyson.l.goetschius@jpmorgan.com or
janice.r.fong@jpmorgan.com

with a copy to:

JPMorgan Chase Bank, National Association
JPM-Delaware Loan Operations

500 Stanton Christiana Road, NCC5, Floor 01
Newark, DE 19713-2107
Attention: PFG Servicing
Telephone: (302) 634-9627
Email/Fax: PFG_Servicing@jpmorgan.com

And, for compliance-related items, with a copy to:

public.finance.notices@jpmchase.com

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, sent by facsimile transmission or mailed, be effective when deposited with the courier, sent by facsimile transmission or mailed, respectively, addressed as aforesaid, except that Borrowing Requests and requests for LC Disbursements submitted to the Lender will not be effective until received by the Lender.

Section 7.3. Survival of Covenants; Successors and Assigns.

(a) All covenants, agreements, representations and warranties made herein and, in the certificates, delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full in cash. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of the Lender. The Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of the Lender. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Borrower (which consent may not be withheld unreasonably); *provided* that the Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Borrower and the Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, the Lender will be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of the Lender's rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a "*Participation*") without the consent of the Borrower. In the event of any such grant by the Lender of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Borrower may continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Lender; provided that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and

provided, further, that the Borrower's liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14) will not in any event exceed that liability which the Borrower would owe to the Lender but for such participation.

Section 7.4. No Recourse Against Members. CPA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Fee Agreement. The Lender shall not make any claims, take any actions or assert any remedies against any Member arising solely as a result of CPA's breach of this Agreement.

Section 7.5. Liability of Lender; Indemnification.

(a) To the extent permitted by the laws of the State, the Borrower assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; *provided* that this provision is not intended to and will not preclude the Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither the Lender nor any of its respective officers, directors or employees will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Lender against presentation of requests for LC Disbursements or requests which the Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; provided that the Borrower is not required to indemnify the Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent, that a court of competent jurisdiction has determined by a final, non-appealable judgment were caused by the gross negligence or willful misconduct of the Lender.

(b) To the extent permitted by the laws of the State, the Borrower indemnifies and holds harmless the Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which the Lender may incur (or which may be claimed against the Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; provided that the Borrower is not required to indemnify the Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Lender's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Borrower, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and waives, any claim against the Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of the Borrower under this Section 7.5 will survive the termination of this Agreement.

Section 7.6. Expenses. Upon receipt of a written invoice, the Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents, (iii) the fees and disbursements of counsel to the Lender with respect to advising the Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Lender. In addition, and notwithstanding the foregoing, the Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Lender in enforcing any obligations or in collecting any payments due from the Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Borrower under this Section 7.6 will survive the termination of this Agreement.

Section 7.7. No Waiver; Conflict. Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between the Borrower and the Lender.

Section 7.8. Modification, Amendment Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.9. Dealings. The Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Borrower and/or any PPA Counterparty regardless of the capacity of the Lender hereunder or under any Letter of Credit.

Section 7.10. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11. Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Basic Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Basic Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 7.2), certificate, request, statement, disclosure or authorization related to this Agreement, any other Basic Document and/or the transactions contemplated hereby and/or thereby (each an “*Ancillary Document*”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Basic Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Basic Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Lender has agreed to accept any Electronic Signature, the Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring,

enforcement of remedies, bankruptcy proceedings or litigation among the Lender and the Borrower, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Basic Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) agrees that the Lender may, at its option, create one or more copies of this Agreement, any other Basic Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Basic Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Basic Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Parties for any Liabilities arising solely from the Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 7.12. Table of Contents; Headings. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.13. Entire Agreement. This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.14. Governing Law Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; PROVIDED, THAT THE OBLIGATIONS OF THE LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) To the extent permitted by Applicable Law, each of the parties hereto waives its right to a jury trial of any claim or cause of action based upon or arising out of the basic documents or any of the transactions contemplated thereby, including contract claims, tort claims, breach of duty claims, and all other common law or statutory claims. if and to the extent that the foregoing waiver of the right to a jury trial is unenforceable for any reason in such forum, each of the parties hereto consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the Judicial Referee is empowered to hear and determine all issues in such reference, whether fact or law. Each of the parties hereto represents that it has reviewed this Waiver and Consent and, following consultation with legal

counsel on such matters, knowingly and voluntarily waives its jury trial rights and consents to judicial reference. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

(c) The covenants and waivers made pursuant to this Section 7.14 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.15. Government Regulations. The Borrower shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Borrower is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Order that prohibits or limits the Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower and (b) ensure that the proceeds of LC Disbursements under the Letters of Credit are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Borrower shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

Section 7.16. USA PATRIOT Act. The Lender notifies the Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower agrees to provide such documentary and other evidence of the Borrower’s identity as may be requested by the Lender at any time to enable the Lender to verify the Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Patriot Act.

Section 7.17. Electronic Transmissions. Without limiting Section 7.11(b) hereof, the Borrower hereby authorizes the Lender to accept and process any amendments, transfers, assignments of proceeds, LC Disbursements, consents, waivers and all documents relating to the Letters of Credit which are sent to Lender by electronic transmission, including SWIFT, electronic mail, telex, telecopy, courier, mail or other computer generated telecommunications, and such electronic communication will have the same legal effect as if written and will be binding upon and enforceable against the Borrower. The Lender may, but shall not be obligated to, require authentication of such electronic transmission or that the Lender receives original documents prior to acting on such electronic transmission.

Section 7.18. Assignment to Federal Reserve Bank. The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the Borrower to the Lender in accordance with the terms of this Agreement will satisfy the Borrower’s obligations

hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

Section 7.19. Arm's Length Transaction. The transactions described in this Agreement are arm's length, commercial transactions between the Borrower and the Lender in which: (i) the Lender is acting solely as a principal (*i.e.*, as a lender) and for its own interest; (ii) the Lender is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to these transactions and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender or any of its Affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Lender has to the Borrower with respect to these transactions are set forth in the Basic Documents and the Letters of Credit; and (v) the Lender is not recommending that the Borrower take an action with respect to the transactions described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Borrower should discuss the information contained herein with the Borrower's own legal, accounting, tax, financial and other advisors, as the Borrower deems appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Borrower and the Lender have duly executed this Agreement as of the date first written above.

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: _____
Title: _____

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF OPINION OF CHAPMAN & CUTLER LLP

[Opinion to address: Existence and good standing of CPA; CPA has received all consents and approvals of Governmental Authorities to act as a CCA; power and authority of CPA to (1) be a CCA, (2) execute, deliver and perform the Basic Documents and (3) own and operate the Enterprise; all consents necessary to execute, deliver and perform the Basic Documents have been obtained; execution, delivery and performance of the Basic Documents will not violate the JP Agreement or CPA's bylaws or the Act; the Basic Documents are enforceable against CPA; and the pledge of Net Revenues in the Agreement is a valid pledge.]

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this “*Certificate*”) is furnished to JPMorgan Chase Bank, National Association (including its successors and assigns, the “*Lender*”) pursuant to the Revolving Credit Agreement, dated as of _____, 2021 (together with all amendments and supplements thereto, the “*Agreement*”), by and between the Clean Power Alliance of Southern California (including its successors and assigns, the “*Borrower*”) and the Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. The financial statements required by Section 5.1(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Borrower in accordance with GAAP as of the date and for the period covered thereby.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

5. The Debt Service Coverage Ratio Notice is attached hereto.

[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of _____, 20__.

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF BORROWING REQUEST

_____, 20__

JPMorgan Chase Bank, National Association
JPM-Delaware Loan Operations
500 Stanton Christiana Road, NCC5, Floor 01
Newark, DE 19713-2107
Attention: PFG Servicing
Telephone: (302) 634-9627
Email/Fax: PFG_Servicing@jpmorgan.com

JPMorgan Chase Bank, National Association
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: Allyson Goetschius or Janice Fong
Telephone: (212) 270-0335 or (212) 270-3762
Facsimile: (917) 849-0272
Email: allyson.l.goetschius@jpmorgan.com or janice.r.fong@jpmorgan.com

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of _____, 2021 (together with any amendments or supplements thereto, the "Agreement"), by and between Clean Power Alliance of Southern California (with its successors and assigns, the "Borrower") and JPMorgan Chase Bank, National Association (with its successors and assigns, the "Lender") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that the Lender make a Loan under the Agreement and disburse such funds as set forth in #5 below, and in that connection sets forth below the following information relating to such Loan (the "Proposed Loan"):

1. The Business Day of the Proposed Loan is _____, 20__ (the "Issuance Date").

2. The principal amount of the Proposed Loan is \$ _____, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date.

3. The Type of Borrowing is: [SPECIFY] [a Base Rate Borrowing] [a Eurodollar Borrowing][.];[IN THE CASE OF A EURODOLLAR BORROWING] and the initial Interest Period shall be for [one month][three months].]

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of the Borrower set forth in the Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct in all respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date; [and]

(b) No Default or Event of Default has occurred and is continuing [.] [; and]

[(c) The Borrower has filed the necessary notices and filings with, and provided for payment of any fee related thereto to, the California Debt Issuance Advisory Commission.] **[INCLUDE THIS CERTIFICATION IF THIS IS THE INITIAL BORROWING REQUEST AND NO LETTER OF CREDIT REQUEST HAS PREVIOUSLY BEEN MADE.]**

5. [The Proposed Loan shall be made by the Lender by wire transfer of immediately available funds in accordance with the instructions set forth below and the Borrower hereby confirms that the Lender is authorized to make said disbursements:

[Insert wire instructions and amounts]

[OR]

5. [The Proposed Loan shall be deposited into Borrower's account at the Lender and the Borrower hereby confirms that the Lender is authorized to make said disbursements.]

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT D-1

FORM OF LETTER OF CREDIT REQUEST

_____, 20__

JPMorgan Chase Bank, National Association
JPM-Delaware Loan Operations
500 Stanton Christiana Road, NCC5, Floor 01
Newark, DE 19713-2107
Attention: PFG Servicing
Telephone: (302) 634-9627
Email/Fax: PFG_Servicing@jpmorgan.com

JPMorgan Chase Bank, National Association
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: Allyson Goetschius or Janice Fong
Telephone: (212) 270-0335 or (212) 270-3762
Facsimile: (917) 849-0272
Email: allyson.l.goetschius@jpmorgan.com or janice.r.fong@jpmorgan.com

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of _____, 2021 (together with any amendments or supplements thereto, the "*Agreement*"), by and between Clean Power Alliance of Southern California (with its successors and assigns, the "*Borrower*") and JPMorgan Chase Bank, National Association (with its successors and assigns, the "*Lender*") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.4 of the Agreement, that the Lender issue a Letter of Credit under the Agreement, and in that connection sets forth below the following information relating to such Letter of Credit (the "*Proposed Letter of Credit*"):

1. The Business Day of the Proposed Letter of Credit is _____, 20__ (the "*Issuance Date*").

2. The principal amount of the Proposed Letter of Credit is \$_____. After giving effect to the issuance of the Proposed Letter of Credit, the aggregate principal amount of all Loans and Letters of Credit outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date set forth in 1 above.

3. The tenor of the Proposed Letter of Credit shall be [_____].

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect thereto:

(a) The representations and warranties of the Borrower set forth in the Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct in all respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date; [and]

(b) No Default or Event of Default has occurred and is continuing [.] [; **and]**

[(c) The Borrower has filed the necessary notices and filings with, and provided for payment of any fee related thereto to, the California Debt Issuance Advisory Commission.] **[INCLUDE THIS CERTIFICATION IF THIS IS THE INITIAL LETTER OF CREDIT REQUEST AND NO BORROWING REQUEST HAS PREVIOUSLY BEEN MADE.]**

5. The undersigned hereby confirms that the Borrower has submitted a Standby Letter of Credit Application in the form attached as Annex I (or any successor form provided by the Lender to the Borrower and the Lender).

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: _____
Title: _____

ANNEX I

FORM OF STANDBY LETTER OF CREDIT APPLICATION

Application and Agreement for Irrevocable
Standby Letter of Credit

J.P.Morgan

This application and the Letter of Credit issued hereunder are subject to and governed by the **CONTINUING AGREEMENT FOR COMMERCIAL & STANDBY LETTERS OF CREDIT** executed by the undersigned in favor of JPMorgan Chase Bank, N.A., as may be amended or restated from time to time (the “Agreement”).

When Transmitting this application by facsimile all pages must be transmitted.
Questions regarding completion of this form should be directed to
GTS.Client.Services@JPMChase.com OR 800-634-1969

For assistance in filling out this application, please place your cursor over the underlined, blue text for specific instructions/hints.

To: JPMorgan Chase Bank, N.A. and/or its subsidiaries and/or affiliates (“Issuer”). Date:

I. Pursuant to the Terms and Conditions contained herein, please issue an IRREVOCABLE STANDBY Letter of Credit (together with any replacements, extensions or modifications, the “Credit”) and transmit it by:

- S.W.I.F.T. (to Advising Bank)
- Courier (directly to the Beneficiary)

If completing in Microsoft Word, please enter data by ‘clicking’ on the gray boxes.

<p><u>Applicant/Obligor</u> (Full name and address, jointly and severally if more than one, individually and collectively, “Applicant/Obligor”):</p> <p>[Signature lines are on last page].</p>	<p><u>Beneficiary</u> (Full name and address):</p>
<p><u>Account Party</u> (Full name and address of entity to be named in Letter of Credit if different than the above Applicant/Obligor):</p> 	<p><u>Advising Bank</u> Specify name, S.W.I.F.T./address through whom the Credit is to be transmitted to the Beneficiary. (If left blank, Issuer may, at its own discretion, transmit through one of its branches, affiliates or correspondents.):</p>

Amount: Up to an aggregate amount of If not USD, indicate currency	<u>Expiry Date:</u> Demands/claims must be presented to the counters of the nominated bank not later than
II. <u>REQUIRED FOR SANCTION SCREENING PURPOSES.</u> A brief description of the purpose of the Credit including, where applicable, a description of the merchandise, the country of origin of the merchandise, and the name of the countries where merchandise is being shipped from and to must be entered:	
III. <u>Complete only</u> if automatic extension of the expiry date is required. Credit to contain automatic extension clause with extension period of <input type="checkbox"/> one year/ <input type="checkbox"/> other (please specify). No less than calendar days non-extension notice to the beneficiary. Automatic extension final expiration date: (the date after which the Credit will no longer be subject to automatic extension).	
IV. AVAILABLE BY (indicate A, B, C or D) <input type="checkbox"/> A. Beneficiary’s dated statement referencing JPMorgan Chase Bank, N.A. Letter of Credit Number indicating amount of demand/claim and purportedly signed by an authorized person reading as follows (Please state within the quotation marks the wording to appear on the statement to be presented): “ (insert appropriate reason for drawing) ” See attached sheet(s) for additional documents and/or special instructions, which form(s) an integral part of this Application. Such attachments/special instructions must be approved and signed by Applicant/Obligor. <input type="checkbox"/> B. Issue substantially as per the attached sheet(s) and/or special instructions, which form(s) an integral part of this Application. Such attachments/special instructions must be approved and signed by Applicant/Obligor. <input type="checkbox"/> C. Issue Credit in your standard format in favor of another bank (See Section VI. below). <input type="checkbox"/> D. Other:	
<u>DELIVERY INSTRUCTIONS/SPECIAL HANDLING (IF ANY)</u>	

MULTIPLE DRAWINGS PROHIBITED (IF BLANK, MULTIPLE DRAWINGS WILL BE PERMITTED).

PARTIAL DRAWINGS PROHIBITED (IF BLANK, PARTIAL DRAWINGS WILL BE PERMITTED).

CREDIT IS TRANSFERABLE ONLY IN ITS ENTIRETY (ISSUER IS AUTHORIZED TO INCLUDE ITS STANDARD TRANSFER CONDITIONS AND IS AUTHORIZED TO NOMINATE A TRANSFERRING BANK, IF APPLICABLE). TRANSFER FEES/CHARGES ARE FOR THE ACCOUNT OF BENEFICIARY OR IF BOX IS CHECKED, FOR THE ACCOUNT OF THE APPLICANT/OBLIGOR.

V. The Credit, or any Credit issued by you shall be subject to the International Standby Practices 1998, International Chamber of Commerce Publication 590 (“ISP”) or, if box is checked, it shall be subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 (“UCP”).

VI. Complete only when another bank is to issue its guarantee or undertaking based on the issued Credit. We understand and agree that by making this request, we shall remain liable under this Credit until Issuer is fully released in writing by such entity.

(i) Please issue a Credit in your customary format (as a counter guarantee) in favor of another bank (or Issuer’s affiliated office, branch or other correspondent bank) and we request that such bank issue a local guarantee, bond, standby letter of credit or other undertaking (collectively referred to as “**Undertaking**”) substantially as set forth below. The term “Credit” as used in this Agreement shall also include any such Undertaking.

Details provided below:

Type of Undertaking: Bid; Performance; Advance Payment; Specify Other:

Expiry Date (at least 30 days prior to the Expiry Date on page 1):

Beneficiary (Full name and full street address):

Bid/contract ref no.:

Bid/contract purpose/description/name:

Conditions for Drawing:

(ii) Please request/authorize another bank to issue their Undertaking substantially in the attached format

See attached sheet(s) for additional documents and/or special instructions, which form(s) an integral part of this Application. Such attachments/special instructions must be approved and signed by Applicant/Obligor.

Unless otherwise stated herein, the nominated bank (if any) is authorized to send all documents to you in one airmail or courier service, if available.

THE UNDERSIGNED HEREBY AGREES TO ALL THE TERMS AND CONDITIONS SET FORTH HEREIN INCLUDING, ALL OF WHICH HAVE BEEN READ AND UNDERSTOOD BY THE UNDERSIGNED.

(Applicant/Obligor)

(Authorized "Signature")

(Print Authorized Signor's Name)

(Title)

(Phone)

(Date)

THE FOLLOWING IS TO BE EXECUTED IF THE CREDIT IS TO BE ISSUED FOR THE ACCOUNT OF A PERSON OTHER THAN THE PERSON SIGNING ABOVE:

AUTHORIZATION AND AGREEMENT OF ADDITIONAL PARTY NAMED AS ACCOUNT PARTY

To: THE ISSUER OF THE CREDIT

We join in the above Agreement, naming us as Account Party, for the issuance of the Credit and, in consideration thereof, we irrevocably agree (i) that the above Applicant has sole right to give instructions and make agreements with respect to this Application, the Agreement, the Credit and the disposition of documents, and we have no right or claim against you, any of your affiliates or subsidiaries, or any correspondent in respect of any matter arising in connection with any of the foregoing and (ii) to be bound by the Agreement and all obligations of Applicant thereunder as if we were a party thereto. Applicant is authorized to assign or transfer to you all or any part of any security held by Applicant for our obligations arising in connection with this transaction and, upon any such assignment or transfer, you shall be vested with all powers and rights in respect of the security transferred or assigned to you and you may enforce your rights under this Agreement against us or our Property in accordance with the terms hereof.

(Account Party)

(Authorized "Signature")

(Print Authorized Signor's Name)

(Title)

(Phone)

(Date)

EXHIBIT D-2

FORM OF CONTINUING AGREEMENT FOR COMMERCIAL & STANDBY LETTERS OF CREDIT

To induce JPMorgan Chase Bank, N.A. and/or any of its subsidiaries or affiliates (individually and collectively, the “Bank”), in its sole discretion, to issue from time to time at the request of the undersigned (individually and, if more than one, collectively, the “Applicant”), one or more standby or commercial letters of credit or other independent undertakings (together with any replacement, extension or modification thereof, each a “Credit”, and collectively, “Credits”), the Applicant agrees as follows:

ARTICLE I – DEFINED TERMS; APPLICATION PROCESS

Section 1.01. Defined Terms. Unless otherwise defined herein, capitalized terms used herein have the meaning set forth in Annex A.

Section 1.02. Applications. Each request to issue a Credit hereunder (each such request, an “Application”) shall be irrevocable and in a form acceptable to the Bank. The Applicant shall be responsible for the final text of a Credit requested hereunder notwithstanding the Bank’s recommendation, assistance or drafting or the Bank’s use, non-use or refusal to use text submitted by the Applicant.

Section 1.03. Letters of Credit Issued for Affiliates. Notwithstanding that a Credit issued or outstanding hereunder supports any obligations of, or is for the account of, an Affiliate of the Applicant, or states that an Affiliate of the Applicant is the “account party,” “applicant,” “customer,” “instructing party,” or the like of or for such Credit, and without derogating from any of the Bank’s rights (whether arising by contract, at law, in equity or otherwise) against such Affiliate in respect of such Credit, the Applicant (a) shall reimburse, indemnify and compensate the Bank for such Credit (including to reimburse any and all drawings thereunder) as if such Credit had been issued solely for the account of the Applicant and (b) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Affiliate in respect of such Credit. The Applicant hereby acknowledges that the issuance of such Credits for an Affiliate inures to the benefit of the Applicant, and that the Applicant’s business derives substantial benefits from the businesses of such Affiliate.

Section 1.04. Joint and Several Liability. If more than one Person signs this Agreement or an Application hereunder, each of them shall be jointly and severally liable hereunder and thereunder and all the terms and provisions regarding liabilities, obligations and property of such Persons shall apply to any liabilities, obligations and property of any and all of them.

ARTICLE II – PAYMENT TERMS

Section 2.01. Draw Reimbursement; Fees. For each Credit, the Applicant shall pay the Bank (a) the amount of each drawing (i) on demand, when payment is made at sight, and (ii) at

least one Business Day prior thereto, when payment is to be made under a time draft (or acceptance relating thereto) or deferred payment obligation, and (b) related commissions, fees and charges (including any third party fees incurred by the Bank), at such rates, amounts and times as the Bank and the Applicant shall mutually agree (or in the absence of such an agreement, as reasonably determined by the Bank).

Section 2.02. Interest. If any amount payable by the Applicant to the Bank hereunder is not paid when due, such overdue amount shall bear interest at a rate per annum equal to the Default Rate, calculated on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable on demand for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.03. Non-USD Draw. Unless otherwise previously agreed by the Bank, if an amount drawn under any Credit is in a currency other than United States dollars, the Applicant shall reimburse the Bank, on demand, the United States dollar equivalent of such drawn amount based on the Bank's actual cost of settlement of its obligation.

Section 2.04. Debit Authorization; Payments Generally. The Applicant hereby authorizes the Bank to debit from any of Applicant's accounts maintained with the Bank any amount payable by the Applicant hereunder, including the amount of any drawing under a Credit payable pursuant to Section 2.01(a). All payments required to be made by the Applicant hereunder shall be made in immediately available funds, without setoff, recoupment or counterclaim.

Section 2.05. Increased Costs. If, as a result of any Regulatory Change, the Bank determines that the cost (including but not limited to, any reserve, special deposit, insurance charge, capital charge, liquidity requirement, Tax (imposed on letters of credit or other obligations, or its deposits, reserves, other liabilities, or capital attributable thereto but excluding Excluded Taxes) or other assessment) to the Bank of issuing or maintaining any Credit is increased, or any amount received or receivable by the Bank hereunder is reduced, or the Bank is required to make any payment in connection with any transaction contemplated hereby, then the Applicant shall pay to the Bank on demand such additional amount or amounts as the Bank determines will compensate the Bank for such increased cost, reduction or payment.

Section 2.06. Taxes.

(a) All payments to be made hereunder shall be made without setoff or counterclaim and free and clear of, and without any deduction for any Taxes, except as required by applicable law. If any Indemnified Taxes are required by applicable law to be withheld from any amounts payable to the Bank hereunder, the amounts so payable to the Bank shall be increased to the extent necessary to yield to the Bank (after payment of all Indemnified Taxes) the amounts payable hereunder and in the full amounts to be paid. If any applicable law requires the deduction or withholding of any Tax from any amounts payable to the Bank hereunder, whenever any such Tax is paid by the Applicant, as promptly as possible thereafter, the Applicant shall send to the Bank an official receipt showing payment thereof, together with such additional documentary evidence as may be reasonably required from time to time by the Bank. The Applicant shall indemnify the

Bank, within ten (10) days after demand therefor, for Indemnified Taxes imposed with respect to payments made hereunder and paid or otherwise borne by the Bank whether or not such Indemnified Taxes were correctly or legally imposed.

(b) The Applicant shall indemnify the Bank against any stamp Taxes, transfer Taxes, documentary Taxes, assessments or charges made by any governmental authority by reason of the execution and delivery of this Agreement or any other Facility Document.

ARTICLE III – OBLIGATIONS ABSOLUTE

Section 3.01. Obligations Absolute. The Applicant's obligation to reimburse any drawing under a Credit as provided in Section 2.01(a) shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including, without limitation: (a) any lack of validity, enforceability or legal effect of any Credit or this Agreement, or any term or provision therein or herein; (b) payment against presentation of any Drawing Document that does not comply in whole or in part with the terms of the applicable Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person (or a transferee of such Person) purporting to be a successor or transferee of the beneficiary of such Credit; (c) the Bank being the beneficiary of any Credit; (d) the Bank or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Credit even if such Drawing Document claims an amount in excess of the amount available under the Credit; (e) the existence of any claim, set-off, defense or other right that the Applicant or any other Person may have at any time against any beneficiary, any assignee of proceeds, the Bank or any other Person; (f) the Bank or any correspondent having previously paid against fraudulently signed or presented Drawing Documents (whether or not the Applicant reimbursed the Bank for such drawing); and (g) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing, that might, but for this Section, constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, the Applicant's obligations hereunder (whether against the Bank, the beneficiary or any other Person).

Section 3.02. Limitation of Liability. Subject to Section 3.03 below, neither the Bank nor any of its Related Parties shall have any liability or responsibility, and the Bank's rights and remedies against the Applicant shall not be impaired, by reason of or in connection with: (a) honor of a presentation under any Credit which on its face substantially complies with the terms of such Credit; (b) honor of a presentation of any Drawing Documents which appear on their face to have been signed, presented or issued (i) by any purported successor or transferee of any beneficiary or other party required to sign, present or issue the Drawing Documents or (ii) under a new name of the beneficiary; (c) acceptance as a draft of any written or electronic demand or request for payment under a Credit, even if nonnegotiable or not in the form of a draft, and may disregard any requirement that such draft, demand or request bear any or adequate reference to the Credit; (d) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness, or legal effect of any presentation under any Credit or of any Drawing Documents; (e) disregard of any non-documentary conditions stated in any Credit; (f) acting upon any Instruction which it, in Good Faith, believes to have been given by a Person or entity authorized

to give such Instruction; (g) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation; (h) any delay in giving or failing to give any notice; (i) any acts, omissions or fraud by, or the solvency of, any beneficiary, any nominated Person or any other Person; (j) any breach of contract between the beneficiary and the Applicant or any of the parties to the underlying transaction; (k) assertion or waiver of any provision of the UCP or ISP which primarily benefits an issuer of a letter of credit, including, any requirement that any Drawing Document be presented to it at a particular hour or place; (l) payment to any paying or negotiating bank (designated or permitted by the terms of the applicable Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under the Standard Letter of Credit Practice applicable to it; or (m) acting or failing to act as required or permitted under Standard Letter of Credit Practice (or in the case of other independent undertakings or guarantees, the UN Convention).

Section 3.03. Standard of Care. Nothing in Section 3.02 shall be construed to excuse the Bank from liability to the Applicant to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Applicant to the extent permitted by applicable law) suffered by the Applicant that are caused by the Bank's failure to exercise care when determining whether Drawing Documents presented under a Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Bank (as finally determined by a court of competent jurisdiction) in (a) honoring a presentation that does not at least substantially comply with a Credit, (b) failing to honor a presentation that strictly complies with a Credit, or (c) retaining Drawing Documents presented under a Credit, the Bank shall be deemed to have exercised care in each such determination or action. In no event shall the Bank be deemed to have failed to act with due diligence or reasonable care if the Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement. The Applicant's aggregate remedies against the Bank and any Related Party for wrongfully honoring a presentation under any Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by the Applicant to the Bank in respect of the honored presentation in respect of such Credit under Section 2.01 above, plus interest. The Applicant shall take action to avoid and mitigate the amount of any damages claimed against the Bank or any Related Party, including by enforcing its rights in the underlying transaction. Any claim by the Applicant for damages under or in connection with this Agreement or any Credit shall be reduced by an amount equal to the sum of (i) the amount saved by the Applicant as a result of the breach or alleged wrongful conduct and (ii) the amount of the loss that would have been avoided had the Applicant mitigated damages.

Section 3.04. Non-New York Law Governed Credit. If a Credit is to be governed by a law other than that of the State of New York, the Bank shall not be liable for any Costs resulting from any act or omission by the Bank in accord with the UCP or the ISP, as applicable, and the Applicant shall indemnify the Bank for all such Costs.

Section 3.05 Notice of Objection, Etc. The Applicant shall notify the Bank of (a) any noncompliance with any Instruction, any other irregularity with respect to the text of any Credit or

any amendment thereto or any claim of an unauthorized, fraudulent or otherwise improper Instruction, within one (1) Business Day of the Applicant's receipt of a copy of such Credit or amendment and (b) any objection the Applicant may have to the Bank's honor or dishonor of any presentation under any Credit or any other action or inaction taken or proposed to be taken by the Bank under or in connection with this Agreement or any Credit, within three (3) Business Days after the Applicant receives notice of the objectionable action or inaction. The failure to so notify the Bank within said times shall discharge the Bank from any loss or liability that the Bank could have avoided or mitigated had it received such notice, to the extent that the Bank could be held liable for damages hereunder; provided, that, if the Applicant shall not provide such notice to the Bank within three (3) Business Days of the date of receipt in the case of clause (a) or within ten (10) Business Days of the date of receipt in the case of clause (b), the Bank shall have no liability whatsoever for such noncompliance, irregularity, action or inaction and the Applicant shall be precluded from raising such noncompliance, irregularity or objection as a defense or claim against the Bank. The Applicant's acceptance or retention of a Drawing Document presented under or in connection with any Credit (whether or not the document is genuine) or of any Released Merchandise shall ratify the Bank's honor of the presentation and preclude the Applicant from raising a defense, set-off or claim with respect to the Bank's honor of such Credit. The Bank shall not be required to seek any waiver of discrepancies from the Applicant or to grant any waiver of discrepancies which the Applicant approves or requests.

ARTICLE IV – REPRESENTATIONS AND WARRANTIES

The Applicant hereby represents and warrants on and as of the date hereof, and the date of each issuance, amendment, and extension of a Credit, as applicable, that:

Section 4.01. Organization; Powers. It is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization and has all necessary power and authority to enter into and perform this Agreement and the other Facility Documents.

Section 4.02. Authorization; Enforceability. It has obtained all authorizations, consents and approvals required for it to enter into and perform this Agreement and the other Facility Documents in accordance with its terms. This Agreement and each other Facility Document has been duly executed and delivered by the Applicant and constitutes the legal, valid and binding obligation of the Applicant, enforceable against it in accordance with its terms.

Section 4.03. Governmental Approvals; No Conflicts. The execution, delivery and performance of this Agreement and the other Facility Documents by the Applicant (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Applicant or any order of any Governmental Authority, and (c) will not violate or result in a default under any material agreement or arrangement to which the Applicant is a party or by which it or its properties may otherwise be bound.

Section 4.04. Financial Condition. The financial statements most recently furnished to the Bank by the Applicant fairly present the financial condition of the Applicant in accordance with generally accepted accounting principles, and there has been no material adverse change in the Applicant's business, condition (financial or otherwise) or results of operation since the date of the Applicant's most recent annual financial statements.

Section 4.05. Disclosure. No information now or hereafter furnished by the Applicant to the Bank in connection with this Agreement, any other Facility Document or any Credit is or shall be materially false or misleading when furnished.

Section 4.06. Litigation. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Applicant, threatened against or affecting the Applicant which, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a material adverse effect on its financial condition or business or which purports to affect the validity or enforceability of this Agreement, any other Facility Document, any Credit or any transaction related to any Credit.

Section 4.07. Anti-Corruption Laws and Sanctions. The Applicant has implemented and maintains in effect policies and procedures designed to ensure compliance by the Applicant, its subsidiaries, Affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Applicant, its subsidiaries, Affiliates and their respective officers and directors and to the knowledge of the Applicant, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and if the Applicant is organized outside of the United States of America, the Applicant further represents that it is not knowingly engaged in any activity that would reasonably be expected to result in the Applicant being designated as a Sanctioned Person. None of (a) the Applicant, any subsidiary, Affiliate, any of their respective directors, officers or employees, or (b) to the knowledge of the Applicant, any agent of the Applicant or any subsidiary or Affiliate that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Credit, use of proceeds or other transaction contemplated by this Agreement or any other Facility Documents will violate any Anti-Corruption Law or applicable Sanctions.

ARTICLE V - COVENANTS

The Applicant covenants and agrees with the Bank that:

Section 5.01. Financial Statements and Other Information. To the extent not otherwise provided to the Bank under other agreements, upon request, the Applicant will furnish to the Bank its most recent year-end, quarterly and monthly (if any), financial statements (as audited) and such other information regarding the financial condition, business affairs or operations of the Applicant as the Bank may reasonably request. Further, the Applicant acknowledges and agrees to provide the Bank additional information, records, and documentation as requested by the Bank, pursuant to the Bank's programs enacted to comply with Section 326 of the USA Patriot Act, the applicable

regulations promulgated thereunder, and the Bank's Customer Identification Program and authorizes the Bank to verify information as per the USA Patriot Act Regulation.

Section 5.02. Existence; Conduct of Business. The Applicant will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business.

Section 5.03. Compliance with Laws. The Applicant will comply with all laws, rules, regulations and orders of any Governmental Authority (including the USA Patriot Act, foreign exchange control regulations, foreign asset control regulations and other trade-related regulations) now or hereafter applicable to each Credit, the transactions underlying such Credit or Applicant's execution, delivery and performance of this Agreement and each other Facility Document.

Section 5.04. Inspection Rights. The Applicant will permit the Bank (or its representatives), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

Section 5.05. Payment of Taxes. The Applicant will pay all Taxes required to have been paid by it when due, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, and (b) the Applicant has set aside on its books and records adequate reserves with respect thereto in accordance with generally accepted accounting principles.

Section 5.06. Insurance. The Applicant will cause all Released Merchandise to be insured against theft, fire and such other risks usually insured against in connection with the underlying transaction.

Section 5.07. Anti-Corruption and Sanctions. The Applicant will maintain in effect and enforce policies and procedures designed to ensure compliance by the Applicant, its subsidiaries, Affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Applicant agrees that no goods or vessels used to transport goods will be the subject of any Sanctions. The Applicant will not request any Credit, and shall not use, and shall procure that its subsidiaries, Affiliates and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

ARTICLE VI – EVENTS OF DEFAULT

Section 6.01. Events of Default. If any of the following events (“Events of Default”) shall occur and be continuing:

(a) the Applicant shall fail to pay any Obligations when and as the same shall become due and payable;

(b) any representation or warranty made or deemed made by or on behalf of the Applicant or any Guarantor in or in connection with this Agreement or any other Facility Document, or in any Instruction, report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Facility Document, shall prove to have been incorrect in any material respect when made or deemed made;

(c) the Applicant or any Guarantor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Facility Document;

(d) the Applicant or any Guarantor shall fail to pay when due any indebtedness (including but not limited to indebtedness for borrowed money) or any event or condition shall occur that shall result in any such indebtedness becoming due prior to its scheduled maturity or that permits (with or without the giving of notice, the lapse of time or both) the holder of such indebtedness or obligee to cause such indebtedness to become due, by acceleration or otherwise, prior to its scheduled maturity;

(e) the Applicant or any Guarantor: (i) shall generally not, or be unable to, or shall admit in writing its inability to, pay its debts as its debts become due; (ii) shall make an assignment for the benefit of creditors; (iii) shall file a petition in bankruptcy or for any relief under any law of any jurisdiction relating to reorganization, arrangement, readjustment of debt, dissolution or liquidation; (iv) shall have any such petition filed against it in which an adjudication is made or order for relief is entered or which shall remain undismissed for a period of thirty (30) days or shall consent or acquiesce thereto; or (v) shall have had a receiver, custodian or trustee appointed for all or a substantial part of its property;

(f) any Facility Document shall at any time cease to be in full force and effect or its validity or enforceability shall be disputed or contested or any lien or security interest securing the Obligations shall cease to create a valid and perfected first priority lien or security interest in the property purported to be subject thereto;

(g) there shall be commenced against the Applicant or any Guarantor any proceeding for enforcement of a money judgment, which proceeding shall not have been stayed within thirty (30) days;

(h) a Change of Control shall have occurred or, if an individual, the death of the Applicant or any Guarantor; or

(i) the Applicant or any Guarantor shall (i) merge into or consolidate with any other Person, (ii) dispose of all or substantially all of its assets (whether now owned or hereafter acquired), or (iii) liquidate or dissolve;

THEN, and in every such event (other than an event with respect to the Applicant described in clause (e) above), and at any time thereafter during the continuance of such event, the Bank may, by notice to the Applicant, take any and all of the following actions, at the same or different times: (i) declare the Obligations then outstanding to be due and payable (in whole or in part), and thereupon such Obligations shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Applicant; (ii) require that the Applicant provide cash collateral as required in Section 7.03; and (iii) exercise all other rights and remedies available to it under the Facility Documents and applicable law; and in case of any event with respect to the Applicant described in clause (e) above, the Obligations then outstanding shall automatically become due and payable and the obligation of the Applicant to cash collateralize the aggregate undrawn amount of all outstanding Credits at such time as provided in clause (ii) above shall automatically become effective, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Applicant.

Section 6.02. Code and Other Remedies. In addition to any other rights and remedies granted to the Bank in the Facility Documents, the Bank may exercise all rights and remedies of a secured party under the New York UCC or any other applicable law. Upon and during the continuance of an Event of Default, the Applicant agrees, at the Bank's request, to assemble all Collateral and make it available to the Bank at places which the Bank shall reasonably select, whether at the premises of the Applicant or elsewhere, and the Bank shall be authorized to liquidate or sell immediately, without demand for payment, advertisement or notice to the Applicant, all of which are hereby expressly waived (except such notice as is required by applicable law and that cannot be waived, in which event such notice shall be deemed proper if mailed at least five (5) Business Days before disposition or other action) any and all Collateral (whether received pursuant to Section 7.03 hereof or otherwise) at private sale or at public auction or at brokers' board or upon any exchange or otherwise, at Bank's option, in such parcels and at such time and at such place and at such price and upon such terms and conditions as the Bank may deem proper, and to apply the net proceeds of such sale or sales, together with any balance of deposits and any sums credited by or due from the Bank to the Applicant in general account or otherwise, to the payment of any and all of the Obligations, all without prejudice to the rights of the Bank against the Applicant with respect to any and all amounts which may be or remain unpaid and if any such sale be at broker's board or public auction or upon any exchange the Bank may itself be a purchaser at such sale, free from any right of redemption, which the Applicant hereby expressly waives and releases.

Section 6.03. Bank's Appointment as Attorney-in-Fact, Etc. The Applicant hereby gives the Bank the power and right to amend or terminate, or transfer drawing rights or cure one or more discrepancies under, any Credit on behalf of the Applicant, without notice to or assent by the Applicant. The Applicant further irrevocably constitutes and appoints the Bank and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full

irrevocable power and authority in the place and stead of the Applicant and in the name of the Applicant or in its own name, for the purpose of carrying out the terms of this Agreement and the other Facility Documents, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and the other Facility Documents and to protect, preserve or realize upon the Collateral and the Bank's security interest therein. All powers, authorizations and agencies contained in this Section 6.03 are coupled with an interest and are irrevocable until this Agreement is terminated; provided that Bank agrees that it will not exercise any rights under this Section 6.03 including under the power of attorney provided for herein unless an Event of Default shall have occurred and be continuing.

ARTICLE VII – PLEDGE AND ASSIGNMENT OF SECURITY

Section 7.01. Grant of Security. As security for the payment and performance of all Obligations, the Applicant hereby assigns and transfers to the Bank, and hereby grants to the Bank, a security interest in, all of the following property now owned or at any time hereafter acquired by the Applicant or in which the Applicant now has or at any time in the future may acquire any right, title or interest (collectively, the "Collateral"):

- (a) all Deposit Accounts and Securities Accounts with any office of the Bank wherever located;
- (b) all Underlying Property which has been or at any time shall be (i) received or receivable by the Applicant, the Bank or any correspondent under or in connection with each Credit, or (ii) delivered to or otherwise come into the possession, custody or control of any office of the Bank or any correspondent (which shall be deemed a collateral agent or a bailee of the Bank for the purpose of perfecting a security interest in the Underlying Property) for any purpose, whether or not for the express purpose of being used by any such entity as collateral security or for safekeeping, custody, pledge, transmission or otherwise;
- (c) all present and future claims and rights of the Applicant against any beneficiary of any Credit arising in connection with such Credit or the transaction underlying such Credit; and
- (d) all products and proceeds of the foregoing.

Section 7.02. Holder in Trust, Etc. To the extent the Applicant shall hold any Collateral or any proceeds of Collateral, it shall hold such Collateral in trust for the Bank. The Bank shall be deemed to have possession, custody or control of all Collateral actually in transit to or set apart for it (or any of its agents, correspondents or others acting on its behalf), it being understood that the receipt at any time by the Applicant (or any of its agents, correspondents, or others acting on its behalf), of Collateral shall not be deemed a waiver of any of the Bank's rights or powers.

Section 7.03. Cash Collateral. If at any time there shall occur and be continuing (a) any Event of Default, (b) any material adverse change in the condition (financial or otherwise), business, operations or prospects of the Applicant or any Guarantor, (c) any action for a temporary

restraining order, preliminary or permanent injunction, beneficiary wrongful dishonor action or the issuance or commencement of any similar order, action or event in connection with any Credit or any Drawing Document or this Agreement, which order, action or event may apply, directly or indirectly, to the Bank or which otherwise threatens to extend or increase the Bank's contingent liability beyond the time, amount or other limit provided in such Credit or this Agreement; or (d) any other event or condition which provides a basis for the Bank in good faith to deem itself insecure, then, the Applicant shall, upon Bank's demand, deliver to the Bank, as additional security for the Obligations, cash in an amount required by the Bank.

Section 7.04. Filing of Financing Statements, Etc. The Applicant hereby authorizes the Bank to file UCC financing statements, naming the Applicant as debtor and the Bank as secured party, with respect to any or all of the Collateral hereunder. The Bank is authorized to take any action necessary to protect its rights in the Collateral, including but not limited to issuing an LOI for the Applicant's account to induce delivery of goods underlying any commercial Credit. The Applicant will, at its own expense upon request by the Bank from time to time, sign any other instrument or document (including any security agreement, or control agreement) and take any other action the Bank may reasonably deem necessary or desirable to preserve, perfect, protect or maintain the Collateral and the priority of the Bank's security interest therein and to realize upon the Bank's rights and remedies as a secured party. For the avoidance of doubt and not in limitation of the rights of the Bank under Sections 9-104(a)(1), 9-106(a) and 8-106(e) of the New York UCC, the Applicant and the Bank (acting as a bank with respect to all Deposit Accounts and as a securities intermediary with respect to all Securities Accounts) agree that the Bank may direct disposition of the funds in any Deposit Account and may issue and follow its own entitlement orders with respect to any Securities Account, in either case, without the consent of the Applicant.

Section 7.05. Assertion of Applicant's Rights. To the extent the Bank honors a presentation for which the Bank remains unpaid, the Bank may assert rights of the Applicant and the Applicant shall cooperate with the Bank in its assertion of the Applicant's rights against the beneficiary, the beneficiary's rights against the Applicant and any other rights that the Bank may have by subordination, subrogation, reimbursement, indemnity or assignment.

Section 7.06. Certain Matters Relating to Commercial Letters of Credit.

(a) If the Bank shall agree to honor or accept Drawing Documents under a Credit on a time draft or deferred payment basis, the Applicant shall not take possession of the Drawing Documents or the Underlying Property except for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with such Underlying Property in a manner preliminary to its sale or exchange. An Instruction to release any such Drawing Document or Underlying Property shall be deemed a representation by the Applicant to the Bank that the Applicant seeks such release for one of said purposes. In each such case, the Applicant shall apply the proceeds of Underlying Property to the Obligations relating to the applicable Credit.

(b) The Bank's rights and liens hereunder shall continue unimpaired, and the Applicant shall be and remain obligated in accordance with the terms and provisions hereof, notwithstanding

the release and/or substitution of any Underlying Property which may be held as security hereunder at any time, or of any rights or interest therein.

ARTICLE VIII - OPERATIONAL PROVISIONS RELATED TO COMMERCIAL LETTERS OF CREDIT

In the event that any commercial letter of credit is issued hereunder, the following terms shall apply:

Section 8.01. Absence of Written Instructions. In the absence of written instructions to the contrary, the Applicant agrees that (a) if the Credit authorizes drawings and/or shipments in installments and any installment is not drawn and/or shipped within the period allowed for that installment but the Applicant waives such discrepancy, the Bank is authorized to honor any subsequent installments so long as documents for such installments are presented within the period allowed for such installments; and (b) each negotiated Credit shall expire at the counters of the nominated person even if notice of the presentation or any documents contained in the presentation is not received by the Bank until after the expiry date of the Credit or any installment thereof.

Section 8.02. Release of Documents or Claiming of Goods from the Carrier. In the event the Bank, upon the Applicant's request, agrees to deliver to the Applicant, a customs broker or any other person designated by the Applicant, any of the documents of title relating to the Credit, prior to having received payment in full of all the Obligations, the Applicant agrees to obtain possession of any goods represented by such documents within twenty-one (21) days after the date of delivery of such documents, and if the Applicant fails to do so, the Applicant agrees to return such documents or to have them returned to the Bank prior to the expiration of the twenty-one (21) day period. The Applicant further agrees to execute and deliver to the Bank receipts for such documents and the goods represented thereby identifying and describing such documents and goods. If the Applicant claims from the carrier any goods identified in the shipping documents required under the Credit, (by virtue of a steamship release, air release, letter of indemnity or any other means), with or without the assistance of the Bank, and such goods have been released to the Applicant or a customs broker or agent acting on the Applicant's behalf, the Applicant hereby authorizes the Bank to immediately, and without further inquiry and consideration, debit any account of the Applicant in an amount equal to the fair market value of such goods, that have been released, together with any out-of-pocket charges or expenses owing to the Bank.

Section 8.03. LOIs. Terms regarding steamship guarantees, releases or letters of indemnity in favor of a carrier issued by the Bank upon Instruction of the Applicant ("LOIs") are set forth in Annex B.

ARTICLE IX - OPERATIONAL PROVISIONS RELATED TO STANDBY LETTERS OF CREDIT

In the event that any standby letter of credit is issued hereunder, the following terms shall apply:

Section 9.01. Installments. If the Credit is issued subject to UCP 600, unless otherwise agreed, in the event that any installment of the Credit is not drawn within the period allowed for that installment, the Credit may continue to be available for any subsequent installments in the sole discretion of the Bank, notwithstanding Article 32 of UCP.

Section 9.02. Auto Extend Notice. If the Credit provides for automatic extension without amendment, the Applicant agrees that it will notify the Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which the Bank must give notice of non-extension if the Applicant wishes the Credit not to be extended. Any decision to extend or not extend the Credit shall be in the Bank's sole discretion and judgment. The Applicant hereby acknowledges that in the event the Bank notifies the beneficiary of the Credit that it has elected not to extend the Credit and the beneficiary draws on the Credit after receiving the notice of non-extension, the Applicant acknowledges and agrees that the Applicant shall have no claim or cause of action against the Bank or defense against payment under the Agreement for the Bank's discretionary decision to extend or not extend the Credit.

Section 9.03. Pending Expiry Notice. If a Credit's terms and conditions provide that the Bank give the beneficiary a notice of pending expiration, Applicant agrees that it will notify the Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which the Bank must give such notice of the pending expiration date. In the event the Applicant fails to so notify the Bank and the Credit is extended, the Applicant's Obligations under this Agreement shall continue in effect and be binding on the Applicant with regard to the Credit as so extended.

ARTICLE X – MISCELLANEOUS

Section 10.01. Notices.

(a) Notices to the Bank provided for herein shall be sent to the address of the Bank as set forth in the applicable Credit and shall be delivered by hand, overnight courier or certified mail, return receipt requested. Notices to the Applicant provided for herein shall be sent to the address set forth in the Application unless advised otherwise in writing.

(b) The Bank may transmit a Credit and any amendment thereto by S.W.I.F.T. message and thereby bind the Applicant directly and as indemnitor to the S.W.I.F.T. rules.

(c) The Bank is authorized to accept and process any Application and any amendments, transfers, assignments of proceeds, Instructions, consents, waivers and all documents relating to a Credit or an Application which are sent by Electronic Transmission and such Electronic Transmission shall have the same legal effect as an original and shall be binding upon and enforceable against the Applicant. The Bank may, but shall not be obligated to, require authentication of such Electronic Transmission or receipt of original documents prior to acting on such Electronic Transmission. If it is a condition of a Credit that payment may be made upon receipt by the Bank of an Electronic Transmission advising negotiation, the Applicant hereby agrees to reimburse the Bank on demand for the amount indicated in such Electronic Transmission advice, and further agrees to hold the Bank harmless if the documents fail to arrive, or if, upon the

arrival of the documents, the Bank should determine that the documents do not comply with the terms and conditions of such Credit.

(d) The Bank's records of the content of any Instruction shall be conclusive absent manifest error.

Section 10.02. Amendment; Waiver. Neither the Bank nor the Applicant shall be deemed to have amended or modified any term hereof, or waived any of their rights unless the Bank and the Applicant consent in writing to such amendment, modification or waiver. No such waiver, unless expressly stated therein, shall be effective as to any transaction which occurs subsequent to such waiver, nor as to any continuance of a breach after such waiver. The Bank's or the Applicant's consent to any amendment, waiver, or modification does not mean that the Bank or the Applicant shall consent or has consented to any other or subsequent Instruction to amend, modify, or waive a term of this Agreement, any other Facility Document or any Credit.

Section 10.03. Indemnification. The Applicant shall indemnify and hold harmless the Bank, and its correspondents and each of its Related Parties (each, including the Bank, an "Indemnified Person") from and against any and all Costs, arising out of, in connection with, or as a result of: (a) any Credit or any pre-advice of its issuance; (b) any transfer, sale, delivery, surrender, or endorsement of any Drawing Document at any time(s) held by any Indemnified Person in connection with any Credit; (c) any action or proceeding arising out of or in connection with any Credit or this Agreement or any other Facility Document (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Credit, or for the wrongful dishonor of or honoring a presentation under any Credit; (d) any independent undertakings issued by the beneficiary of any Credit (in connection with such Credit); (e) any unauthorized Instruction or error in any Electronic Transmission; (f) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated; (g) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of letter of credit proceeds or holder of an instrument or document; (h) the fraud, forgery or illegal action of parties other than the Indemnified Person; (i) the enforcement of this Agreement or any other Facility Document or any rights or remedies under or in connection with this Agreement, any other Facility Document or any Credit; (j) the Bank's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation; (k) Bank dishonoring any presentation upon or during the continuance of any Event of Default or for which the Applicant is unable or unwilling to make any payment to the Bank required under Section 2.01; and (l) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of such Indemnified Person; provided, however, that such indemnity shall not be available to any Person claiming indemnification under this Agreement or any other Facility Document to the extent that such Costs are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of such Indemnified Person. If and to the extent that the obligations of the Applicant under this Section are unenforceable for any reason, the Applicant shall make the maximum contribution to the Costs permissible under applicable law.

Section 10.04. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Bank and the Applicant and their respective successors and assigns permitted hereby, except that the Applicant may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. Nothing in this Agreement, expressed or implied, shall be construed to confer any right or benefit upon any Person (other than the parties hereto, the Indemnified Persons and their respective successors and permitted assigns). The Bank may assign or sell participations in all or a portion of its rights and obligations under this Agreement (including all or a portion of its rights and obligations under any Credit) to another entity without the prior written consent of the Applicant.

Section 10.05. Termination; Survival.

(a) This Agreement is a continuing agreement and may not be terminated by the Applicant except upon (i) thirty (30) days' prior written notice of such termination by the Applicant to the Bank at the address of the Bank set forth on the most recent Credit issued hereunder, (ii) payment of all Obligations and (iii) the expiration or cancellation of all Credits and LOIs (if any) issued hereunder. Notwithstanding the foregoing sentence, if a Credit is issued in favor of another entity, which entity is to issue a guarantee or undertaking on Applicant's behalf in connection therewith, or is issued as support for such a guarantee, the Applicant shall remain liable with respect to such Credit until the Bank is fully released in writing by such entity.

(b) The provisions of Articles II, III, VII and Sections 10.03, 10.05, 10.10 and 10.11 shall survive and remain in full force and effect regardless of the consummation of any transactions contemplated hereby, the reimbursement or repayment of any drawings or Obligations, the expiration or termination of the Credits or LOIs or the termination of this Agreement or any provision hereof.

Section 10.06. Counterparts; Integration; Electronic Execution. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the Facility Documents constitute the entire contract and final agreement among the parties relating to the subject matter and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Delivery of an executed counterpart of a signature page of this Agreement or any other Facility Document that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement or such other Facility Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement and/or any other Facility Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Bank to accept Electronic Signatures in any form or format without its prior written consent and pursuant

to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Bank has agreed to accept any Electronic Signature, the Bank shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Applicant (or any Guarantor) without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and (b) upon the request of the Bank, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Applicant hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement or any other Facility Document shall have the same legal effect, validity and enforceability as any paper original, (ii) agrees that the Bank may, at its option, create one or more copies of this Agreement or any other Facility Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of the Bank's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), and (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement or any other Facility Document based solely on the lack of paper original copies of this Agreement or such other Facility Document, respectively, including with respect to any signature pages thereto.

Section 10.07. Severability. Any provisions of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.08. Right of Setoff. The Applicant agrees that, if an Event of Default shall have occurred and be continuing, the Bank shall be entitled, at any time and from time to time, (a) to setoff and apply any and all deposits (general or special, time or demand, provisional or final, matured or unmatured) at any time held, and other obligations at any time owing, by the Bank to or for the credit or the account of the Applicant, against any and all of the Obligations, and (b) to advance funds to the Applicant under any line of credit (committed or uncommitted) made available to the Applicant by the Bank and to apply such funds against any and all of the Obligations, irrespective of, in the case of both (a) and (b), whether or not the Bank shall have made any demand under this Agreement or any other Facility Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of the Bank different from the branch or office that is holding such deposit, obligated on such indebtedness or extending such credit line, as applicable. The rights of the Bank under this Section are in addition to other rights and remedies (including other rights of setoff) that the Bank may have. The Bank agrees to notify the Applicant promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09. Foreign Currency Indemnity. The Applicant's obligation to make payments in any currency (the "Contract Currency") shall not be discharged or satisfied by any tender, or

any recovery pursuant to any judgment or otherwise, that is expressed in or converted into any currency other than the Contract Currency, except to the extent that such tender or recovery results in the actual receipt by the Bank at its designated office of the full amount of the Contract Currency specified to be payable hereunder. The Applicant's obligation to make payments in the Contract Currency shall be enforceable as an alternative or additional cause of action to the extent that such actual receipt is less than the full amount of the Contract Currency specified to be payable hereunder, and shall not be affected by judgment being obtained for other sums due hereunder. The Applicant shall indemnify the Bank for any shortfall in such actual receipt.

Section 10.10. Governing Law; Jurisdiction; Consent to Service of Process; Etc.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws. The UCP and the ISP are incorporated by reference into this Agreement provided, however, that to the extent permitted by applicable law, this Agreement shall prevail in case of a conflict between this Agreement, the New York UCC, the UCP, ISP and/or Standard Letter of Credit Practice and the UCP shall prevail in case of conflict between the UCP and the New York UCC or other Standard Letter of Credit Practice, if the Credit is governed by the UCP and the ISP shall prevail in case of a conflict between the ISP and the New York UCC and other Standard Letter of Credit Practice if the Credit is a standby Credit governed by the ISP.

(b) The Applicant consents to the nonexclusive jurisdiction and venue of the federal courts located in the Borough of Manhattan, City of New York (or New York state courts sitting in the Borough of Manhattan in the event that the federal court lacks subject matter jurisdiction) and any appellate court from any thereof in any action or proceeding arising out of or relating to this Agreement, any other Facility Document, any Instruction or any Credit; provided that, a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Service of process in any legal action or proceeding arising out of or in connection with this Agreement, any other Facility Document, any Instruction or any Credit may be made upon the Applicant by mailing a copy of the summons to the Applicant either at the address set forth in the applicable Application or at the Applicant's last address appearing in the Bank's records. In addition, if the Applicant is organized in a jurisdiction outside the United States of America, service of process by the Bank in connection with any dispute shall be binding on the Applicant if sent to the Process Agent (as defined below) by registered mail at the address specified below. The Applicant hereby irrevocably appoints CT Corporation (the "Process Agent"), presently located at 28 Liberty Street, New York, New York 10005 as its agent to receive on its behalf and behalf of its property service of copies of the summons and complaint and any other process which may be served in any such action or proceeding. Such service may be made by mailing or delivering a copy of such process to the Applicant in care of the Process Agent at its address and the Applicant hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf. Nothing herein shall affect the right of the Bank to serve legal process in any other manner permitted by law or affect the right of the Bank to bring any action or proceeding against the Applicant or its property in the courts of any other jurisdiction.

(d) No legal action or proceeding arising out of or in connection with this Agreement, any Facility Document, any Instruction or any Credit may be brought by the Applicant against the Bank (i) except in a state or federal court located in the Borough of Manhattan, City of New York, State of New York and (ii) unless commenced within one (1) year after (x) the expiration date of the applicable Credit or (y) the alleged breach shall have purportedly occurred, whichever is earlier.

Section 10.11. WAIVER OF JURY TRIAL. THE APPLICANT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO JURY TRIAL IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER FACILITY DOCUMENT, ANY INSTRUCTION, ANY CREDIT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

Section 10.12. Disclosure. The Bank may disseminate information relating to the Applicant, this Agreement and any Credit (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors, and third parties (including any correspondent bank) selected by any of the foregoing, wherever situated, for confidential use in connection with Bank's performance, administration or enforcement of this Agreement or any other Facility Document (including in connection with the provision of any service and for data processing, statistical and risk analysis purposes); (b) to the extent requested by any Governmental Authority; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) in connection with the exercise of any remedies hereunder or under any other Facility Document or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder or under any other Facility Document, (e) subject to an agreement containing customary confidentiality provisions, to any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or any Credit; (f) with the consent of the Applicant or (g) to the extent such information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Bank on a non-confidential basis from a source other than the Applicant.

Section 10.13. Waiver of Immunity. The Applicant acknowledges that this Agreement and each Credit is entered into (or will be entered into) for commercial purposes. To the extent that the Applicant may now or hereafter be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to this Agreement, any other Facility Document or any Credit, to claim for itself or its revenues or properties any immunity from the jurisdiction of any court or from legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the extent that in any such jurisdiction there may be attributed to the Applicant any such immunity (whether or not claimed), the Applicant hereby irrevocably agrees not to claim, and hereby waives, such immunity in respect of its obligations under this Agreement, any other Facility Document or any Credit.

Section 10.14. Interest Rate Limitation. In no case shall the interest which may be charged by the Bank hereunder exceed the maximum amount which the Bank may charge or collect under the law applicable to it.

Section 10.15. Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

IN WITNESS WHEREOF, the Applicant has caused this Agreement to be duly executed and delivered by its authorized officer as of the day and year written below.

APPLICANT

By: _____

Name:

Title:

Date:

Without limiting the terms above, the Applicant hereby authorizes the Bank to debit Applicant's account no. _____ unless the Applicant shall have agreed in writing to other payment arrangements with the Bank for the amount of each drawing and/or the Bank's commissions and charges.

ANNEX A - DEFINITIONS

The following terms shall have the following meanings:

“Affiliate” means, with respect to a specific Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under the common Control with the Person specified.

“Agreement” means this Continuing Agreement for Commercial and Standby Letters of Credit, including the Annexes hereto, as it may be amended, supplemented, or otherwise modified from time to time.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Applicant or any of its subsidiaries or Affiliates from time to time concerning or relating to bribery or corruption.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, New York are authorized or required by law to remain closed.

“Change of Control” means the acquisition of direct or indirect Control of the Applicant or any Guarantor by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the arrangement or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Costs” means any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, and expenses, including expert witness fees and legal fees, charges and disbursements of any counsel for any Indemnified Person.

“Default Rate” means a rate per annum equal to 2% above the Prime Rate.

“Deposit Account” has the meaning set forth in the New York UCC.

“Drawing Document” means any draft, demand or claim for payment under any Credit or other document presented for purposes of drawing under a Credit.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Electronic Transmission” means any electronic transmission using SWIFT, electronic mail, facsimile, any other computer generated telecommunications, or any electronic platform as agreed by the Bank from time to time.

“Excluded Taxes” means any (i) Taxes imposed on or measured by net income (however denominated), franchise taxes or branch profit taxes, in each case imposed by the jurisdiction in which the Bank is organized or in which its applicable office issuing any Credit hereunder is located, and (ii) U.S. Federal withholding taxes imposed under Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, (the “Code”) as of the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“Facility Document” means this Agreement and any other agreement entered into in connection herewith by the Applicant or any Guarantor with or in favor of the Bank, including any Application but excluding any Credit.

“Good Faith” means honesty in fact in the conduct or transaction concerned.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantor” means any Person that has guaranteed or provided credit support for all or part of the Obligations.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Instruction” means each Application, any inquiries, communications and instructions (in any form, whether oral, telephonic, written, electronic mail or transmission or facsimile) regarding a Credit.

“ISP” means, with respect to any Credit, International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adhered to by the Bank on the date such Credit is issued.

“New York UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“Obligations” means all obligations and liabilities of the Applicant to the Bank under any Facility Document or otherwise with respect to any and all Credits and LOIs issued hereunder (if any), whether matured or unmatured, absolute or contingent, now existing or hereafter incurred. Without limiting the foregoing, the Obligations include (a) the obligation to pay interest,

commissions, charges, expenses, fees, indemnities and other amounts payable by the Applicant under any Facility Document and (b) the obligation of the Applicant to reimburse any amount in respect of any of the foregoing that the Bank may elect to pay or advance on behalf of the Applicant.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Bank) or any similar release by the Federal Reserve Board (as determined by the Bank). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Regulatory Change” means any change after the date hereof in United States federal, state or foreign laws or regulations (including Regulation D of the Board of Governors of the Federal Reserve System) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks including the Bank of or under any United States federal or state, or any foreign, laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a “Regulatory Change”, regardless of the date enacted, adopted, issued, or implemented.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Released Merchandise” means, with respect to a Credit or LOI, all Underlying Property released (including pursuant to a forwarders cargo receipt or by any other means whatsoever) or consigned to the Applicant or any Person designated by the Applicant in connection with such Credit or LOI.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, by the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) if the Applicant is organized outside of the United States of America the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“Securities Account” has the meaning set forth in the New York UCC.

“Standard Letter of Credit Practice” means, for the Bank, any domestic or foreign law or letter of credit practices applicable in the city in which the Bank issued the applicable Credit or for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Credit, as the case may be. Such practices shall be (i) of banks that regularly issue Credits in the particular city and (ii) required or permitted under the UCP or the ISP, as chosen in the applicable Credit.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, value added tax or any other goods and services, use or sales tax or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“UCP” means, with respect to any Credit, Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adhered to by the Bank on the date such Credit is issued.

“UN Convention” means the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

“Underlying Property” means all property of any kind whatsoever (now existing or hereafter acquired) referred to, or relating to, an applicable Credit including, without limitation, any and all right, title and interest of the Applicant in any goods, equipment, inventory, money, documents, letters of credit, warehouse receipts, instruments, securities, security entitlements, financial assets, investment property, precious and base metals, chattel paper, electronic chattel paper, accounts, commercial tort claims, deposit accounts, general intangibles (including any claims for breach of contract, breach of warranty claims and any insurance policies and proceeds), letter of credit rights, choses in action and the proceeds of any and all thereof (including any and all of the aforesaid referred to in any Credit or the Drawing Documents relating thereto).

ANNEX B – TERMS APPLICABLE TO THE ISSUANCE OF LOIs

If the Bank issues an LOI or endorses a bill of lading at the instruction of the Applicant or otherwise pursuant hereto, the Applicant agrees as follows:

(a) Except as otherwise set forth in this Annex B or expressly set forth elsewhere in this Agreement, an LOI shall be deemed issued by the Bank subject to the same terms and conditions set forth herein for Credits, including, without limitation, payment obligations, indemnification provisions and limitations of liability benefiting the Bank and other Indemnified Persons.

(b) The Applicant shall be liable for payments made under any LOI on demand and otherwise subject to Article 2 of the Agreement. The Bank shall have the right in its sole discretion and without notice to or approval of the Applicant, to pay, settle or adjust any claim or demand made against or upon the Bank in connection therewith without inquiry or determination, on the Bank's part, of the circumstances, merits or validity of any claim or demand.

(c) The Applicant shall take whatever steps are necessary to obtain the shipping documents concerning the Released Merchandise. Upon Applicant's receipt of such shipping documents, the Applicant shall deliver them to the carrier, duly endorsed by all parties whose endorsement is required by the carrier, and obtain from the carrier and deliver to the Bank, the LOI and a release of the Bank's liability to the carrier.

(d) The Bank may make payments against any drawing under the Credit related to an LOI, whether or not the drawing shall comply with the terms and conditions of such Credit, without any liability whatsoever to the Bank. The Applicant expressly acknowledges that the Applicant may be required to reimburse the Bank for payments made by the Bank under both the LOI and such Credit with respect to the same Released Merchandise.

(e) The Applicant shall account by delivering to the Bank, immediately upon the receipt thereof by the Applicant, the proceeds of the sale of the Released Merchandise or the documents related thereto in whatever form received (with Applicant's endorsement where necessary) to be applied by the Bank to the payment of any drawing under the Credit. If any proceeds shall be notes, accounts, acceptances, or in any form other than cash, they shall not be applied by the Bank until paid in cash. The Bank shall have the option at any time to sell or discount these items and so apply the net proceeds, conditionally upon final payment of these items.

(f) The Applicant shall pay all charges in connection with the Released Merchandise and shall at all times hold it separate and apart from the property of the Applicant and shall definitively show such separation in all its records and entries.

(g) The Applicant shall at all times keep the Released Merchandise fully insured at Applicant's expense in favor of, and to the satisfaction of, the Bank against loss by fire, theft, and any other risk to which it may be subject. The Applicant shall deposit the insurance policies with the Bank upon its demand. If for any reason any of such policies fail to provide for payment of

the loss thereunder to the Bank as its interest may appear, the Applicant hereby (i) assigns and makes the loss payable under any of such policies payable to the Bank as its interest may appear, (ii) assigns to the Bank all of the avails and proceeds of any and all of such policies, and (iii) agrees to accept such avails and proceeds in trust for the Bank and to forthwith deliver the same to the Bank in the exact form received (with the endorsement of the Applicant where necessary).

(h) The Bank shall have no responsibility for the existence, quantity, quality, condition, value or delivery of any Released Merchandise or the correctness, validity or genuineness of the documents purporting to represent Released Merchandise.

EXHIBIT E
ACCOUNT CONTROL AGREEMENT

EXHIBIT F
INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

EXHIBIT G
SECURITY AGREEMENT

FEE AGREEMENT

This FEE AGREEMENT dated September 2, 2021 (as amended, modified or restated from time to time, this “*Fee Agreement*”), is by and between the CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (together with its successors and assigns, the “*Borrower*”) and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the “*Lender*”).

Reference is made to the Credit Agreement, dated as of September __, 2021 (as amended, modified, extended or restated from time to time, the “*Agreement*”), entered into between the Borrower and the Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between the Borrower and the Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

Article I FEES.

Section 1.1 Undrawn Fees. The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the “*Commitment End Date*”), and in arrears on the first Business Day of each April, July, October and January occurring thereafter to the Commitment End Date, and on the Commitment End Date, a non-refundable undrawn fee (the “*Undrawn Fee*”) in an amount equal for each day during such calculation period to the product of (x) 0.45% (the “*Undrawn Fee Rate*”); provided, however, that (1) if the Borrower obtains an “investment grade” (i.e., “BBB-” or better/“Baa3” or better) standalone “strength rating” from any nationally recognized rating agency (whether based upon the U.S. municipal joint action agencies methodology or otherwise) (a “*Rating*”) and (2) such Rating either (a) is withdrawn or is suspended for credit related reasons or (b) is downgraded below investment grade, then the Undrawn Fee Rate shall automatically increase by an additional 1.00%, (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360. The term “*Unutilized Commitment*” as used in this Fee Agreement means, for any day, the amount obtained by subtracting the Revolving Credit Exposure from the Commitment, in each case, as of 5:00 p.m. New York City time on such day.

Section 1.2 Letter of Credit Fees. The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to but excluding the date such Letter of Credit is terminated (the “*LC Termination Date*”), and in arrears on the first Business Day of each April, July, October and January occurring thereafter to the LC Termination Date, and on the LC Termination Date (each, a “*LC Payment Date*”), a non-refundable Letter of Credit fee (the “*LC Facility Fee*”) in an amount equal for each day during such calculation period to the product of (x) 1.65% (the “*LC Facility Fee Rate*”); provided, however, that (1) if the Borrower obtains a Rating and (2) such Rating either (a) is withdrawn or is suspended for credit related reasons or (b) is downgraded below investment grade,

then the LC Facility Fee Rate shall automatically increase by an additional 1.00%, and (y) the daily average stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

Section 1.3 Issuance and Drawing Fees. The Borrower agrees to pay to the Lender a non-refundable issuance fee of \$500 in respect of the issuance of each Letter of Credit, which fee shall be earned on the issuance date and shall be payable upon invoice on the next LC Payment Date (or, if there is no further LC Payment Date, the LC Termination Date). The Borrower agrees to pay to the Lender a non-refundable draw fee of \$500 for each drawing under a Letter of Credit, which fee shall be earned on the drawing date and shall be payable upon invoice on the next LC Payment Date (or, if there is no further LC Payment Date, the LC Termination Date).

Section 1.4 Amendment Waiver or Consent Fees. The Borrower agrees to pay to the Lender on the date on which the Borrower requests from the Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be reasonably determined by the Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, plus, in each case, the reasonable fees and expenses of legal counsel to the Lender.

Section 1.5 Termination Fee; Reduction Fee.

(a) The Borrower hereby agrees to pay to the Lender a termination fee in connection with any termination of the Commitment by the Borrower prior to the date that is half-way between the Closing Date and the Maturity Date (such date, the “*Mid-Point Date*”), in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such termination, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit or LC Disbursements) and (3) a fraction, the numerator of which is equal to the number of days from and including the Mid-Point Date to but excluding the Maturity Date, and the denominator of which is 360 (the “*Termination Fee*”), which Termination Fee shall be paid on or before the date of such termination; provided, however, that no Termination Fee shall be payable if (i) the Commitment is terminated prior to the Mid-point Date as a result of the Lender requesting compensation for increased costs or loss of return from the Borrower pursuant to Section 2.12 of the Agreement as a result of a Change in Law, unless the Borrower replaces the Commitment with a Lender Agreement provided by a bank or other financial institution that is also subject to the effects of such Change in Law, in which case the Termination Fee shall be payable, or (ii) the Commitment is terminated on or after the Mid-Point Date. No termination in full of the Commitment shall become effective unless and until all amounts payable by the Borrower to the Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.5(a)) have been paid in full.

(b) The Borrower agrees not to permanently reduce the Commitment below the Commitment in effect as of the Closing Date prior to the Mid-Point Date, without the payment by the Borrower to the Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such permanent reduction, (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number

of days from and including the Mid-Point Date to the Maturity Date, and the denominator of which is 360; provided, however, that no Reduction Fee shall be payable if the Commitment is permanently reduced prior to the Mid-point Date as a result of the Lender requesting compensation for increased costs or loss of return from the Borrower pursuant to Section 2.12 of the Agreement as a result of a Change in Law, unless the Borrower replaces the permanently reduced Commitment with a Lender Agreement provided by a bank or other financial institution that is also subject to the effects of such Change in Law, in which case the Reduction Fee shall be payable and, if such permanent reduction requires the prepayment or repayment of Loans or LC Disbursements, that such outstanding Loans and LC Disbursements are paid in full on or prior to the reduction date from a source of funds that does not, directly or indirectly, involve a Bank Agreement. Under no circumstances shall the Borrower permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction the Borrower reduces the Revolving Credit Exposure (whether by prepayment of Loans or return and cancellation of Letters of Credit) so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

Section 1.6 Applicable Margin. As used in the Agreement, “*Applicable Margin*” means 1.90%; provided, however, that (1) if the Borrower obtains a Rating and (2) such Rating either (a) is withdrawn or is suspended or (b) is downgraded below investment grade, then the Applicable Margin shall automatically increase by an additional 1.00%.

Section 1.7 Default Rate. As used in the Agreement, “*Default Rate*” means a rate per annum equal to (i) in the case of the principal of any Loan, three percent (3%) plus the rate otherwise applicable to such Loan as provided in the Agreement; (ii) in the case of the undrawn amount of all outstanding Letters of Credit at such time, 3% plus the LC Facility Fee; or (iii) in the case of any other amount, including Undrawn Fees, 3% plus the rate applicable to Base Rate Loans as provided in the Agreement.

Article II MISCELLANEOUS.

Section 2.1 Legal Fees. The Borrower shall pay counsel to the Lender a legal fee of \$37,500 plus actual expenses (if any) in immediately funds no later than the Closing Date.

Section 2.2 Amendments. No amendment to this Fee Agreement will become effective without the prior consent of the Borrower and the Lender, which consent must be in writing and signed by the Lender and an Authorized Representative of the Borrower.

Section 2.3 Governing Law. This Fee Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York without giving effect to conflicts of laws provisions (other than New York general obligations laws 5-1401 and 5-1402); *provided*, that the obligations of the Borrower hereunder shall be governed by the laws of the State of California without regard to choice of law rules.

Section 2.4 Counterparts. This Fee Agreement may be executed in two or more counterparts, each of which will constitute an original but both or all of which, when taken together, will constitute but one instrument. This Fee Agreement may be delivered by the

exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

Section 2.5 Severability. Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: _____
Title: _____

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: _____
Name: _____
Title: _____

PAYOFF AND TERMINATION LETTER

September 2, 2021

River City Bank
2485 Natomas Park Drive, Suite 400
Sacramento, CA 95833
Attention: **Malissa Karsseboom, Loan Center**

Re: Termination of the Revolving Credit Commitment under that certain Amended and Restated Credit Agreement dated as of April 5, 2021 (the "*Credit Agreement*"), by and between Clean Power Alliance of Southern California (the "*Borrower*"), and River City Bank ("*Lender*").

Ladies and Gentlemen:

Lender has been informed that the Borrower intends to terminate the commitments under the Credit Agreement on September [], 2021 (the "*Termination Date*"), and, except as provided herein, to satisfy in full all advances and other payment obligations outstanding on such Termination Date (collectively, the "*Payoff Amount*"), including, but not limited to, all outstanding principal and accrued but unpaid interest, and other fees or charges outstanding or payable under the Credit Agreement, excepting therefrom the Letter of Credit No. SLCPDX08099 issued by Lender in favor of Southern California Edison in the stated amount of \$147,000.00 (the "*SCE LC*"). The SCE LC represents a Letter of Credit Advance evidenced by that certain Letter of Credit Note made by Borrower dated as of December 2, 2020 (the "*SCE LC Note*"), and, in accordance with the terms thereof, the SCE LC shall be cash collateralized by the Borrower depositing with Lender the sum of \$161,700.00 (the "*Cash Collateral Amount*") on or before the Termination Date. The Borrower has advised Lender that satisfaction of the Payoff Amount will be effected by the wire transfer from the Borrower to the Lender in immediately available funds, in an aggregate amount sufficient to satisfy the full Payoff Amount on the Termination Date. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

The total Payoff Amount on the date hereof is set forth in the **[invoice provided by Lender]** in the form of Exhibit A attached hereto.

Lender agrees that (w) the Payoff Amount shall be satisfied, (x) the liens, if any, that have been granted by the Borrower for the benefit of Lender as security for the indebtedness of the Borrower under the Credit Agreement (other than with respect to the Cash Collateral Amount) shall automatically be terminated, released and discharged, and (y) the Credit Agreement, the Promissory Note, any Letter of Credit Notes (other than the SCE LC Note), and the Loan Documents shall be automatically terminated and of no further force or effect, without further action, and the Borrower shall not have any further liability or obligation thereunder if, in each case, on or before the hereinafter defined Cutoff Time, (a) Lender has received a wire transfer from the Borrower of immediately available federal funds in the amount set forth in Exhibit A, (b) the Borrower has delivered to Lender the Cash Collateral Amount in immediately available funds and executed such agreements as Lender may reasonably request to establish and perfect Lender's security interest in the Cash Collateral Amount, and (c) a copy of this letter fully executed by the Borrower and Lender (the requirements of each of the foregoing items are collectively referred to as the "*Payoff Conditions*" and the date and time on which the Payoff Conditions are satisfied, the "*Payment Time*").

In the event that all of the Payoff Conditions are not satisfied on or before 4:00 p.m. (Pacific Time) on September 2, 2021 (the “*Cutoff Time*”), the payoff calculations set forth herein shall thereafter be null and void, and the Borrower should contact Lender to obtain updated payoff calculations.

No termination of Lender’s security under the Credit Agreement shall operate to terminate or impair the Borrower’s indemnifications of Lender under the Credit Agreement which by their express terms survive the Payment Time. Further, nothing herein shall be deemed to modify, terminate, limit or impair the Borrower’s obligations to Lender under the SCE LC, the SCE LC Note or the provisions of Section 4 of the Credit Agreement, which shall continue in full force an effect until such time as the Borrower’s and Lender’s obligations in respect of the SCE LC are fully and finally discharged.

After the Payment Time, Lender agrees to promptly execute and deliver all terminations and satisfactions necessary or reasonably requested by the Borrower, if any, in order to release any and all security interests it may have securing the indebtedness of the Borrower under the Credit Agreement.

Effective as of the date hereof, each of the Borrower and Lender hereby acknowledge and agree that Lender shall not have any further obligation to make loans or extend other financial accommodations to or for the benefit of the Borrower under the Credit Agreement or otherwise; provided, however, that nothing herein shall release Lender from its obligations under the SCE LC.

The Borrower hereby ratifies and reaffirms the terms of the SCE LC Note. Lender shall promptly release the Cash Collateral Amount to the Borrower upon the expiration of the SCE LC and discharge of Lender’s obligations thereunder.

This letter agreement may be executed in any number of counterparts, all of which, when taken together, shall be deemed one and the same agreement. Any manually executed counterpart of this letter agreement delivered by facsimile or other electronic transmission shall be deemed an original counterpart hereof. **This letter agreement shall be governed by, and construed in accordance with, the laws of the State of California and shall be subject to Section 12.13 of the Credit Agreement.**

[Remainder of page intentionally left blank; signatures appear on following pages.]

When accepted by Lender, the foregoing shall constitute an agreement made in, and governed by the internal laws of the State of California.

Very truly yours,

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, as Borrower

By: _____
Name:
Title:

The above and foregoing is acknowledged, accepted and agreed to:

RIVER CITY BANK, as Lender

By: _____
Name:
Title:

EXHIBIT A

[invoice or other evidence of Payoff Amount to be provided by Lender and attached hereto as Exhibit A]



Item 9

Credit Agreement with JPMorgan Chase

September 2, 2021

Recommendation:

Adopt Resolution No. 21-09-018 Authorizing and Approving Entry into A Credit Agreement and Specified Related Agreements (“Agreements”) with JPMorgan Chase Bank, and Delegating Authority to CPA Authorized Representatives to Execute and Deliver the Agreements

Summary

- CPA's current one-year, \$37 million Credit Agreement with River City Bank (RCB) expires on March 31, 2022
- Staff has explored a larger credit facility to support an investment grade credit rating and provide additional liquidity. Staff contacted Barclay's, RCB, and JPMorgan Chase Bank (JPM) about increasing its credit facility
- The proposed JPM Agreements would;
 - Provide CPA with an \$80 million credit facility
 - Be used to support the issuance of letters of credit and working capital needs
 - Replace the Credit Agreement with RCB
 - Increase CPA's liquidity by \$43 million, prepare CPA for an investment grade credit rating, improve perception of CPA's credit strength among market participants, and reduce future energy costs
- The Finance Committee reviewed the terms of the proposed JPM Credit Agreements at its August 25 meeting and supported moving forward

Background

- CPA uses its credit facility to provide letters of credit and to borrow funds to provide working capital
- Maintenance of a credit facility is important to;
 - Provide additional liquidity and support the days liquidity on hand target described in CPA's Reserve Policy
 - Demonstrate financial strength to market participants
 - Support an eventual investment grade credit rating
- By demonstrating financial strength to energy market suppliers and investors, CPA lowers the cost of both short- term energy and capacity purchases and long-term renewable energy and storage agreements

Proposed Terms

RCB Agreement

Proposed JP Morgan Agreement

	RCB Agreement	Proposed JP Morgan Agreement
Amount	\$37 million	\$80 million
Expiry	3/31/2022	10/31/2023
Borrowing Rate (1)	1.60%	1.90%
Letter of Credit Fee	1.5% per annum	1.65% per annum
Loan Fee	.15% of Amount	None
Non utilization fee	.1% of unused Amount	.45% of unused Amount
Annual cost before borrowing and LC Fees	\$92,500	\$360,000

(1) Borrowing rate over the index rate

- Legal Fees (one time): \$37,500
- Total FY 2021/22 interest costs associated with the proposed Agreement including interest and fees are \$390,000. Staff plans to include interest costs associated with the proposed Agreement in a Budget Amendment that would be presented to the Board for approval later this fiscal year.

Proposed Terms

Permitted use of loan proceeds:

- (i) to provide cash collateral to secure the Borrower's obligations under PPAs,
- (ii) to repay in whole or in part any LC Disbursement,
- (iii) for general corporate purposes,
- (iv) for capital expenditures related to the development or acquisition of new assets related to the Enterprise subject to prior written approval by the Lender, which such approval shall not be unreasonably be withheld, or
- (v) to repay (1) the Existing Debt in favor of the County of Los Angeles, provided that no more than \$30,000,000 of Loan proceeds may be applied for such purpose, and (2) to repay the Existing Debt in favor of River City Bank with proceeds of the Loan made pursuant to the Initial Borrowing.

Credit Agreement Page 50

Proposed Agreement

- Staff recommends the proposed agreements for the following reasons;
 - \$43 million increase in the size of the facility will add 21 days to the Days Cash on Hand ratio as described in CPA's Reserve Policy. CPA had 46 Days Cash on Hand as of March 31, 2021
 - JP Morgan is investment grade rated (S&P A+, Moody's AA2)
 - The increased credit facility will improve perception of CPA's financial strength by market participants and lower energy costs
 - The proposed agreements have an "adverse material change" clause (see page 14 of the Credit Agreement) However, JP Morgan has agreed to revisit the provision once CPA receives feedback from credit rating agencies, likely in Q3 2022
 - There are no fees or penalties for early termination of the agreements after the midpoint of the proposed term (September 2022), providing CPA with more flexibility to renegotiate terms as needed

Proposed Agreement

- Staff considered different loan facility amounts. The \$80 million loan facility amount was selected taking into consideration;
 - expected days liquidity on hand needs for an investment grade credit rating
 - “stress case” liquidity needs for CPA.
- Staff considered delaying the start date of the JPM Agreements to a point in time nearer to the expiration of the Current RCB Agreements. Staff believe that it is prudent to move forward at this time because;
 - market conditions and banks’ willingness to lend can change
 - approving the JPM Agreements at this time will improve responses to CPA’s 2021 long term renewable energy, storage, and reliability request for offer(s) planned for later this year.

Recommendation:

Adopt Resolution No. 21-09-018 Authorizing and Approving Entry into A Credit Agreement and Specified Related Agreements (“Agreements”) with JPMorgan Chase Bank, and Delegating Authority to CPA Authorized Representatives to Execute and Deliver the Agreements

Thank You. Questions...?

Selected Terms and Definitions

“Debt Service Coverage Ratio” means, for any fiscal quarter of the Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter. The Debt Service Coverage Ratio shall be tested both on a rolling last four consecutive fiscal quarter basis and on a projected following four consecutive fiscal quarter basis, in each case as of the last day of each fiscal quarter (Credit Agreement Page 9)

Debt Service Coverage. The Borrower shall not permit the Debt Service Coverage Ratio to be less than 1.10 for any fiscal quarter of the Borrower, commencing with the fiscal quarter ended September 30, 2021; provided, however, in the event the Debt Service Coverage Ratio for any fiscal quarter is less than 1.10 but the Days Liquidity on Hand for such fiscal quarter equals or exceeds 50 days, then the Borrower shall not be considered to have breached this Section 5.1(q); provided, further, however, that the Borrower may only rely on the cure contained in the preceding proviso twice during any Fiscal Year (Credit Agreement Page 48)

Selected Terms and Definitions

Budget. The Borrower shall include in each annual budget of the Borrower all amounts reasonably anticipated to be necessary to pay all Operating Costs and Annual Debt Service, including debt service on all Secured Debt and Unsecured Debt, for the Fiscal Year to which such budget applies and to comply with the Financial Reserve Policy and the Fiscal Stabilization Fund Policy (Credit Agreement Page 48)

Rates. The Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the Borrower (collectively, “*generation rates*”), which shall provide the Borrower with Revenues in each Fiscal Year sufficient to pay budgeted Operating Costs and Annual Debt Service for such Fiscal Year and, to the extent not paid from other available moneys, any and all amounts the Borrower is obligated to pay or set aside from Revenues by Applicable Law or contract in such Fiscal Year (Credit Agreement Page 47)

Selected Terms and Definitions

Material Adverse Change means any material or adverse change in the business, operations, properties, assets, liability, condition (financial or otherwise) or prospects of the Borrower which, in the reasonable determination of the Lender, is reasonably likely to materially adversely affect Borrower's ability to perform Borrower's Obligations hereunder (Credit Agreement Page 14)

Management Report

To: Board of Directors
From: Ted Bardacke, Executive Director
Subject: Management Report
Date: September 2, 2021

Collections Policy Update

At its July 1, 2021 meeting, the Board adopted a Collections Policy for recovering past due amounts from customers whose charges were no longer being collected by Southern California Edison (SCE) on CPA's behalf. At the time, the Board was informed that the Finance Committee would discuss further implementation details of the Collections Policy at its August meeting.

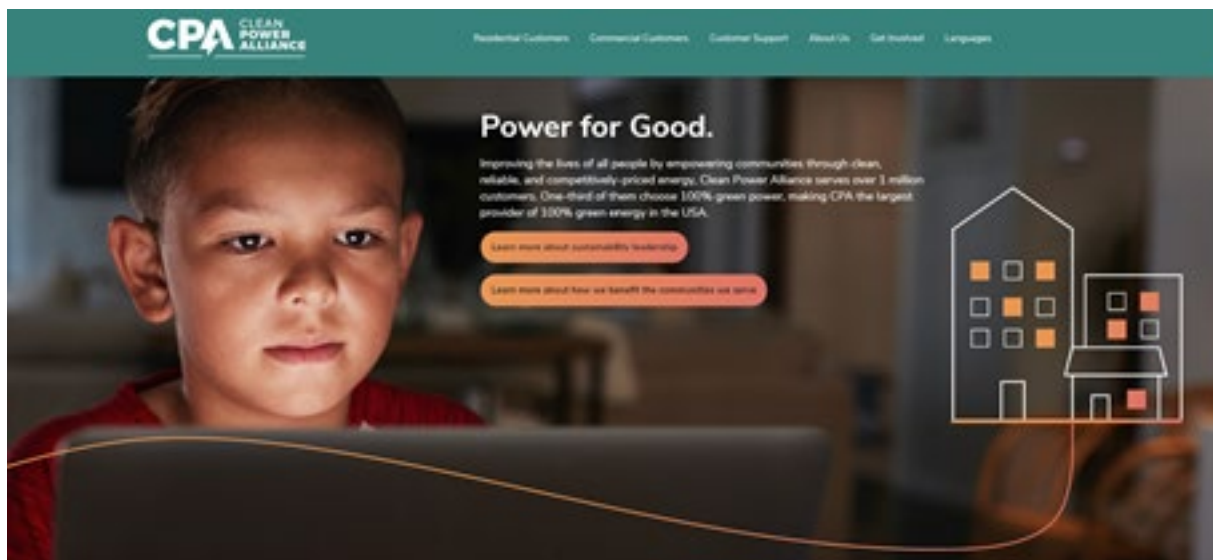
Since the July Board meeting, some details of the state's utility bill forgiveness program (California Arrearage Payment Program, CAPP) have emerged. Among those details are that certain CPA customers who would have been subject to the collection policy may be eligible for utility bill forgiveness. Because of that, CPA will be deferring full implementation of the Collections Policy until it receives more information about CAPP eligibility so as to avoid i) attempting to collect past due balances from customers that will be paid through CAPP or other state program funding and ii) default payment arrangements for active customers with past due balances that may come into effect after the moratorium on disconnections is lifted. That moratorium remains in place through the end of September but could be extended further. Staff will continue to bring Collection Policy implementation issues to the Finance Committee for discussion.

Website and Brand Update

In late August, the first of series of changes to CPA's website were deployed. These changes are in line with an overall brand update that CPA is undergoing that reflects the

tremendous progress the organization has made on behalf of our customers and the communities we serve. The new brand emphasis seeks to reflect and the holistic values that guide CPA's procurement of clean power, the reliability our customers expect, our local investment in communities and programs, and the choices we offer.

The changes are mostly aesthetic changes, particularly on a few of the most visited pages (Home, Power Share, Options, Job/Contracting Opportunities, etc.), but major changes to functionality, architecture, site map and usability will be rolling out over the coming months in a series of "sprints" and with actual consumer testing of beta versions. Below is a screen shot of CPA's new homepage.



EV Charger Incentive Program Update

On August 5th CPA and numerous partners launched an EV Charger Incentive Program via the South Central Coast Incentive Project (SCCIP). Commercial and public properties can apply for rebates on DC fast chargers, and for commercial, public and multifamily residential properties can apply for level 2 chargers. CPA partnered with the California Energy Commission and the Ventura County Air Pollution Control District to provide a total of \$4,085,950 in EV charging station funding in Ventura County in 2021. CPA's total contribution for 2021 is \$533,000. As of August 26th, approximately 75% of this funding has been provisionally reserved by applicants. DC fast charger funding was reserved

within the first 3 minutes of the project launch. Roughly \$1 million remains for level 2 chargers. Half of all funding by charger type is reserved for disadvantaged and low income communities, with higher rebates allotted to applicants from these areas.

CPA has been working independently and with the Center for Sustainable Energy to get the word out on the availability of EV charger rebates. On July 15th, CPA staff took part in a Prelaunch webinar hosted by the CSE. CPA issued a press release for the launch of SCCIP and has kept members informed through emails and social media sites such as Facebook. CPA's CALeVIP program has been mentioned in 20 online clips, reaching a total online and print audience of 264,802 with 8,761 social media followers. A Q3 report on applicants, funds reserved (and approved) and the media reach of CSE is expected in mid-October 2021.

Customer Participation Rate

As of August 24, 2021, CPA's overall participation rate is 95.8%, up slightly from the previous month, with a total of 1,001,475 active customers, up 2,440 customers from the previous month. Opt-outs levels were up slightly in August but a rise in new accounts ("move-ins") is largely responsible for the overall increase in active customers.

Customer Service Center Performance

Incoming calls to CPA's Customer Service Center in August have been steady, with 2,249 calls as of August 24, compared to 2,435 calls for the entire month of July. In August 96.5% of calls were answered within 60 seconds, and average wait time was 13 seconds.

Staffing Updates

CPA has welcomed a number of new staff over the summer and saw the departure of others in the areas of Finance and Customer Programs. New staff include Xico Manarolla (Electrification Programs Manager), Shervan Sebastian (Associate, Marketing and Communications), Karla Velazquez (External Affairs Administrator), Sean Hernandez (Project Manager, Resource Optimization), Rich Viebrok (Project Manager, Power Supply), Scott Gropp (Non-Energy Procurement Administrator), and Dusty Shaller

(Paralegal). CPA has also benefitted this summer from its first ever cohort of interns, who have served both the External Affairs and Operations teams.

A current organizational chart listing filled and open positions is attached.

Contracts Executed in July Under Executive Director Authority

A list of non-energy contracts executed under the Executive Director's signing authority is attached (Attachment 2). The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.

ATTACHMENTS

1. [Overall Participation Rates by Jurisdiction](#)
2. [April and May 2021 Financial Dashboards](#)
3. [Current Organizational Chart](#)
4. [Non-Energy Contracts Executed under Executive Director Authority](#)

Participation by City and County

Jurisdiction	Default Option	Participation Rate	Active Accounts	Lean %	Clean %	100% Green %
Agoura Hills	Lean	95.46%	8,290	99.64%	0.14%	0.23%
Alhambra	Clean	98.07%	34,045	1.23%	98.64%	0.13%
Arcadia	Lean	98.05%	22,545	99.78%	0.15%	0.08%
Beverly Hills	Clean	99.42%	18,714	1.30%	98.56%	0.14%
Calabasas	Lean	98.45%	9,948	99.62%	0.22%	0.17%
Camarillo	Lean	95.36%	28,487	98.80%	0.26%	0.95%
Carson	Clean	97.19%	29,341	1.06%	98.64%	0.30%
Claremont	Clean	95.03%	12,693	1.80%	97.78%	0.42%
Culver City	100% Green	97.62%	19,219	3.26%	1.04%	95.70%
Downey	Clean	97.51%	36,957	1.29%	98.58%	0.14%
Hawaiian Gardens	Clean	97.09%	3,643	1.03%	98.61%	0.36%
Hawthorne	Lean	99.22%	28,437	99.54%	0.24%	0.23%
Los Angeles County	Clean	95.61%	297,422	1.43%	98.33%	0.25%
Malibu	100% Green	97.27%	6,901	2.27%	0.39%	97.34%
Manhattan Beach	Clean	98.55%	15,486	1.88%	94.94%	3.19%
Moorpark	Clean	89.75%	11,507	2.16%	96.97%	0.87%
Ojai	100% Green	93.46%	3,501	5.80%	1.52%	92.69%
Oxnard	100% Green	95.44%	54,952	7.36%	0.42%	92.23%
Paramount	Lean	98.62%	15,668	99.62%	0.31%	0.08%
Redondo Beach	Clean	98.96%	33,365	1.64%	98.11%	0.25%
Rolling Hills Estates	100% Green	94.82%	3,349	4.91%	47.54%	47.57%
Santa Monica	100% Green	97.88%	53,496	3.88%	0.83%	95.29%
Sierra Madre	100% Green	95.68%	5,047	4.36%	3.56%	92.09%
Simi Valley	Lean	93.10%	43,075	99.68%	0.09%	0.24%
South Pasadena	100% Green	98.12%	11,718	2.55%	45.89%	51.57%
Temple City	Lean	97.76%	12,621	99.89%	0.03%	0.08%
Thousand Oaks	100% Green	88.70%	44,360	7.25%	1.13%	91.64%
Ventura	100% Green	93.66%	43,657	5.53%	1.60%	92.87%
Ventura County	100% Green	86.45%	32,387	6.64%	1.53%	91.83%
West Hollywood	100% Green	99.46%	26,298	2.26%	0.38%	97.36%
Westlake Village	Lean	87.22%	3,700	99.76%	0.06%	0.19%
Whittier	Clean	95.87%	30,646	1.38%	98.45%	0.18%
Total		95.78%	1,001,475	30.27%	37.03%	32.71%

Overall Participation by Default Option

Default Option	Participation Rate	Default Option	Active Accounts	% of Active
100% Green	94.88%	100% Green	304,885	30.44%
Clean	96.64%	Clean	523,819	52.30%
Lean	95.92%	Lean	172,771	17.25%
Total	95.78%	Total	1,001,475	100.00%

Financial Dashboard

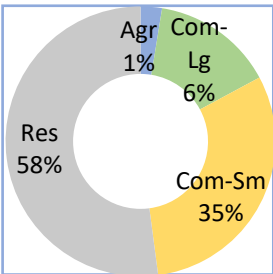
YTD
April
2021

Active Accounts
1,008,000

Participation Rate
95.33%

YTD Sales Volume
11,896 GWh

April Sales Volume
795 GWh



Summary of Financial Results

in \$000,000's	April				Year-to-Date			
	Actual	Budget	Var	%	Actual	Budget	Var	%
Energy Revenues	\$49.5	45.5	4.0	9%	666.8	614.0	52.9	9%
Cost of Energy	\$49.7	43.2	6.6	15%	645.8	580.9	64.9	11%
Net Energy Revenue	-\$0.2	2.4	-2.6		21.0	33.0	-12.0	-36%
Operating Expenditures	\$2.0	2.6	-0.5	-21%	20.3	26.7	-6.3	-24%
Net Income	-\$2.3	-0.2	-2.1		0.7	6.4	-5.7	

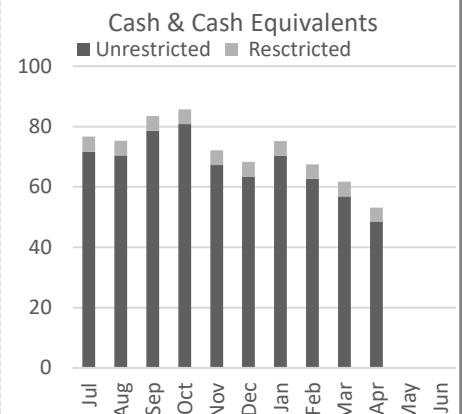
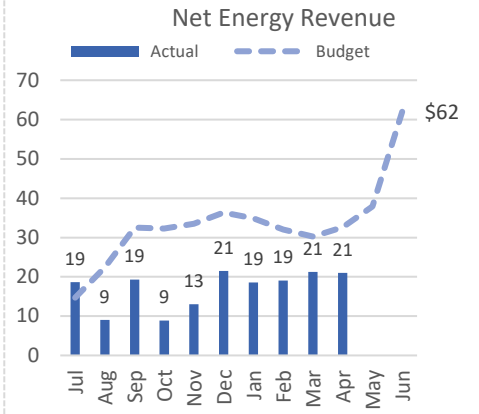
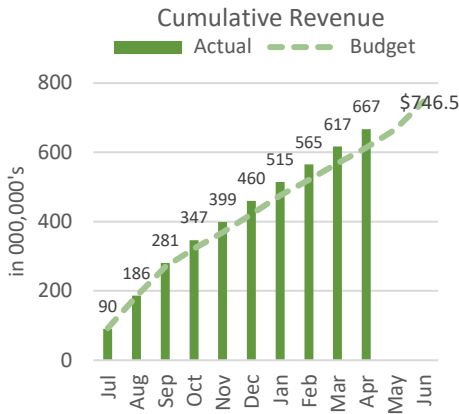
Note: Numbers may not sum up due to rounding.

CPA recorded a loss of \$2.3 million in April 2021, resulting in a year to date gain of \$700,000. April net loss was \$2.1 million below the budgeted loss of \$.2 million. April results have been restated to include a \$3,900,000 transfer from the Fiscal Stabilization Fund (FSF) to revenue consistent with the Fiscal Stabilization Fund Policy.

April results were negatively impacted by bad debt expense which was \$850,000 or 140% higher than budget and by renewable energy costs that were higher than budgeted. Renewable energy costs were higher than budgeted due to the delivery of renewable energy that occurred sooner than budgeted. The expected annual cost of renewable energy in calendar year 2021 remains unchanged.

As of April 30, 2021 CPA had \$48.3 million in cash and cash equivalents, \$36.85 million available on its line of credit and no bank or other debt outstanding. The net position was \$47.3 million and Fiscal Stabilization Fund balance was \$13.5 million. CPA renewed its \$37 million credit facility with River City Bank in April 2021.

CPA is in compliance with its bank and other credit covenants and is in sound financial health.



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

Financial Dashboard

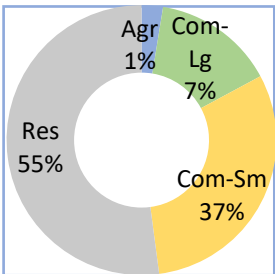
YTD
May
2021

Active Accounts
1,002,000

Participation Rate
95.31%

YTD Sales Volume
12,742 GWh

May Sales Volume
846 GWh



Summary of Financial Results

in \$000,000's	May				Year-to-Date			
	Actual	Budget	Var	%	Actual	Budget	Var	%
Energy Revenues	\$55.2	51.3	3.9	8%	722.1	665.3	56.8	9%
Cost of Energy	\$55.7	45.9	9.8	21%	701.5	626.8	74.7	12%
Net Energy Revenue	-\$0.5	5.4	-5.9		20.6	38.5	-17.9	
Operating Expenditures	\$2.3	2.7	-0.4	-15%	22.7	29.4	-6.7	-23%
Net Income	-\$2.8	2.7	-5.5		-2.1	9.0	-11.2	

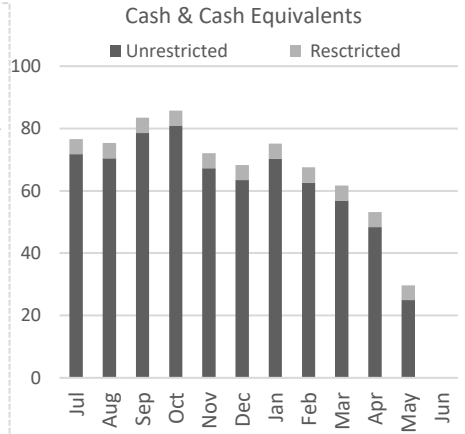
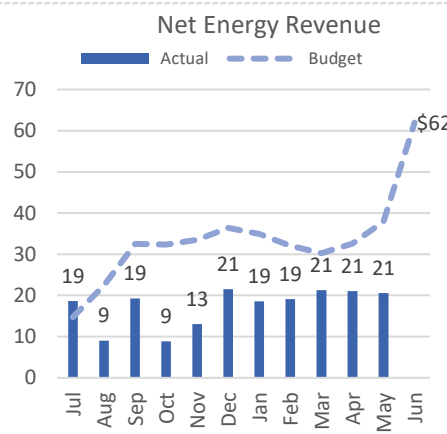
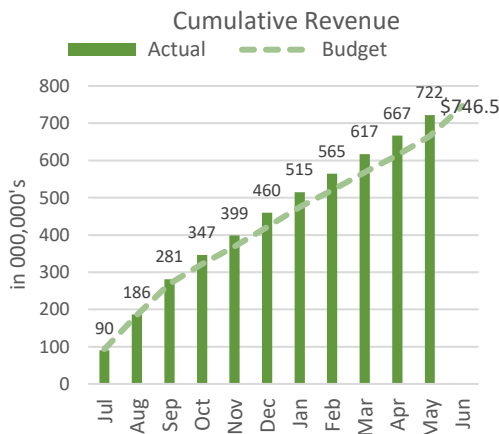
Note: Numbers may not sum up due to rounding.

CPA recorded a loss of \$2.8 million in May 2021, resulting in a year to date loss of \$2.1 million. May net loss was \$5.5 million below the budgeted gain of \$2.7 million. May results include a \$2,000,000 transfer from the Fiscal Stabilization Fund (FSF) to revenue consistent with the FSF Policy.

May results were negatively impacted by bad debt expense which was \$1.7 million or 240% higher than budget and by renewable energy costs that were higher than budgeted. Renewable energy costs were higher than budgeted due to the delivery of renewable energy that occurred sooner than budgeted. The expected annual cost of renewable energy in calendar year 2021 remains unchanged.

As of May 31, 2021 CPA had \$24.8 million in cash and cash equivalents, \$36.85 million available on its line of credit and no bank or other debt outstanding. The net position was \$44.5 million and Fiscal Stabilization Fund balance was \$11.5 million. CPA's cash and cash equivalents were negatively impacted in May by a \$14.8 increase in accounts receivable and accrued revenue and a loss before FSF transfer of \$4.8 million. In August 2021 CPA received a \$30 million term loan from the County of Los Angeles.

CPA is in compliance with its bank and other credit covenants and is in sound financial health.



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

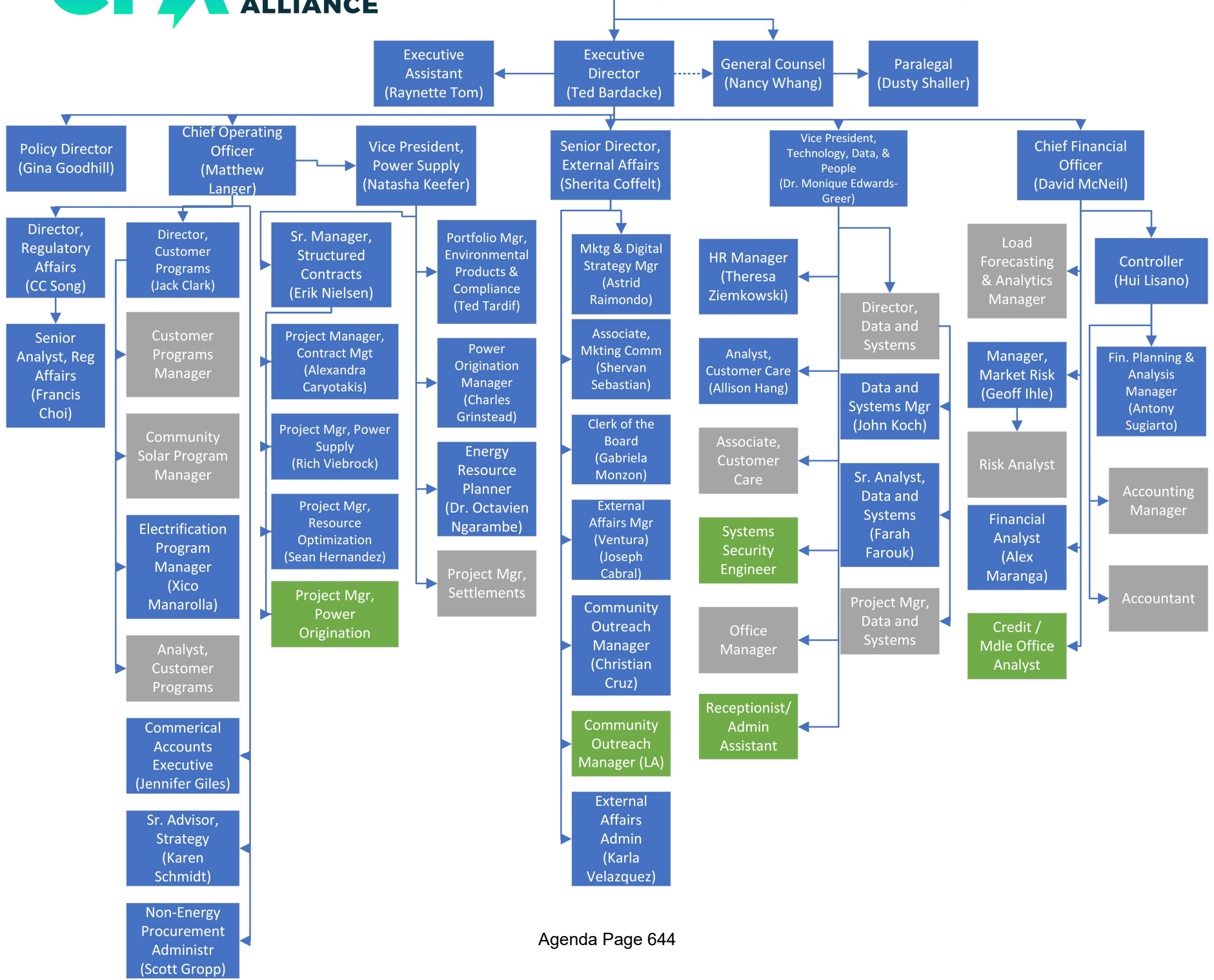
Cost of energy: Cost of energy includes direct costs incurred to serve CPA's load

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



Clean Power Alliance

**Non-energy contracts executed under Executive Director authority
Rolling 12 months -- Open contracts shown in Bold**

Vendor	Purpose	Month	NTE Amount	Status	Notes
Abbot, Stringham and Lynch	2020 CEC Power Source Disclosure Audit	August 2021	\$ 16,700	Completed	Includes two optional renewals for years 2021 and 2022
Brasby Group	Recruiting Services	August 2021	NA	Active	25% of starting salary upon hiring an exclusively referred candidate
CBE Office Solutions	Purchase of Two (2) Sharp MX-3071 Color Copiers and Related Service Agreement	August 2021	\$75,000	Active	Purchase Price: \$15,053.33 Monthly cost per printed pages will apply
Pickit	Digital Asset Management	August 2021	\$2,400	Active	Annual Subscription
Knowledge City	Employee Training	July 2021	\$7,251	Active	Licenses for employee training Extends through 6/30/2022
Celtis Ventures, Inc.	Marketing Support for Power Share program	May 2021	\$65,000	Active	Original Contract Date: January 2021 NTE \$50,000 Amendment #1 - NTE increased to \$55,000 in April 2021 Amendment #2 - NTE increased to \$65,000 in May 2021 - Extends through 1/15/2022
Clever Creative Inc.	CPA Brand Audit and Design Refresh	May 2021	\$55,000	Completed	Original Contract Date: January 2021 NTE \$50,000 Amendment #1 - NTE increased to \$55,000 in May 2021 - Extends through 6/30/21
(W)right On Communications, Inc.	On-call External Affairs support services	January 2021	\$50,000	Completed	Original Contract Date: January 2021 NTE \$50,000 Amendment #1 - NTE increased to \$58,000 in May 2021 - Extends through 6/15/21
Polsinelli, LLP	Legal Service Agreement (Employment, Compliance, General Legal Support related to Commercial Liability, Risk, and Mitigation issues)	April 2021	\$75,000	Active	Amendment #2 to original Agreement executed on March 8, 2019
AccuWeather Enterprise Solutions	Professional Forecasting Weather Services	April 2021	\$9,600	Active	Addendum to April 2020 Agreement. Extended through March 2023 at \$400/mo
Shute, Mihaly & Weinberger, LLP	Legal Service Agreement (Regulatory, Administrative, Environmental, Energy Procurement, Public Contracting, Public Entity Governance Laws, Issues and/or Proceedings)	April 2021	\$65,000	Active	
NewGen Strategies and Solutions, LLC	Regulatory Support for 2021 ERRA forecast proceedings	April 2021	\$102,560	Active	Amendment #1 to May 2020 Agreement to increase NTE from \$71,240 to \$102,560
SCS Engineers	Professional Services for CARB AB32 GHG Verification	April 2021	\$17,000	Completed	

Clean Power Alliance

**Non-energy contracts executed under Executive Director authority
Rolling 12 months -- Open contracts shown in Bold**

Vendor	Purpose	Month	NTE Amount	Status	Notes
Chapman & Cutler, LLP	2021 Legal Services (CPA's Credit Agreement)	March 2021	\$20,000	Active	
Wimer Associates	Facilitation of Staff Training Sessions	February 2021	\$13,600	Active	
Critical Mention, Inc.	Media Monitoring Service	February 2021	\$6,000	Active	
OpenPath	New Office Keycard Access Control System	January 2021	\$1,500	Active	
Wrike, Inc	Project Management Software	January 2021	\$2,100	Active	
Prime Government Solutions, Inc.	Board and committee meeting agenda management software	December 2020	\$16,000	Active	
MRW & Associates, LLC	Ratemaking support	December 2020	\$90,000	Active	
Informal Development	Website repair, development, & as-needed maintenance	November 2020	\$12,000	Active	
Sigma Computing, Inc.	Business intelligence & analytics software tool	October 2020	\$10,000	Active	
ProComply, Inc.	Energy regulation compliance training	October 2020	\$5,000	Active	
Langan Engineering and Environmental Services	GIS support services for CPA's community solar programs and RFO procurement process	October 2020	\$120,000	Active	
Mercer (US) Inc.	Total remuneration benchmarking study with job architecture and salary structure design	October 2020	\$105,500	Active	Joint project with three other CCAs
Gold Coast Transit District	On-bus advertising in Ventura County	October 2020	\$2,970	Completed	
Cameron-Cole, LLC	Independent audit of Greenhouse Gas Emissions	September 2020	\$7,080	Completed	
Crown Castle Fiber LLC	New Office Dedicated Internet Access Service	September 2020	\$ 18,600	Active	
NextLevel Internet, Inc.	New Office High Speed Internet Service	September 2020	\$ 6,936	Active	
Windstream Services, LLC	New Office Telephone Service	September 2020	\$ 14,095	Active	
Zero Outages	New Office Security, Firewall, & Wi-Fi Service	September 2020	\$ 7,608	Active	
Westfall Commercial Interiors	Furniture for New Office	September 2020	\$ 296,558	Completed	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
Abbot, Stringham and Lynch	2019 CEC Power Source Disclosure Audit	September 2020	\$ 13,000	Completed	
Elite Edge Consulting	Accounting system support and implementation	September 2020	\$ 112,000	Active	
Baker Tilly	FY 2019/20 Financial Audit	August 2020	\$ 28,000	Active	Renewed for FY2020/21
Burke, Williams, Sorenson, LLP	Legal Services Agreement (Brown Act, public entity governance issues and other legal services)	July 2020	\$ 100,000	Active	

Clean Power Alliance					
Non-energy contracts executed under Executive Director authority					
Rolling 12 months -- Open contracts shown in Bold					
Vendor	Purpose	Month	NTE Amount	Status	Notes
Hall Energy Law PC	Energy Procurement Counsel	July 2020	\$ 125,000	Active	
The Harmon Press	Professional Printing Services	July 2020	\$ 40,000	Active	
InterEthnica	Written Translation Services, Typesetting, and Graphic Design in Spanish, Chinese, and Korean	July 2020	\$ 10,000	Active	
West Coast Mailers	Bulk Mailing Services	July 2020	\$ 20,000	Active	
Snowflake Inc.	Engineering Support Services for Load Forecasting Analysis	July 2020	\$ 15,000	Active	
CIM/Prime Construction/Pinnacle Communication Services	New Office Space Equipment and Installation: Audio Visual/Security Systems/Data and Communications Cabling	July 2020	\$ 361,281	Active	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
Adobe Inc.	AdobeSign Secure Electronic Signature Service	June 2020	\$ 3,200	Active	
EZ Texting	Peak Management Pricing customer text messaging alerts	May 2020	\$ 1,000	Active	
Place and Page	Graphic Design Services	May 2020	\$ 30,000	Active	
Davis Wright Tremaine, LLP	Legal Services Agreement (Regulatory Assistance)	April 2020	\$ 125,000	Active	1st Amendment in October 2020 to increase the NTE from \$4,000 to \$35,000. 2nd Amendment in March 2021 to increase the NTE from \$35,000 to \$125,000.
Snowflake Inc.	Cloud-Native Elastic Data Warehouse Service	April 2020	\$ 36,000	Active	
Amazon Web Services	Cloud-based Database Hosting	April 2020	\$ 36,000	Active	
ICE Options Analytics LLC	Trading Platform Subscription Service	March 2020	\$ 19,000	Active	
Greenberg Glusker	Legal Services Agreement (PPA Negotiations)	March 2020	\$ 59,000	Active	
Omni Government Relations & Pinnacle Advocacy, LLC	Lobbying Services	December 2019	\$ 108,000	Active	Renewed for 2021 at same amount
CLG Group	Executive Training	November 2019	\$ 15,000	Active	Renewed for 2021 at \$7,500
Inventre Recruitment	Ongoing Recruitment Services	October 2019	\$ 120,000	Active	Renewed for 2021 at same amount
JLL	Real Estate Brokerage Services	October 2019	NA	Active	

Commonly Used Acronyms

BESS	Battery Energy Storage System
CAC	Community Advisory Committee
CAISO	California Independent System Operator
CALCCA	California Community Choice Association
CalEVIP	California Electric Vehicle Incentive Program
CARB	California Air Resources Board
CARE	California Alternate Rates for Energy (Low Income Discount Rate)
CCA	Community Choice Aggregation
CEC	California Energy Commission
CPUC	California Public Utilities Commission
DA	Direct Access (Private Retail Energy Supplier)
DAC	Disadvantaged Community (As Defined by Calenviroscreen 3.0)
DER	Distributed Energy Resources
DR	Demand Response
ERMP	Energy Risk Management Policy
ERRA	Energy Resource Recovery Account (SCE Generation Rate Setting)
ESA	Energy Storage Agreement
EVSE	Electric Vehicle Supply Equipment (EV Charger)
FERA	Family Electric Rate Assistance (Low Income Discount Rate)
GHG	Greenhouse Gas
IOU	Investor Owned Utility
IRP	Integrated Resource Plan
JPA	Joint Powers Authority

Commonly Used Acronyms

Kwh	Kilowatt-Hour (A Measure of Energy Used in A One-Hour Period)
Kw	Kilowatt = 1,000 Watts (Watt = A Measure of Instantaneous Power)
LSE	Load Serving Entity
MB	Medical Baseline (Discount Rate for Medical Equipment Needs)
MW	Megawatt = 1,000 Kilowatts
Mwh	Megawatt-Hour = 1,000 Kilowatt-Hours
NEM	Net Energy Metering (Usually for Customers With Solar)
OAT	Other Applicable Tariffs
PCIA	Power Charge Indifference Adjustment (Can Be Called “Exit Fee”)
PCC1	Renewable Energy Generated Inside California
PCC2	Renewable Energy Generated Outside California
PCC3	A REC from A Renewable Resource, Delivered Without Energy
PCL	Power Content Label
POU	Publicly Owned or Municipal Utility
PPA	Power Purchase Agreement
PSPS	Public Safety Power Shutoff
PV	Photovoltaic (Solar) Panels
RA	Resource Adequacy
REC	Renewable Energy Credit
RPS	Renewables Portfolio Standard
T&D	Transmission and Distribution
TOU	Time Of Use (Used to Refer To Rates That Differ By Time Of Day)
WECC	Western Electricity Coordinating Council

END OF DOCUMENT