



# REGULAR MEETING of the Board of Directors of the Clean Power Alliance of Southern California

Thursday, July 7, 2022

2:00 p.m.

**SPECIAL NOTICE:** Pursuant to the Proclamation of the State of Emergency by Governor Newsom on March 4, 2020, AB 361, and enacting Resolutions, 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](#)

If the YouTube stream is not working, please use the zoom link.

\*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/84912360644>

or

Dial: (346) 248-7799 Meeting ID: 849 1236 0644

**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](mailto: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](mailto: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](mailto: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](mailto:clerk@cleanpoweralliance.org) or (323) 640-7664. 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.*

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## **CALL TO ORDER AND ROLL CALL**

## **PLEDGE OF ALLEGIANCE**

## **GENERAL PUBLIC COMMENT**

## **CONSENT AGENDA**

1. Adopt Resolution No. 22-07-035 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953(e)
2. Approve Minutes from June 2, 2022, Board of Directors Meeting
3. Adopt Resolution No. 22-07-036 to Approve Energy Risk Management Policy Amendments
4. Adopt Resolution No. 22-07-037 Approving the Selection of California Community Choice Financing Authority (CCCFA), a Joint Powers Authority, as the Bond Issuer for A Potential CPA Energy Prepayment Financing Transaction and Authorizing CPA To Join the CCCFA as a Founding Member
5. Approve the Selection of Goldman Sachs & Co. LLC and J. Aron & Company, LLC ("Goldman Sachs") as the Prepaid Supplier for a Potential Energy Prepayment Financing

6. Authorize the Chief Executive Officer to Execute Task Order No. 4 with Ascend Analytics for 2022 Mid-Term Reliability RFO Support Services for a Not-to-Exceed Amount of \$172,500
7. Receive and File Quarterly Communications Report (February – April 2022)
8. Receive and File Community Advisory Committee Monthly Report

## **CLOSED SESSION**

9. CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION  
Exposure to litigation pursuant to paragraph (2) or (3) of subdivision (d) of Section 54956.9: 1

## **REGULAR AGENDA**

### **Action Items**

10. Approve the following amendments to long-term Power Purchase Agreements:
  - A. Second amendment to Arlington Energy Center II, LLC (Arlington) Renewable Power Purchase and Sale Agreement
  - B. First amendment to Resurgence Solar II, LLC (Resurgence) Renewable Power Purchase and Sale Agreement
  - C. First amendment to Estrella Solar, LLC (Estrella) Renewable Power Purchase and Sale Agreement

## **MANAGEMENT REPORT**

### **COMMITTEE CHAIR UPDATES**

Director Lindsey Horvath, Chair, Legislative & Regulatory Committee

Director Susan Santangelo, Chair, Finance Committee

Director Robert Parkhurst, Chair, Energy Planning & Resources Committee

## **BOARD MEMBER COMMENTS**

## **REPORT FROM THE CHAIR**

## **ADJOURN – NEXT REGULAR MEETING ON SEPTEMBER 1, 2022 (DARK IN AUGUST)**

**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](http://www.cleanpoweralliance.org/agendas)



## Staff Report – Agenda Item 1

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**To:** Clean Power Alliance (CPA) Board of Directors

**From:** Nancy Whang, General Counsel

**Approved by:** Ted Bardacke, Chief Executive Officer

**Subject:** Adopt Resolution 22-07-035 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953(e)

**Date:** July 7, 2022

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### **RECOMMENDATION**

Adopt Resolution No. 22-07-035 finding the continuing need to meet by teleconference pursuant to Government Code Section 54953(e).

### **BACKGROUND/DISCUSSION**

This resolution is required pursuant to AB 361, signed by Governor Newsom on September 20, 2021, so that CPA may continue to meet under the modified teleconferencing rules.

The State of Emergency declared by Gov. Newsom remains in effect and COVID-19 and the Omicron variant continue to pose a threat to the health and lives of the public as discussed more fully in Resolution No. 22-07-035. For these reasons, the recommended action is for the Board to adopt the attached Resolution 22-07-035 finding the continuing need to meet by teleconference pursuant to Government Code Section 54953(e).

This Resolution will authorize the Board to hold teleconference meetings within the requirements of AB 361 but does not prohibit the Board from holding in person meetings.

### **ATTACHMENT**

1. Resolution No. 22-07-035 finding the continuing need to meet by teleconference

**RESOLUTION NO. 22-07-035****RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA FINDING THE CONTINUING NEED TO MEET BY TELECONFERENCE PURSUANT TO GOVERNMENT CODE SECTION 54953(e)****THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:**

**WHEREAS**, all meetings of the Board Of Directors, the Executive Committee, the Energy, Finance, and Legislative and Regulatory Committee (“Three Standing Committees”), and the Community Advisory Committee (“CAC”) of Clean Power Alliance Of Southern California (“CPA”) are subject to the Ralph M. Brown Act (Cal. Gov. Code §§54950 – 54963) (“Brown Act”); and

**WHEREAS**, Government Code section 54953(e) of the Brown Act makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

**WHEREAS**, on March 4, 2020, Governor Newsom declared a State of Emergency as a result of the COVID-19 pandemic; and

**WHEREAS**, such State of Emergency due to COVID-19 remains in effect; and

**WHEREAS**, COVID-19 continues to threaten the health and lives of the public; and

**WHEREAS**, COVID-19 the Omicron variant remains a variant of concern, breakthrough cases of COVID-19 remain a concern, and the Los Angeles County Department of Public Health recommends measures to promote social distancing, including recommendations to avoid prolonged exposure to crowded indoor spaces.

**NOW, THEREFORE, BE IT DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA THAT:**

**IT IS DETERMINED, AFFIRMED, AND ORDERED** that due to COVID-19, holding in-person meetings of the Board of Directors, Executive Committee, Three Standing Committees, and CAC of CPA will present imminent risk to the health and safety of attendees.

**IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED** that meetings of the Board of Directors, Executive Committee, Three Standing Committees, and CAC of CPA may continue to meet by teleconference in accordance with Government Code section 54953(e).

**IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED** that this Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of (1) 30 days from the date of adoption of this Resolution, or (2) such time the Board of Directors of the Clean Power Alliance of Southern California adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the Board may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953, or (3) the Board of Directors of the Clean Power Alliance of Southern California adopts a Resolution rescinding this Resolution.

**IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED** that the approval of this Resolution is not a “project” under Section 21065 of the Public Resources Code and under California Environmental Quality Act (“CEQA”) Guidelines Sections 15378(a) and is exempt under CEQA Guidelines Section 15061(b)(3).

**ADOPTED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Julian Gold, Chair

**ATTEST:**

\_\_\_\_\_  
Gabriela Monzon, Secretary

**MINUTES**

REGULAR MEETING of the Board of Directors of the  
Clean Power Alliance of Southern California  
Thursday, June 2, 2022, 2:00 p.m.

*The Board of Directors conducted this meeting remotely, pursuant to the Proclamation of the State of Emergency by Governor Newsom on March 4, 2020, AB 361, and enacting CPA Resolutions, and as a response to mitigating the spread of COVID-19*

**CALL TO ORDER & ROLL CALL**

Chair Diana Mahmud called the meeting to order at 2:00 p.m. and Gabriela Monzon, Clerk of the Board, conducted roll call.

<b>Roll Call</b>				
1	<b>Agoura Hills</b>	Deborah Klein Lopez	Alternate	Remote
2	<b>Alhambra</b>			Absent
3	<b>Arcadia</b>	Sho Tay	Director	Remote
4	<b>Beverly Hills</b>	Julian Gold	Director	Remote
5	<b>Calabasas</b>	Mary Sue Maurer	Director	Remote
6	<b>Camarillo</b>	Susan Santangelo	Director	Remote
7	<b>Carson</b>	Cedric L. Hicks, Sr.	Alternate	Remote
8	<b>Claremont</b>	Jeremy Swan	Alternate	Remote
9	<b>Culver City</b>	Daniel Lee	Director	Remote
10	<b>Downey</b>	Catherine Alvarez	Director	Remote
11	<b>Hawaiian Gardens</b>	Ramie L. Torres	Alternate	Remote
12	<b>Hawthorne</b>	Alex Monteiro	Director	Remote
13	<b>Los Angeles County</b>	Sheila Kuehl	<b>Vice Chair</b>	Remote
14	<b>Malibu</b>	Mikke Pierson	Director	Remote
15	<b>Manhattan Beach</b>	Hildy Stern	Director	Remote
16	<b>Moorpark</b>	Janice Parvin	Director	Remote
17	<b>Ojai</b>	Betsy Stix	Director	Remote
18	<b>Oxnard</b>	Bert Perello	Director	Remote
19	<b>Paramount</b>			Absent
20	<b>Redondo Beach</b>			Absent

21	<b>Rolling Hills Estates</b>	Steve Zuckerman	Director	Remote
22	<b>Santa Monica</b>	Gleam Davis	Director	Remote
23	<b>Sierra Madre</b>	Robert Parkhurst	Director	Remote
24	<b>Simi Valley</b>	Ruth Luevanos	Director	Remote
25	<b>South Pasadena</b>	Diana Mahmud	<b>Chair</b>	Remote
26	<b>Temple City</b>	Fernando Vizcarra	Director	Remote
27	<b>Thousand Oaks</b>	Kevin McNamee	Director	Remote
28	<b>City of Ventura</b>	Joe Yahner	Alternate	Remote
29	<b>Ventura County</b>	Carmen Ramirez	Alternate	Remote
30	<b>West Hollywood</b>	Lindsey Horvath	Director	Remote
31	<b>Westlake Village</b>	Phillippe Eskandar	Alternate	Remote
32	<b>Whittier</b>	Vicki Smith	Alternate	Remote

All votes are unanimous unless otherwise stated.

**GENERAL PUBLIC COMMENT**

Harvey Eder provided public comment.

**CONSENT AGENDA**

1. Adopt Resolution 22-05-029 Finding the Continuing Need to Meet by Teleconference Pursuant to Government Code Section 54953 (e)
2. Approve Minutes from May 11, 2022, Board of Directors Meeting
3. Approve Bill Positions in the 2021/2022 Legislative Session as Recommended by the Legislative & Regulatory Committee: (a) Senate Bill 1020: Support if Amended; and (b) Senate Bill 887: Support
4. Approve Reappointments and New Appointments to the Community Advisory Committee (CAC) for Terms from July 1, 2022 to June 30, 2024
5. Receive and File Fiscal Year Q3 Financial Report
6. Receive and File Q1 2022 Risk Management Report
7. Receive and File Community Advisory Committee Monthly Report

Director Perello asked about Item 4 on the Consent Agenda. Staff reported the CPA bylaws do not establish an attendance requirement for the CAC and the individual in question had excused absences.

**Motion:** Director Hicks, Carson

**Second:** Director Horvath, West Hollywood

**Vote:** The consent agenda was approved by a roll call vote, with an abstention from Alternate Director Carmen Ramirez on Item 2.

## REGULAR AGENDA

8. (a) Adopt Resolution 22-06-033 Authorizing and Approving Entry into an Amendment to the Revolving Credit Agreement with JPMorgan Chase Bank, N.A. and Delegating Authority to the Authorized Representatives to Execute and Deliver such Amendment and other Documents Related Thereto;  
(b) Adopt 22-06-034 Authorizing and Approving the Issuance of One or More Surety Bonds and the Entry into Indemnity Agreement(s) Related to any such Surety Bond(s) and Delegating Authority to the Authorized Representatives to Approve the Terms of any such Surety Bond and to Execute and Deliver such Indemnity Agreement and Other Documents Related Thereto

Ted Bardacke, CEO, and David McNeil, CFO, provided a presentation on financing options for the Financial Security Requirement (FSR) CPA must post by July 1, 2022. Mr. Bardacke reviewed the FSR, identifying that CPA has never been required to post more than the minimum FSR amount, currently set at \$147,000. A historic surge in forward power prices right before Southern California Edison (SCE) calculated the new FSR amount led to an extreme rise in the amount CPA may be required to post. Unless the FSR amount is recalculated using a more favorable methodology, or the Advice Letter is suspended by the California Public Utilities Commission (CPUC), CPA must post \$97 million by July 1<sup>st</sup>. Mr. McNeil reviewed the financing options staff is exploring in order to post the \$97 million to meet the FSR, including amending the JPMorgan credit agreement and/or issuing a surety bond(s) or a combination of both. Mr. McNeil added this two-pronged approach provides greater certainty of being able to post the FSR by the deadline and provides flexibility in finding an optimal solution.

In response to Director Zuckerman's questions, Mr. McNeil clarified that a surety bond would not change the current agreement with JPMorgan and staff has no pre-established preference for a financial approach. Director Parkhurst asked about the significant differences in the calculations of other Investor-Owned Utilities such as Pacific Gas & Electric (PG&E) and San Diego Gas & Electric (SDG&E) who remained at the minimum FSR. Mr. McNeil clarified that they used different reference months to price the forward energy. SCE used the month of April and over that time span, forward prices went up significantly. Another factor is revenue; where revenue collected from customers is deducted from costs. SDG&E and PG&E charge higher rates than SCE and therefore have higher revenue, which lowers the FSR. Mr. Bardacke indicated that the calculation month is very important and is part of the basis of CalCCA's protest letter that SCE should calculate the FSR using the month of March like the other two IOUs. Mr. Bardacke indicated the calculations are exponential and largely based on the increase in prices coupled with lower rates. Vice Chair Kuehl inquired about alternate options if the protest is unsuccessful, besides posting a bond and/or borrowing funds; commented that the significant increase in the FSR intends to cause direct financial harm to CCAs. Mr. Bardacke expressed that CPA would be in violation of regulations allowing it to function as a Load Serving Entity if it failed to post the FSR. In response to Director Zuckerman's questions relating to the probability of all CCA's failing, staff explained it is highly improbable that CPA and all other CCA's will fail at the same time, and therefore, the approach and methodology used to calculate CPA's FSR is based on an unlikely scenario. Director Horvath asked about the use of other financial institutions; Mr. McNeil advised that JPMorgan is the best option, adding that regulations allow for only three forms of

security including cash, a letter of credit, and surety bonds. Chair Mahmud inquired whether there was any CPUC rule of practice through which to seek an expedited consideration of the pending FSR proceeding. Nancy Whang, General Counsel, advised that there were no qualifications to allow for an expedited consideration of the FSR advice letter. Ms. Whang stated that there may be other legal tools; however, an advice letter is not considered within the context of a proceeding so it may be challenging to use other legal tools. In response to Chair Mahmud's question regarding any effect on credit rating timelines, Mr. McNeil noted that the choice of one financial instrument versus another will not negatively impact CPA's timeline. Director Lee opined that staff should reach out to environmental groups and the governor as they could be useful allies. Directors Luevanos and Perello suggested holding a press conference and publicizing the issue in local newspapers to bring awareness to the issue. Director Ramirez asked if there was any indication that SCE intentionally produced a higher FSR to interrupt CPA operations. Staff commented that standard methodology was used but the outcome highlights the flaws in the underlying process. Mr. Bardacke indicated that Board members would be asked to sign a letter to the CPUC in the coming days as a first step in advocacy.

**Motion:** Director Gold, Beverly Hills  
**Second:** Director Parkhurst, Sierra Madre  
**Vote:** Item 8 was approved by a roll call vote.

9. Approve Resolution No. 22-06-030 to Approve New Rates for Phase 1 & 2 Non-Residential Customers, Resolution No. 22-06-031 to Approve New Rates for Phase 4 & 5 Non-Residential Customers, and Resolution No. 22-06-032 to Approve New Rates for Phase 3 & 5 Residential Customers; Effective July 1, 2022 or October 1, 2022 as Applicable

Staff provided Director Parkhurst with various clarifications about SCE/CPA rate comparisons; and indicated CPA's subset customer rates are closer to those of SCE than they have been in the past.

**Motion:** Director Zuckerman, Rolling Hills Estate  
**Second:** Director Perello, Oxnard  
**Vote:** Item 9 was approved by a roll call vote.

10. Approve Fiscal Year 2022/2023 Budget as Recommended by the Finance Committee and Authorize Movement of Funds Budgeted Under General and Administrative Expenses to Interest Expense, if necessary, in Order to Incur Expenses Associated with the Posting of CPA's Financial Security Requirement

Mr. McNeil provided a presentation of the proposed FY 2022/23 budget. Mr. McNeil reviewed the FY 2022/23 budget process timeline, identified key takeaways of the FY 22/23 budget, showed comparisons of CPA's operating expenses to those of select CCAs, and defined FY 22/23 operating income and reserves and reserve policy targets.

In response to questions about lower net margins, Mr. McNeil indicated that PG&E's rates are higher and that allows CCAs in northern California to charge higher rates and therefore have better margins. Chair Mahmud referenced the

historic power prices in April and requested details surrounding the 4% increase in procurement costs; Mr. McNeil indicated that the impact to CPA's budget is minimal due to hedging strategies consistent with the energy risk management policy. Chair Mahmud asked for the percentage of staffing increase based upon the transfer of services from consultants to in-house staff. Mr. McNeil indicated that communications is the major area where insourcing has reduced consultant costs. Mr. Bardacke added that the increase in staffing of approximately \$200,000 is part of an overall goal to insource core operations and improve communications materials. Director Gold offered that the Finance Committee extensively reviewed the budget and is fully supportive of it. Director Ramirez opined that it is important to keep staff happy and healthy amid endemic governmental staff shortages.

**Motion:** Director Parkhurst, Sierra Madre  
**Second:** Director Vizcarra, Temple City  
**Vote:** Item 10 was approved by a roll call vote.

11. Election of Executive Committee At-Large Positions for Two-Year Terms from July 1, 2022 to June 30, 2024

Gabriela Monzon, Clerk of the Board, provided an oral report on the item.

Los Angeles County jurisdictions unanimously elected Deborah Klein Lopez, City of Agoura Hills, and Alex Monteiro, City of Hawthorne, as At-Large Executive Committee Members representing jurisdictions in Los Angeles County, for the term July 1, 2022 to June 30, 2024.

Director Perello asked about a nominee's intent to run for this position. Staff reported the bylaws require a nominee to express an intent to fulfill the term and confirmed nominees expressed intent.

Ventura County jurisdictions elected Betsy Stix, City of Ojai, as an At-Large Executive Committee Member representing jurisdictions in Ventura County for the term from July 1, 2022 to June 30, 2024.

**MANAGEMENT REPORT**

Mr. Bardacke informed the Board that the luncheon for Chair Mahmud was postponed due to concerns over rising COVID numbers. Mr. Bardacke discussed staffing updates.

**COMMITTEE CHAIR UPDATES**

Director Horvath, Legislative & Regulatory Committee Chair, advised the Board that staff is continuously monitoring the proceedings of the legislature and will provide updates as needed. Director Horvath thanked Chair Mahmud for her leadership as Board Chair.

Director Gold, Finance Committee Chair, thanked Chair Mahmud for her leadership and thanked the Board for the approval of the budget.

Director Parkhurst, Energy Planning & Resources Committee Chair, thanked Chair Mahmud for her leadership and reported that the Integrated Resource Plan was postponed until the next Board meeting.

**BOARD MEMBER COMMENTS**

Directors Perello, Monteiro, Zuckerman, Santangelo, Ramirez and Vice Chair Kuehl expressed sentiments and thanked Chair Mahmud for her leadership as Board Chair.

**REPORT FROM THE CHAIR**

Chair Mahmud thanked the staff and Board members for their hard work in advancing CPA's goals.

**ADJOURN**

Chair Mahmud adjourned the meeting at 3:58 p.m.

DRAFT



## Staff Report – Agenda Item 3

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Geoff Ihle, Director of Energy Market Risk Management  
**Approved By:** Ted Bardacke, Chief Executive Officer  
**Subject:** Energy Risk Management Policy (ERMP) Amendments  
**Date:** July 7, 2022

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### **RECOMMENDATION**

Adopt Resolution No. 22-07-036 to approve ERMP amendments (Attachment 1).

The Energy Resources & Planning Committee supported the recommendation to approve these ERMP amendments at its June 22, 2022 meeting.

### **BACKGROUND**

In July 2018, the Board approved an ERMP that governs the framework by which the Board, staff, and consultants conduct power procurement and related business activities. The ERMP establishes a staff-level Risk Management Team<sup>1</sup> (RMT) and is supplemented by an Energy Risk Hedging Strategy, which sets the minimum and maximum procurement amounts CPA will undertake for various energy products. At least on an annual basis, the Chief Executive Officer (CEO), in consultation with the RMT, reviews the ERMP and associated procedures to determine if they should be amended, supplemented, or updated to account for changing business conditions and/or regulatory requirements. If an amendment is warranted, the ERMP amendment is submitted to the Board for approval. The Board approved amendments in July of 2019, 2020, and 2021 to reflect changes in business or regulatory conditions or to make other administrative revisions.<sup>2</sup>

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<sup>1</sup> The RMT is comprised of the CEO, CFO, COO, and Vice President, Power Supply.

<sup>2</sup> [https://cleanpoweralliance.org/wp-content/uploads/2019/07/071819\\_CPA-Board-AgendaPacket\\_web.pdf](https://cleanpoweralliance.org/wp-content/uploads/2019/07/071819_CPA-Board-AgendaPacket_web.pdf)  
<https://cleanpoweralliance.org/wp-content/uploads/2020/07/070920-CPA-Board-of-Directors-Agenda-Packet-.pdf>  
<https://cleanpoweralliance.org/wp-content/uploads/2021/06/07-01-21-CPA-Board-of-Directors-Agenda-Packet.pdf>

The ERMP and associated hedging strategy is based on industry best practices but evolves as CPA develops further operational experience and/or new market and regulatory conditions unfold.

### **PRIOR COMMITTEE ACTION**

The Executive Committee was provided a high-level overview of the proposed ERMP amendments at its June 15, 2022, meeting. On June 22, 2022, the Energy Planning & Resources Committee recommended approval of the proposed ERMP amendments to the Board.

### **SUMMARY OF PROPOSED ERMP AMENDMENTS**

Proposed revisions to the ERMP include:

- Refinements to Carbon free maximum hedge percentages as follows:

<b>Time Period</b>	<b>Minimum Hedge %</b>	<b>Maximum Hedge %</b>
Prompt Calendar Year	75	100
PY + 1	50	<del>100</del> 75
PY + 2	25	<del>75</del> 50
PY + 3	0	<del>50</del> 40
PY + 4	0	<del>50</del> 40

These increases are proposed because carbon-free energy for later years is currently available, and supply may become constrained in the next several years if drought conditions in the west persist and/or the availability of hydroelectric energy becomes further constrained.

- Creating a form to formalize the process for the CEO to delegate energy transaction execution authority. While the existing ERMP allows for the CEO to delegate energy transaction execution authority, for operational efficiency the CEO intends to delegate certain transaction signing authorities to staff on an ongoing basis. The form allows for those delegations to be limited by certain parameters such as delivery term, maximum volume per transaction, maximum price, maximum notional, reporting requirements, and other restrictions.<sup>3</sup>

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<sup>3</sup> For context, the CEO currently signs several hundred energy transaction confirmations annually. Each of these confirmations go through a multi-step quality control and review process before they are executed.

- Moving approval of counterparty credit limit exceptions from the full RMT to the Chief Financial Officer (CFO) to enhance operational efficiency. Overall transaction approval will continue to go to the full RMT for agreement approval, and the RMT will continue to receive regular counterparty credit reporting.
- Clarifying that, consistent with current practice, modifications to standard credit terms in confirmations or enabling agreements require approval by the CFO.

### **Other Minor Changes**

Several other minor revisions are made throughout the document that reflects CPA's operational history related to procurement activities. Notably, the titles of the Chief Executive Officer and the Vice President, Power Supply have been updated in numerous locations.

### **ERMP Acknowledgements**

The ERMP requires CPA representatives, including the Board, participating in any activity or transaction within the scope of the ERMP to sign, on an annual basis or upon any revision, an acknowledgment of their responsibilities, duties, obligations, and compliance under the ERMP. In tandem with the amendment to the ERMP, staff will be asking the Board to complete their annual acknowledgment forms in July, which will be emailed to the Directors in a subsequent communication from the Clerk of the Board.

### **ATTACHMENTS**

1. Resolution No. 22-07-036
2. Proposed ERMP Amendments (redline)

**RESOLUTION NO. 22-07-036****RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN  
POWER ALLIANCE OF SOUTHERN CALIFORNIA  
ADOPTING AND APPROVING THE AMENDED ENERGY  
RISK MANAGEMENT POLICY****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" or "CPA") was formed on June 27, 2017;

**WHEREAS**, on April 5, 2018, the CPA Board of Directors ("Board") adopted Resolution 18-005 delegating authority to the Executive Director for certain activities related to power procurement;

**WHEREAS**, on July 12, 2018, the Board adopted Resolution 18-006 approving the Energy Risk Management Policy ("ERMP") which establishes a framework by which the Board, staff, and consultants conduct power procurement and related business activities that may impact the risk profile of CPA;

**WHEREAS**, the ERMP specifies that CPA will review the policy on an annual basis in order to determine if the ERMP should be amended, supplemented, or updated to account for changing business conditions and/or regulatory requirements;

**WHEREAS**, in July of 2019, 2020 and 2021, the Board approved amendments to the ERMP to account for changing business or regulatory conditions as well as administrative adjustments; and,

**WHEREAS**, CPA has considered the prevailing business conditions and regulatory environment and determined that refinements or updates to certain functions or activities are necessary or beneficial.

**NOW, THEREFORE, BE IT DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA** that the attached ERMP, presented as Exhibit A, as amended therein, is hereby approved as of July 7, 2022;

**IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED**, any power procurement activity that falls outside the parameters of the ERMP, as amended herein, shall be brought to the Board for consideration;

**IT IS FURTHER DETERMINED, AFFIRMED, 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;

**IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED** that this Resolution shall be continuing and remain in full force and effect; and,

**IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED** that the approval of the ERMP is not a “project” under Section 21065 of the Public Resources Code and under California Environmental Quality Act (“CEQA”) Guidelines Sections 15378(a) and is exempt under CEQA Guidelines Section 15061(b)(3).

**ADOPTED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Julian Gold, Chair

**ATTEST:**

\_\_\_\_\_  
Gabriela Monzon, Secretary

**EXHIBIT A**

**ENERGY RISK MANAGEMENT POLICY**

(see attached)



# Energy Risk Management Policy

July 7, 2022

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## Section 1: ENERGY RISK MANAGEMENT POLICY OVERVIEW

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### 1.1 Background and Purpose

The Clean Power Alliance of Southern California (CPA) is a Joint Powers Authority (JPA) administering a Community Choice Aggregation (CCA) program in Southern California. CPA service territory currently includes 32 jurisdictions – 30 cities and the unincorporated parts of Los Angeles and Ventura Counties. CPA members presently include the following:

**Counties:**

Los Angeles

Ventura

**Cities:**

Agoura Hills

Hawaiian Gardens

Santa Monica

Alhambra

Hawthorne

Sierra Madre

Arcadia

Manhattan Beach

Simi Valley

Beverly Hills

Malibu

South Pasadena

Calabasas

Moorpark

Temple City

Camarillo

Ojai

Thousand Oaks

Carson

Oxnard

Ventura

Claremont

Paramount

West Hollywood

Culver City

Redondo Beach

Westlake Village

Downey

Rolling Hills Estates

Whittier

CCA, authorized in California under AB 117 and SB 790, allows local governments, including counties and cities, to purchase wholesale power supplies for resale to their residents and businesses as an alternative to electricity provided by an Investor Owned Utility (IOU). For CPA members, that IOU is Southern California Edison (SCE). Electricity procured by CPA to serve customers is delivered over SCE's transmission and distribution system.

CPA exists to serve its local government members, and the residences and businesses located within their respective communities. CPA's specific objectives are to provide its customers with a reliable supply of electricity, at competitive electric rates, sourced from a generation portfolio with lower greenhouse gas (GHG) emissions and higher renewable content than the incumbent utility, SCE. CPA also has goals to be a catalyst for local economic development and give its member agencies greater choice in the energy procured for their residents.

To meet these commitments, CPA must procure electric power supplies and operate in the wholesale energy market which exposes CPA, and ultimately the customers that it serves, to various risks. The intent of the Energy Risk Management Policy (ERMP) is to provide CPA, and by extension its customers, with a

framework to identify, monitor and manage risks associated with procuring power supplies and operating in wholesale energy markets.

The Energy Risk Management Policy (ERMP), including its appendices, establishes CPA's Energy Risk Program.

## 1.2 Scope

Unless otherwise explicitly stated in the ERMP or other policies approved by the CPA Board of Directors (Board), the ERMP applies to all power procurement and related business activities that may impact the risk profile of CPA. The ERMP documents the framework by which CPA staff and consultants will:

- Identify and quantify risk
- Develop and execute procurement strategies
- Develop controls and oversight
- Monitor, measure and report on the effectiveness of the ERMP

To ensure its successful operation, CPA has partnered with experienced consultants to provide power supply services. Specific to power procurement, CPA has partnered with a third-party Scheduling Coordinator that augments CPA's internal Front (scheduling), Middle (monitoring) and Back (settlement) Office related activities as discussed at Section 4.3. The Scheduling Coordinator supporting CPA's power procurement activities will adhere to and be governed by the ERMP in providing these services to CPA. In addition, the Scheduling Coordinator's activities executed on CPA's behalf will be governed by its own risk management policies and procedures, and prudent industry practices.

## 1.3 Energy Risk Management Objective

The objective of the ERMP is to provide a framework for conducting procurement activities that maximize the probability of CPA meeting the goals listed in Section 2.1.

Pursuant to the ERMP, CPA will identify and measure the magnitude of the risks to which it is exposed and that contribute to the potential for not meeting identified goals.

## 1.4 ERMP Administration

The ERMP has been reviewed and approved by the Board. The ~~Executive Director~~Chief Executive Officer in consultation with the Risk Management Team (collectively, the "RMT"), as defined in Section 4.2, and the Board must approve amendments to the ERMP, except for appendices D, E, and F, which may be amended with approval of the ~~Executive Director~~Chief Executive Officer, in consultation with the RMT. The ~~Executive Director~~Chief Executive Officer must give notice to the Board of any amendment it makes to an appendix or a reference policy or procedure document.

## Section 2: GOALS AND RISK EXPOSURES

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### 2.1 ERMP Goals

To help ensure its long-term success, CPA has outlined the following goals:

- Build a portfolio of resources with lower GHG emissions and higher renewable content than SCE;
- Meet reliability requirements established by the State of California, and operate in a manner consistent with Prudent Utility Practice (defined as the practices generally accepted in the utility industry to ensure safe, reliable, compliant and expeditious operations);
- Maintain competitive retail rates with SCE after adjusting for exit fees (currently the Power Charge Indifference Adjustment or PCIA) and Franchise Fees paid by CPA customers;
- Emphasize during the initial years of operation the funding of financial reserves to meet the following long-term business objectives:
  - Stabilize rates by dampening year-to-year variability in power supply costs;
  - Establish an investment-grade credit rating to maximize the ability of CPA to engage in long-term acquisition or development of generation supplies consistent with ERMP goals; and
  - Provide a source of equity capital for investment in generation.

The goals outlined above are incorporated into the financial models and metrics that are used to monitor and measure risk and ERMP success. It is important to note that the goals listed above are not intended to be a comprehensive list of goals for CPA. Rather, the above reflect the overarching goals critical to CPA's long-term financial success and that will guide the ERMP.

### 2.2 Risk Exposures

For the purpose of the ERMP, risk exposure is assessed on all transactions (energy, environmental attributes, and capacity) as well as the risk exposure of open positions and the impacts of these uncertainties on CPA's load obligations.

CPA faces a range of risks during launch and ongoing operation including:

- Customer opt-out risk
- Market risk
- Regulatory risk
- Volumetric risk
- Model risk
- Operational risk
- Counterparty credit risk
- Reputation risk

### 2.2.1 Customer Opt-Out Risk

Customer opt-out risk may be realized by any condition or event that creates uncertainty within, or a diminution of, CPA's customer base. Customer opt-out risk is manifested in two separate ways.

First, the ability of customers to return to bundled service from SCE creates uncertainty in CPA's revenue stream, which is critical for funding ERMP goals and achieving the investment grade credit rating needed to successfully operate over the long-term.

Second, customer opt-out risk can potentially challenge the ability of CPA to prudently plan for, and cost-effectively implement, long-term resource commitments made on behalf of its member communities and the customers it serves.

CPA will manage customer opt-out risk through the following means:

- Implement a key accounts program and maintain strong relationships with the local community including elected leaders, stakeholders and all of the customers CPA serves;
- Actively monitor and advocate for the interests of CPA and its customers in SCE ratemaking proceedings, California Public Utilities Commission (CPUC) proceedings that potentially affect exit fees paid by CPA customers, as well as all regulatory and legislative proceedings where an adverse outcome may challenge the ability of CPA to deliver on customer commitments;
- Regularly monitor and report actual and projected financial results including probability-based and stress-tested financial results assuming a range of possible future outcomes with respect to:
  - Future SCE generation and PCIA rates;
  - Future market costs for energy, environmental attributes and capacity; and
  - Anticipated or threatened regulatory actions, when appropriate.
- Adopt, implement and update, as needed, a formal Energy Risk Hedging Strategy (Appendix B) describing the strategy that CPA will follow for engaging in procurement activities; and
- Evaluate expansion of CPA's customers base through incorporation of other eligible communities into the CCA.

### 2.2.2 Market Risk

Market risk is the uncertainty of CPA's financial performance due to variable commodity market prices (market price risk) and uncertain price relationships (basis risk). Variability in market prices creates uncertainty in CPA's procurement costs, which has a direct impact on customer rates. CPA will manage market risk through:

- Regular measurement;
- Execution of approved procurement;
- Hedging and Congestion Revenue Right strategies; and
- Use of the Limit Structure set forth in the ERMP (see limits in Section 5.1.2 and Appendix B).

### 2.2.3 Regulatory and Legislative Risk

CPA and other CCAs are subject to an evolving legal and regulatory landscape. Additionally, CCAs are in direct competition with California's IOUs in supplying retail electricity and the IOUs face the risk of stranded investments in generating assets and power purchase agreements procured in the past to serve now departing CCA loads. The manner in which such stranded costs of these legacy power supplies are allocated to departing CCA loads is subject to change based on various proceedings at the CPUC. The outcome of such proceedings will directly affect the cost of power for CPA's customers, as well as impact the rate competitiveness of CPA.

In addition to exit fees, potential regulatory and/or legislative changes could affect the ability of CPA to exercise local control over the manner and means of procuring power supplies to serve its customers.

CPA will manage regulatory and legislative risks by:

- Regularly monitor and analyze legislative and regulatory proceedings impacting CCAs; and
- Actively participate in, and advocate for, the interests of CPA and its customers during regulatory and legislative proceedings.

### 2.2.4 Volumetric Risk

Volumetric risk reflects the potential uncertainty in the quantity of different power supply products (e.g., renewable energy, Carbon Free Energy and capacity) required to meet the needs of CPA customers. This uncertainty can lead to adverse financial outcomes, as well as create potential for CPA to fail to meet reliability or renewable energy compliance requirements established by the State of California and/or the CPA Board. Customer load is subject to fluctuation due to customer opt-outs or departures, temperature deviation from normal, unforeseen changes in the growth of behind the meter generation by CPA customers, unanticipated energy efficiency gains, new or improved technologies, as well as local, state and national economic conditions. CPA will manage volumetric risk by taking steps to:

- Implement robust short- and long-term load and generation supply forecast methodologies, including regular monitoring of forecast accuracy through time and refining such forecasts, including by incorporating CPA's actual load data into forecasts as such data becomes available;
- Account for volumetric uncertainty in load and/or generation supply in the Energy Risk Hedging Strategy;
- Monitor trends in customer onsite generation, economic shifts, and other factors that affect electricity customer consumption and composition; and
- Proactively engage with customers in developing distributed energy resources and behind-the-meter generation and energy efficiency programs so as to better forecast changes in load.

### 2.2.5 Model Risk

Model risk has potential for an inaccurate or incomplete representation of CPA's actual or forecast financial performance due to deficiencies in models and/or information systems used to capture all transactions. CPA will manage model risk by:

- RMT ratification of models used to forecast financial performance, net positions and/or measure risk;
- Ongoing review of model outputs;
- A requirement to record all procurement transactions in a single trade capture system; and
- Ongoing update and improvement of models as additional information and expertise is acquired and industry best practices evolve.

### 2.2.6 Operational Risk

Operational risk is the uncertainty of CPA's financial performance due to weaknesses in the quality, scope, content, or execution of human resources, technical resources, and/or operating procedures within CPA. Operational risk can also be exacerbated by fraudulent actions by employees or third parties or inadequate or ineffective controls. CPA will manage operational risk through:

- The controls set forth in the ERMP;
- RMT oversight of procurement activity;
- Timely and effective reporting to the ~~Executive Director~~Chief Executive Officer in consultation with the RMT, and the Board;
- Implementation of a compliance training program for CPA staff;
- Ongoing CPA and Scheduling Coordinator staff education/training and participation in industry forums; and
- Annual audits to test compliance with the ERMP.

### 2.2.7 Counterparty Credit Risk

Counterparty credit risk is the potential that a counterparty will fail to perform or meet its obligations in accordance with terms agreed to under contract. CPA's exposure to counterparty credit risk is controlled by the limit controls set forth in the Credit Policy described in Section 6.

### 2.2.8 Reputation Risk

Reputation risk is the potential that CPA's reputation is harmed, causing customers to opt-out of CPA service and migrate back to SCE. Reputational risk is also the potential that energy market participants view CPA as an untrustworthy business partner, thus reducing the pool of potential counterparties and/or having counterparties apply a CPA-specific risk premium to pricing. Reputational risk is managed through:

- Implementation of and adherence to the ERMP;
- Engaging in ethical, transparent and honest business practices during trading activities; and
- Establishment and adherence to industry best practices including both those adopted by other CCAs, as well as those adopted by traditional municipal electric utilities.

## Section 3: BUSINESS PRACTICES

### 3.1 General Conduct

It is the policy of CPA that all Board members, staff, and consultants (collectively referred to “CPA Representatives”), adhere to standards of integrity, ethics, conflicts of interest, compliance with statutory law and regulations and other applicable CPA standards of personal conduct while employed by or affiliated with CPA. Towards this end, all persons performing marketing and trading functions on behalf of CPA shall be subject to, read, understand, and abide by the provisions contained in the CPA Code of Marketing and Trading Practices (see Appendix F).

### 3.2 Trading for Personal Accounts

All CPA Representatives participating in any transaction or activity within the coverage of the ERMP are required to comply with the CPA Conflict of Interest Code approved by the Fair Political Practices Commission and are obligated to give notice in writing to CPA of any legal, financial or personal interest such person has in any counterparty that seeks to do business with CPA, and to identify any real or potential conflict of interest such person has or may have with regard to any existing or potential contract or transaction with CPA, within 48-hours of becoming aware of the conflict of interest. Written notice should be submitted to the ~~Executive Director~~Chief Executive Officer substantially in the form of the letter notification shown in Appendix E. This written notice obligation shall be in addition to the regulations or requirements of the Fair Political Practices Commission (e.g., Statement of Economic Interests, Form 700) and any policy adopted by the CPA Board of Directors, including but not limited to the Vendor Communication Policy No. 2019-10.

Further, all persons are prohibited from personally participating in any transaction or similar activity that is within the coverage of the ERMP, or prohibited by California Government Code Section 1090, and that is directly or indirectly related to the trading of electricity and/or environmental attributes as a commodity.

If there is any doubt as to whether a prohibited condition exists, then it is the CPA Representative’s responsibility to discuss the possible prohibited condition with CPA General Counsel.

### 3.3 Adherence to Statutory Requirements

All CPA Representatives are required to comply with rules promulgated by the State of California, CPUC, California Energy Commission, Federal Energy Regulatory Commission (FERC), Commodity Futures Trading Commission (CFTC), and other regulatory agencies.

Congress, FERC and CFTC have enacted laws and regulations that prohibit, among other things, any action or course of conduct that actually or potentially operates as a fraud or deceit upon any person in connection with the purchase or sale of electric energy or transmission services. These laws also prohibit any person or entity from making any untrue statement of fact or omitting a material fact where the omission would make a statement misleading. Violation of these laws can lead to both civil and criminal actions against the individual involved, as well as CPA. The ERMP is intended to comply with these laws, regulations and rules and to avoid improper conduct on the part of anyone employed by CPA. These procedures may be modified from time to time based on legal requirements, auditor recommendations,

and other considerations.

In the event of an investigation or inquiry by a regulatory agency, CPA will provide legal counsel to employees provided the subject of the investigation is within the employee's course and scope of employment. However, CPA reserves the right to refrain from providing legal counsel if it reasonably appears to the CPA General Counsel and ~~Executive Director~~ Chief Executive Officer that the employee was either not acting in good faith or was acting outside the course and scope of his or her employment.

CPA employees are prohibited from working for another power supplier, CCA or utility while they are simultaneously employed by CPA unless an exception is authorized by the Board.

### 3.4 Transaction Type

Authorized transaction types are listed in Appendix C. Each approved transaction type that is listed is included to either meet a mandatory procurement obligation required of all Load Serving Entities (LSE) serving retail loads in California; and/or alternatively, the approved product is needed for CPA to meet an identified ERMP goal. Major transaction types include:

- Resource Adequacy Capacity is a mandatory procurement obligation that ensures adequate generation supplies are available on a planning basis to reliably meet the requirements of electric consumers in the California Independent System Operator (CAISO) balance authority;
- Portfolio Content Category 1 (PCC1) and Portfolio Content Category 2 (PCC2) renewable energy must be procured by CPA to comply with the state of California's Renewable Portfolio Standard, as required by SB 350. CPA has made a voluntary decision to purchase incremental quantities of PCC1 and/or PCC2 renewable energy to exceed the renewable portfolio content of the incumbent utility;
- Carbon Free Energy is a voluntary purchase of specified source energy from large hydroelectric generation that enables CPA to provide its customers with electricity sourced from generators producing low GHG emissions so that member agencies can meet their climate action plans and CPA can contribute to combatting climate change;
- Physical Energy products are a voluntary purchase made by CPA to provide cost certainty and rate stability for customers; and
- The CAISO is the largest grid operator in the state of California and CPA members lie within its balancing area. CAISO operates Day-Ahead, Fifteen Minute and Real-Time Markets and other ancillary markets necessary for reliable operation of the grid. CPA is required to participate in CAISO markets. Acquisition of the CAISO products listed in Appendix C either result from mandatory participation in CAISO's markets, or are useful for managing short-term market risks associated with CAISO's markets.

The strategy for using and procuring the approved products is described in further detail in the Energy Risk Hedging Strategy.

#### 3.4.1 Exceptions

New transaction types may provide CPA with additional flexibility and opportunity but may also introduce new risks. Therefore, transaction types not included in Appendix C must be approved by the RMT and the Board prior to execution using the process defined below.

When seeking approval for a new transaction type, a New Transaction Type Approval Form, as shown in Appendix D, is to be drafted describing all significant elements of the proposed transaction. The proposal write-up will, at a minimum, include:

- A description of the benefit to CPA, including the purpose, function and expected impact on costs (i.e.; decrease costs, manage volatility, control variances, etc.);
- Identification of the in-house and/or external expertise that will manage and support the new or non-standard transaction type;
- Assessment of the transaction's risks, including any material legal, tax or regulatory issues;
- How the exposures to the risks above will be managed by the Limit Structure;
- Proposed valuation methodology (including pricing model, where appropriate);
- Proposed reporting requirements, including any changes to existing procedures and system requirements necessary to support the new transaction type;
- Proposed accounting methodology; and
- Proposed work flows/methodology (including systems).

It is the responsibility of the Middle Office to ensure that relevant departments have reviewed the proposed transaction type and that material issues are resolved prior to submittal to the Board for approval. If the transaction type is approved, Appendix C to the ERMP will be updated to reflect its addition.

### **3.5 Counterparty Suitability**

All counterparties with whom CPA transacts must be reviewed for creditworthiness and assigned a Credit Limit as described in Section 6.

### **3.6 System of Record**

Since information systems play a vital role for CPA's trading and risk management abilities, CPA shall maintain and secure a System of Record. CPA's transaction and contract data are also stored in its Scheduling Coordinator's energy trading and risk management system.

CPA's Technology and Data and Systems group supports the security, integrity, and recoverability of the System of Record. The Scheduling Coordinator has assigned a Database Administrator (DBA) that is charged with database security and maintenance for the Scheduling Coordinator's transaction database. For data recoverability, transaction data stored in the System of Record is replicated daily to ensure data redundancy and is backed-up via cloud-based applications.

All transaction records will be maintained in US dollars and will be separately recorded and categorized by type of transaction and other characteristics, in line with standard industry practice. This System of Record shall be auditable and audited as appropriate.

### **3.7 Transaction Valuation**

Transaction valuation and mark-to-market (valuing of an asset based on its current market price) reporting of positions shall be based on independent, publicly available, market-observed prices (replacement costs) whenever possible. In the event there are not market-observed prices, the value of CPA's transactions

shall follow a notional value calculation (the total nominal dollar value of a transaction over its full duration) or other methodology approved as part of the new product approval process.

All transactions and open positions will be valued daily.

### 3.8 Stress Testing

In addition to limiting and measuring risk using the methods described herein, stress testing shall also be used to examine performance of the CPA portfolio under potential adverse conditions. Stress testing is used to understand the potential variability in CPA's projected procurement costs and resulting impacts on customer rates and CPA's competitive positioning associated with low probability events. The Middle Office will perform stress-testing of the portfolio as directed by the RMT.

### 3.9 Trading Practices

As previously noted, CPA exists to serve its customers. The scope of its wholesale market operations is limited to that which is required to meet the power supply obligations of its customers consistent with ERMP goals. It is the expressed intent of the ERMP to prohibit wholesale market activities that result in procurement of any power supply product beyond that which is required to meet an identifiable need of CPA customers. The purchase or sale of any power supply product beyond what is reasonably anticipated to be needed to meet the requirements of CPA customers is a speculative transaction and is prohibited.

In the course of developing operating plans and conducting procurement activities, CPA recognizes that staff must employ reasonable expertise and judgment, and it is not the intent of the ERMP to restrain the legitimate application of analysis and market expertise in executing procurement strategies intended to minimize costs or maximize the value of generation within the constraints of the ERMP. If any questions arise as to whether a proposed transaction(s) constitutes speculation, the RMT shall review the transaction(s) to determine whether the transaction(s) would constitute speculation and shall document its findings. As used here, "speculation" means the act of trading an asset with the expectation of realizing financial gain resulting from a change in price in the asset being transacted.

Staff and consultants engaged in procurement activities will also observe the following practices:

- Persons shall conduct business in good faith and in accordance with all applicable laws, regulations, tariffs and rules;
- Persons shall not arrange or execute wash trades (i.e., offsetting transactions where no financial risk is taken);
- Persons shall not disseminate known false or misleading information or engage in transactions to exploit such information;
- Persons shall not game or otherwise interfere with the operation of a well-functioning competitive market;
- Persons shall not collude with other market participants; and
- Persons shall immediately report any known or suspected violation of the ERMP.

### 3.10 Training

CPA recognizes the importance of ongoing education to manage risk and to contribute to ERMP success. Towards this end, CPA will observe the following practices:

- All employees executing procurement transactions on behalf of CPA must receive appropriate training in the attributes of each product type that they transact, how the product furthers the portfolio objectives of CPA, and how the risk profile of CPA is impacted by procurement of each product;
- All employees executing procurement activities shall complete required and available energy market compliance training as determined by the Chief Operating Officer once per calendar year and acknowledge receipt of said training in writing;
- The Human Resources [Department](#) shall maintain records of each employee's training status.

## Section 4: ORGANIZATIONAL STRUCTURE AND RESPONSIBILITIES

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### 4.1 Board of Directors Responsibilities

The Board has the responsibility to review and approve the ERMP. With this approval, the Board acknowledges responsibility for understanding the risks CPA is exposed to through its CCA activity and how the policies outlined in the ERMP help CPA manage the associated risks. The Board is also responsible to:

- Provide strategic direction to CPA;
- Consider transactions beyond authorities delegated to the ~~Executive Director~~Chief Executive Officer in consultation with the RMT;
- Consider changes to the Energy Risk Hedging Strategy (see Appendix B); and
- Consider new transaction types not currently listed in the ERMP (see Appendix C).

### 4.2 Risk Management Team

The RMT is responsible for implementing, maintaining and overseeing compliance with the ERMP and for maintaining the Energy Risk Hedging Strategy. At a minimum, the members of the RMT shall include the ~~Executive Director~~Chief Executive Officer and at least two additional CPA staff members with experience in energy markets selected at the sole discretion of the ~~Executive Director~~Chief Executive Officer.

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. The RMT shall consider and propose changes to the ERMP when conditions dictate.

Pursuant to direction and delegation from the Board of Directors and the limitations specified by this ERMP, the ~~Executive Director~~Chief Executive Officer, in consultation with the RMT, maintains authority over procurement activities for CPA. This authority includes, but is not limited to, taking any or all actions necessary to ensure compliance with the ERMP.

The RMT responsibilities may include, but are not limited to:

- Maintain the Energy Risk Hedging Strategy and ensure that all procurement strategies and related protocols are consistent with the ERMP;
- Review financial and risk models and subsequent changes;
- Establish counterparty Credit Limits;
- Review initial counterparty credit review models and methods for setting and monitoring Credit Limits and subsequent changes;
- Review reports as described in the ERMP;
- Meet to review actual and projected financial results and potential risks;
- Keep apprised of any change in the environment in which CPA operates that has a material effect upon the risk profile of CPA;
- Review summaries of limit violations and recommend corrective actions, if necessary; and

- Review the effectiveness of CPA's energy risk measurement methods.

### 4.3 Segregation of Duties

CPA shall work to maintain a segregation of duties, also referred to as "separation of function," to help manage and control the risks outlined in the ERMP. Individuals responsible for legally binding CPA to a transaction will not also perform confirmation or settlement functions without supplemental, transparent, and auditable controls. CPA also will leverage the organizational structure of the Scheduling Coordinator's Middle and Back offices to help maintain a segregation of duties. The Front, Middle and Back Office responsibilities for CPA are described below.

#### 4.3.1 Front Office

The Front Office is headed by the ~~Director of Power Planning & Procurement~~ Vice President, Power Supply. The Front Office has overall responsibility for (1) managing all activities related to procuring and delivering resources needed to serve CPA load, (2) analyzing fundamentals affecting load and supply factors that determine CPA's net position, and (3) transacting within the limits of the ERMP and associated policies to balance loads and resources and maximize the value of CPA assets through the exercise of approved optimization strategies. Other duties associated with these responsibilities include:

- Assist in the development and analysis of risk management hedging products and strategies, and bring recommendations to the RMT;
- Prepare a monthly operating plan for the prompt month (the month following the current month) that gives direction to the Day-Ahead and Real-Time Market trading and scheduling staff regarding the bidding and scheduling of CPA's resource portfolio in the CAISO market;
- Calculate and maintain the net forward positions (a forecast of the anticipated electric demands compared to existing resource commitments) of CPA for all power products (energy, renewable energy, Carbon Free Energy and Resource Adequacy Capacity);
- Develop, price and negotiate hedging products;
- Oversee scheduling of load and resources into CAISO;
- Keep accurate records of all executed transactions;
- Manage and facilitate the transaction execution process for power supply transactions through coordination of the following activities:
  - Notify Front Office personnel of any anticipated unique physical delivery or scheduling issues;
  - Work with Middle Office personnel and legal counsel to establish a contract, evaluate counterparty creditworthiness and secure additional credit from the counterparty, if necessary;
  - Work with Middle Office, as needed, to perform an analysis of the potential transaction to evaluate the effect on CPA's portfolio risks;
  - Notify Back Office of terms and conditions affecting settlement to ensure that the necessary settlement procedures are in place.

### 4.3.2 Middle Office

The Middle Office functions will be the responsibility of the Chief Financial Officer. The Middle Office provides market and credit risk oversight, has responsibility for development of risk management policies and procedures, monitors compliance with the same, and keeps management and the Board informed on risk management issues. CPA will maintain its Middle Office functions independent from the front and back office functions.

Middle Office responsibilities include the following:

- Create and ensure compliance with policies outlining standard procedures for conducting business;
- Oversee short-term and long-term load forecasting;
- Estimate and publish daily forward monthly power curves and weekly publish natural gas price curves for a minimum of the balance of the current year through the next calendar year;
- Verify the net forward positions of CPA for all power products;
- Ensure that CPA adheres to all risk policies and procedures;
- Implement and enforce credit policies and limits;
- Confirm all transactions conform to commercial terms and alert Front Office to discrepancies;
- Ensure all trades have been entered into the System of Record as well as the Scheduling Coordinator's transaction data management system;
- Ensure that all CAISO Day-Ahead, Fifteen Minute and Real-Time Market delivery volumes and prices are entered into a transaction database;
- Review models and methodologies and recommend RMT approval, as needed;
- Mark unrealized and realized gains and losses associated with CPA hedge activity.
- Development and maintain financial and energy risk management models as directed by the RMT
- Develop and maintain load forecasting models and perform long term load forecasts as directed by RMT

### 4.3.3 Back Office

The Back Office functions will be the responsibility of the Chief Financial Officer. It provides support with a wide range of administrative activities necessary to execute and settle transactions and to support the risk control efforts (e.g., transaction entry and/or checking, data collection, billing, etc.) consistent with the ERMP. Through its partnership with the Scheduling Coordinator, CPA will maintain its Back Office functions independent from the Front and Middle Office functions.

Back Office responsibilities include the following:

- Ensuring timely and accurate financial reporting;
- Maintaining a system of financial controls and business processes that control financial risk;
- Maintaining the overall financial security of transactions undertaken on behalf of CPA;

- Carrying out month-end checkout of all transactions each month; and
- Validation and prompt payment of energy related invoices payable by CPA and resolving disputes with counterparties;
- Generation and prompt collection of energy related invoices payable by counterparties

## Section 5: DELEGATION OF AUTHORITY

### 5.1 Risk Limits

The following limits apply to all CPA procurement activities. These limits are Board-approved and define the limits that CPA must operate within. The metrics and management of risk within these limits is further described in the Energy Risk Hedging Strategy.

#### 5.1.2 Delegation Authority

Through its approval of the ERMP, the Board has delegated operations and oversight to the ~~Executive Director~~Chief Executive Officer, in consultation with the RMT, as outlined through the ERMP. Specifically, to facilitate daily operations of the CCA, the Board has delegated transaction execution authorities shown in the table below.

<i>Position</i>	<i>Term Limit*</i>	<i>Counterparty Limit</i>	<i>Notional Value Limit (per transaction)</i>	<i>Notional Value Limit (annual)</i>
<del>Executive Director</del> <u>Chief Executive Officer</u> in consultation with the RMT	5 years	Pursuant to Credit Policy	Board-approved limits set in the Energy Risk Hedging Strategy	
<del>Executive Director</del> <u>Chief Executive Officer</u>	1 year	Pursuant to Credit Policy	\$10m	\$80m <sup>1</sup>

\*Term is the total duration of the contract, defined as the number of days between the beginning flow date and the ending flow date, inclusive.

For operational flexibility, the ~~Executive Director~~Chief Executive Officer will have the authority to delegate transaction execution authority to either the Chief Operating Officer or ~~Director of Power Planning & Procurement~~Vice President, Power Supply, as needed. Any delegation will be documented in writing using the form in Appendix Gg and contain any limitations or exclusions that the Executive Director deems necessary.

For a transaction to be valid, it must conform to each of the four limits specified in the above table.

These limits will be applied to wholesale power procurement outside of transactions directly executed with the CAISO. These limits provide CPA the needed authority to manage risks as they arise. Transactions falling outside the delegations above require Board approval prior to execution.

Transactions with CAISO and CAISO administrative fees are excluded from this table. CAISO transactions are limited to those required for scheduling contracts in the CAISO market and for balancing CPA's load and resources.

<sup>1</sup> Annual limits intended to reflect approximately 10% of annual power supply costs.

### 5.1.3 Long-Term Procurement

Long-term procurement, defined as contract terms greater than 5 years will be subject to Board approval. Long-term contracts are procured through solicitations, bilateral negotiations, or regulatory proceedings, with oversight including shortlist approvals or procurement recommendations, provided by the Energy Resources & Planning Committee of the Board.

All long-term contracts are evaluated using standard evaluation criteria, including economic value over the life of the contract and any additional evaluation criteria established by the Energy Resources & Planning Committee and consistent with Board policy directives. Proposals received in solicitations, including all pricing and other confidential submission information, are reviewed by an RFO Review Team comprised of the ~~Executive Director~~Chief Executive Officer, additional Staff members as determined by the ~~Executive Director~~Chief Executive Officer, and a subset of Board members serving on the Energy Resources and Planning Committee, unless otherwise determined appropriate by the ~~Executive Director~~Chief Executive Officer and General Counsel in consultation with the Board Chair and Chair of the Energy Resources and Planning Committee. Proposals, either from solicitations, bilateral negotiations, or regulatory proceedings, are evaluated by the Energy Resources & Planning Committee and approved for contract negotiations. Final awards are then presented for Board consideration in accordance with applicable law.<sup>2</sup>

Any amendments to a Board-approved long-term contract that make material changes to the terms of the contract including, but not limited to, changes to price, volume, project size, commercial operation date, counterparty security requirements, or other amendments that impact the evaluation criteria upon which a project was approved must be also approved the Board.

Minor, non-core amendments, or additional agreements that are administrative in nature or arising from the counterparties effectuating their obligations related to the project under normal course of business (e.g., implementing project financing, consent to collateral assignment, assignments, changes to progress reporting forms, insurance obligations, or termination), may be approved and executed by the ~~Executive Director~~Chief Executive Officer or Chief Operating Officer.

All procurement executed under the delegation above must align with CPA's underlying risk exposure (i.e., load requirements, locational and temporal) that is being hedged consistent with the Energy Risk Hedging Strategy. The RMT will consider risks associated with executed or planned long-term procurement within its evaluation of overall portfolio risk and procurement decision-making.

### 5.1.4 Volume Limits

Transactions should not be executed that exceed CPA's energy, capacity, or renewable or Carbon Free Energy requirements. If there is an adjustment to CPA requirements resulting in the volume of existing transactions exceeding CPA's requirements, the RMT will determine the most favorable strategy to appropriately rebalance the portfolio.

An exception to the above limits may be made by the RMT if executing a transaction exceeding load will minimize costs or is necessary to ensure compliance. For example, procuring RA for the entire year could

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<sup>2</sup> Awards will be presented without market sensitive information (i.e., pricing or other sensitive commercial terms) for Board consideration in accordance with applicable law.

cause CPA to hold excess RA in certain months. Such a transaction would be acceptable if a lower cost alternative transaction or set of transactions that more closely matches monthly needs is unavailable.

### **5.1.5 Locational Limits**

The delivery location for all transactions must support the requirements of CPA's source or sink locations.

### **5.1.6 CAISO Submission Limits**

CPA shall bid at least 80% of its forecast load requirements in the Day-Ahead Market and bids shall not exceed 100% of forecast load requirements.

CPA shall offer no more than 100% of the forecasted generation capability in the Day-Ahead Market. CPA shall follow CAISO protocols for all activity within CAISO.

## **5.2 Monitoring, Reporting and Instances of Exceeding Risk Limits**

The Middle Office is responsible for monitoring and reporting compliance with all limits within the ERMP. If a limit or control is violated, the Middle Office will send notification to the trader responsible for the violation and the RMT. The RMT will discuss the cause and potential remediation of the exceedance to determine next steps for curing the exceedance.

## Section 6: CREDIT POLICY AND COUNTERPARTY SUITABILITY

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Prior to execution of any transaction, the Front Office will verify that CPA has executed a master agreement with the counterparty, that the counterparty has been evaluated for creditworthiness, and that an approved Credit Limit has been established. No transactions may be executed without first ensuring the transaction falls within the unutilized Credit Limit for the counterparty or has been approved on an exception basis by the [RMT Chief Financial Officer](#).

### 6.1 Master Enabling Agreements and Confirmations

Transactions are governed by master agreements, the forms of which must be prepared by CPA General Counsel and approved by the Board. No transactions may be executed without a fully executed master agreement being on file. Written confirmations of each transaction will contain standard commercial terms and provisions. Material modifications or additions to standard commercial terms in confirmations require approval by legal counsel. [-Modifications to standard credit terms in confirmations or enabling agreements require approval by CFO.](#)

It is CPA's policy to confirm all transactions in writing. All confirmations received from counterparties will be matched against trades in the System of Record. Any discrepancies between a confirmation and the System of Record may be handled by the Front Office representative that executed the transaction, or if necessary, a Middle Office representative will seek resolution with the counterparty. All confirmations will be kept on file.

#### 6.1.1 Exceptions

It is standard industry practice to not provide written confirmation of certain short-term transactions with a term of one day or less. Additionally, CPA may agree with certain counterparties to alternative methods for confirming certain transactions. Transactions executed in a recorded telephone conversation or recorded instant message in which the offer and acceptance shall constitute the agreement of the parties must be confirmed in writing after-the-fact, with notice being provided to the counterparty within 72 hours.

### 6.2 Counterparty Suitability

All counterparties shall be evaluated for creditworthiness by the Middle Office prior to execution of any transaction and no less than annually thereafter. Additionally, counterparties shall be reviewed if a change has occurred, or is perceived to have occurred, in market conditions or in a company's management or financial condition. This evaluation, including any recommended increase or decrease to a Credit Limit, shall be documented in writing and include all information supporting such evaluation in a credit file for the counterparty.

Counterparty Credit Limits, and credit and payment terms will be recommended by the Middle Office for approval by the RMT consistent with CPA's Credit Protocols. The Middle Office will undertake credit analysis that shall include, at a minimum, an evaluation of current audited financial statements or other supplementary data and consider factors such as:

- Liquidity
- Leverage (debt)
- Profitability
- Net worth
- Cash flow
- Proposed collateral and other contract terms

Counterparty's senior unsecured or corporate credit rating will be obtained from one of the nationally recognized rating agencies (S&P, Moody's, and/or Fitch) if available. Trade and banking references, and any other pertinent information, may also be used in the review process.

When establishing credit and payment terms, RMT will consider the Credit Limit of the counterparty, current exposure to the counterparty, the product type and tenor of existing and/or future transactions, notional value of proposed or future transactions with the counterparty and the availability/scarcity and commercial significance of the product being traded. A counterparty may choose to provide a guarantee from a third party, provided the third party satisfies the criteria for a Credit Limit as outlined herein.

### **6.3 Maximum Credit Limit**

Each new counterparty Credit Limit or increase to an existing limit will be reviewed by the RMT. The maximum amount of any Credit Limit extended to a counterparty shall not exceed \$50,000,000<sup>3</sup> unless approved in writing by the Board.

### **6.4 Credit Review Exceptions**

Counterparties not subject to the above credit review criteria include those associated with Day-Ahead and current day purchases where risks associated with market movements are minimal.

### **6.5 Credit Limit and Monitoring**

The Middle Office will monitor the current credit exposure for each counterparty with whom CPA transacts and include such information in the Current Counterparty Credit Risk Report. This report will be submitted to the RMT for review pursuant to the reporting requirements outlined in Section 7.

Current credit exposure is a measure of the known exposures and composed of two primary exposures – (1) realized exposure, and (2) forward exposure. Realized exposure, a payable or receivable amount owed between counterparties, is a measurement of cash flow for billed and unbilled transactions. Forward exposure is a measure of current unrealized exposure and includes the measure of a counterparty's incentive to fulfill contractual obligations. Forward exposure measures the risk associated with having a payment default or the need to replace a transaction in the event of delivery default.

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<sup>3</sup> Approximately 10% of annual power supply costs in 2020.

## 6.6 CPA Credit Support

Counterparties may require CPA to post a form of credit support, such as cash or a letter of credit. The Middle Office will ensure that any CPA credit support requirements are evaluated and approved within the context of the overall transaction approval as specified herein.

## Section 7: POSITION TRACKING AND MANAGEMENT REPORTING

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A vital element in the ERMP is the regular identification, measurement and communication of risk. To effectively communicate risk, all risk management activities must be monitored on a frequent basis using risk measurement methodologies that quantify the risks associated with CPA's procurement-related business activities and performance relative to identified goals.

Minimum reporting requirements are shown below. The reports outlined below will be presented to the RMT. Reports will be generated weekly unless otherwise noted.

- **Financial Model Forecast**

Latest projected financial performance, marked to current market prices, and shown relative to CPA's financial goals.

- **Net Position Report**

Latest forward net position report, by product type (energy, PCC1, PCC2, Carbon Free Energy and RA capacity) for the current and prompt year.

- **Counterparty Credit Exposure**

Current counterparty credit exposure compared against limits approved by CPA, as well as the limit assigned to CPA by the counterparty.

- **Monthly Risk Analysis**

Cash flow forecasting and stress testing of financial forecasts relative to financial goals. Gross margin at risk reporting. Additional discussion of the specific gross margin at risk reporting and its application is provided in the Energy Risk Hedging Strategy.

- **Quarterly Board Report**

Update on activities, projected financial performance, and general market outlook to be presented quarterly at Board meetings, communicated in a way to ensure CPA confidentiality and market sensitive data is not released.

## Section 8: ERMP REVISION PROCESS

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The ERMP will evolve over time as market and business factors change. At least on an annual basis, the ~~Executive Director~~Chief Executive Officer, in consultation with the RMT, will review the ERMP and associated procedures to determine if they should be amended, supplemented, or updated to account for changing business conditions and/or regulatory requirements. If an amendment is warranted, the ERMP amendment will be submitted to the Board for approval. Changes to ERMP appendices may be approved and implemented by the ~~Executive Director~~Chief Executive Officer, in consultation with the RMT, with the exception of new transaction types and changes to the Energy Risk Hedging Strategy, which also require Board approval.

### 8.1 Acknowledgement of ERMP

All CPA Representatives participating in any activity or transaction within the scope of the ERMP or in the case of a consultant, an executive of the consultant or a delegated representative authorized to bind the consultant with regard to ERMP obligations shall sign, on an annual basis or upon any revision, a statement approved by the ~~Executive Director~~Chief Executive Officer, in consultation RMT, that such CPA Representative has:

- Read the ERMP;
- Understands the terms and agreements of said ERMP;
- Will comply with said ERMP;
- If an employee, understands that any violation of said ERMP shall subject the employee to discipline up to and including termination of employment;
- If a consultant, understands that any violation of said ERMP may be grounds for consultant contract termination; and
- If a Board member, understands that any violation of said ERMP shall subject the Board member to action by the Board.

### 8.2 ERMP Interpretations

Questions about the interpretation of any matters of the ERMP should be referred to the ~~Executive Director~~Director, Energy Market Risk Management.

All legal matters stemming from the ERMP will be referred to CPA counsel.

## Appendix A: DEFINITIONS

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**Back Office:** That part of a trading organization which handles transaction accounting, confirmations, management reporting, and working capital management.

**CAISO:** California Independent System Operator. CAISO operates a California bulk power transmission grid, administers the State's wholesale electricity markets, and provides reliability planning and generation dispatch.

**Carbon Free Energy:** Energy that is generated from a specific zero carbon emitting generating asset. It is commonly used to note energy from large hydroelectric or nuclear generation that while non-carbon emitting, is not an RPS-eligible generation source. Sometimes referred to as specified source energy.

**CCA:** Community Choice Aggregator. CCAs allow local government agencies such as cities and/or counties to purchase and/or develop generation supplies on behalf of their residents, businesses and municipal accounts.

**CFTC:** Commodity Futures Trading Commission. The CFTC is a U.S. federal agency that is responsible for regulating commodity futures and swap markets. Its goals include the promotion of competitive and efficient futures markets and the protection of investors and market participants against manipulation, abusive trade practices and fraud.

**Congestion Revenue Right:** A point-to-point financial instrument in the Day-Ahead Energy Market that entitles the holder to receive compensation for or requires the holder to pay certain congestion related transmission charges that arise when the transmission system is congested.

**Credit Limit:** The maximum amount of financial exposure one party is willing to extend to another.

**Day-Ahead Market:** The short-term forward market conducted by an Organized Market prior to the operating day. It is intended to efficiently allocate transmission capacity and facilitate purchases and sales of energy and scheduling of bilateral transactions.

**FERC:** Federal Energy Regulatory Commission. FERC is a federal agency that regulates the interstate transmission of electricity, natural gas and oil. FERC also reviews proposals to build liquefied natural gas terminals, interstate natural gas pipelines, as well as licenses hydroelectric generation projects.

**Front Office:** That part of a trading organization which solicits customer business, services existing customers, executes trades and ensures the physical delivery of commodities.

**Franchise Fee:** A franchise fee is a percentage of gross receipts that an IOU pays cities and counties for the right to use public streets to provide gas and electric service. The franchise fee surcharge is a percentage of the transmission (transportation) and generation costs to customers choosing to buy their energy from third parties. IOUs collect the surcharges and pass them through to cities and counties.

**IOU:** An Investor Owned Utility (IOU) is a business organization providing electrical and/or natural gas services to both retail and wholesale consumers and is managed as a private enterprise.

**Limit Structure:** A set of constraints that are intended to limit procurement activities.

**Middle Office:** That part of a trading organization that measures and reports on market risks, develops risk management policies and monitors compliance with those policies, manages contract administration and credit, and keeps management and the Board informed on risk management issues.

**PCIA:** Power Cost Indifference Adjustment or successor. The PCIA is intended to compensate IOUs for their stranded costs when a bundled customer departs and begins taking generation services from a CCA.

**Portfolio Content Category 1 (PCC1) Renewable Energy:** Energy and bundled Renewable Energy Credits that is simultaneously procured from an RPS-Eligible Facility that is directly interconnected to the distribution or transmission grid within a California balancing authority area (CBA); or that is not directly interconnected to a CBA but is delivered to a CBA without substituting electricity from another source.

**Portfolio Content Category 2 (PCC2) Renewable Energy:** Energy and bundled Renewable Energy Credits that is simultaneously purchased from an RPS-Eligible Facility, but the energy is firmed and shaped with substitute electricity scheduled into a CBA within the same calendar year as the renewable energy is generated.

**Portfolio Content Category 3 (PCC3) Renewable Energy:** Renewable Energy Credits from RPS-eligible facilities that do not meet the definition of PCC1 or PCC2.

**Real-Time Market:** The real-time market is a spot market in which LSEs can buy power to meet the last few increments of demand not covered in their day ahead schedules, up to 75 minutes before the start of the trading hour.

**Resource Adequacy Capacity:** A capacity product whereby a Seller commits to a must offer obligation of its generator in the CAISO market and on behalf of a specified Load Serving Entity.

**RPS-Eligible Facility:** Defined under CA Public Utilities Code § 399.11 et seq. and CA Public Resources Code § 25740 et seq. as an electrical generating facility using technologies such as biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, ocean wave, ocean thermal, or tidal current.

**Settlement:** Settlement is the process by which counterparties agree on the dollar value and quantity of a commodity exchanged between them during a particular time interval.

**Stress testing:** Stress testing is the process of simulating different financial outcomes to assess potential impacts on projected financial results. Stress testing typically evaluates the effect of negative events to help inform what actions may be taken to lessen the negative consequences should such an event occur.

**System of Record (SOR):** An information storage system that is the authoritative data source for a given data element or piece of information.

## Appendix B: ENERGY RISK HEDGING STRATEGY

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### 1.1 Introduction

CPA is routinely exposed to commodity price risk and volume variability risk in the normal conduct of serving the power supply requirements of its customers.

This Energy Risk Hedging Strategy (ERHS) describes the strategy and framework that CPA will use to hedge the power supply requirements of its customers. Specific focus is on procurement of the following market-based products:

- Fixed Priced Energy
- Portfolio Content Category 1 Renewable Energy
- Portfolio Content Category 2 Renewable Energy
- Carbon Free Energy
- Resource Adequacy Capacity

In addition to market-based transactions entered into pursuant to this ERHS, CPA will also enter into longer-term power purchase agreements (PPAs) pursuant to statutory requirements (e.g., SB 350 mandate to, by 2021, procure a minimum of 65 percent of RPS requirements under a 10-year or longer power purchase agreement), as well as voluntary long-term resource acquisition decisions made independently by CPA pursuant to its Integrated Resource Plan or other approved Board-approved strategies. Long-term Power Purchase Agreements (PPAs) will count as hedges as described later in this ERHS.

### 2.1 Governance

This ERHS shall be updated, as necessary, from time to time and governed by the Energy Risk Management Policy (EMRP) approved by the CPA Board of Directors.

### 3.1 Hedging Program Goals

The overall goal of the ERHS is to identify exposure to commodity prices, quantify the financial impact variability in commodity prices, load requirements and generation output may have on the ability of CPA to meet its financial program goals, and manage the associated risk.

The primary goals that guide this ERHS are:

- Acquire a portfolio of resources with lower greenhouse gas emissions and higher renewable content than SCE;
- Meet reliability requirements established by the state of California, and operate in a manner consistent with prudent utility practice;

- Maintain competitive retail rates with SCE after adjusting for exit fees (currently the Power Charge Indifference Adjustment or PCIA) and Franchise Fees paid by CPA customers;
- Build financial reserves to ensure the CPA’s long-term financial objectives are achieved.

All hedging activities will be conducted to achieve results consistent with the above goals and to meet the power supply requirements of CPA’s customers. Any transaction that cannot be directly linked to a requirement of serving CPA’s customers, or that serves to reduce risk is prohibited.

## 4.1 Hedging Targets and Strategies

### 4.1.1 Fixed Price Energy

Fixed Price Energy purchases provide for suppliers to deliver energy – for which CPA will receive energy market revenues – to CPA at a fixed price. They are used to manage the electricity commodity price risk that the CPA faces as a Load Serving Entity. Specific to CPA’s customers, Fixed Price Energy hedges are used to provide cost certainty and rate stability.

CPA predominantly employs Fixed Price Block Energy contracts, which provide for suppliers to deliver a predetermined volume of energy at a constant delivery rate. As CPA enters into long- term, fixed price contracts for renewable and/or carbon-free energy, these will likewise hedge CPA’s market risk and, subsequently, reduce the required volume of Fixed Price Block Energy purchases.

When assessing its requirements for Fixed Price Energy, CPA will use an econometric model to forecast hourly energy requirements and monthly peak demand by customer load class. The model will use historical data to estimate relationships between energy consumption and economic, demographic and/or weather variables. The model will be refined through time as additional load and other data is acquired.

CPA will observe the following schedule when hedging its Fixed Price Energy Requirements. The Minimum and Maximum hedge % represent the Fixed Price Energy planned or under contract divided by forecasted load.

Time Period	Minimum Hedge %	Maximum Hedge %
Prompt 1-4 Quarters	85	110
Balance of prompt year not covered by Prompt 4 Quarters	65	90
Current Calendar Year (CY) + 2	40	80
CY + 3	30	70
CY + 4	30	70
CY + 5	30	70

The hedge schedule for the Prompt Quarter will be measured as of 5 days prior to the first day of the quarter (e.g., on September 27, 2019, CPA will have hedged 85 to 110 percent of its projected energy requirements during Q4 2019 to Q3 2020).

The minimum hedge level will be achieved by implementing a time-driven programmatic strategy. Time-driven programmatic hedges are executed at a predetermined rate pursuant to a time schedule and without regard for market conditions. The purpose of these hedging transactions is to achieve a reduction

in variability in power supply costs by gradually increasing the amount of energy hedged as the actual date of consumption approaches. Time-driven strategies avoid the inherent impossibility of trying to consistently and accurately “time the market” to purchase energy at least cost when making hedging decisions. Additionally, a load serving entity the size of CPA needs to spread its procurement efforts over time to effectively manage the potential negative price impacts of procuring a large volume of energy, over a short period of time, in an illiquid market.

Hedging decisions to reach targets between the minimum and maximum hedge levels will be based on price-driven or opportunistic strategies. The purpose of price-driven or opportunistic strategies is to capitalize on market opportunities when conditions are favorable. CPA will base its decision to execute opportunistic hedges on the anticipated impact to projected power supply costs and the resulting reduction in risk.

Opportunistic hedges may be executed when energy price levels are favorable to lowering the cost of power relative to established program goals and financial projections; alternatively, opportunistic hedges can be executed in adverse market conditions relative to financial goals in order to reduce the potential negative impact of continued upward trending commodity prices relative to established goals.

In executing this ERHS, Fixed-Price Energy hedges may be modified, repositioned or unwound for the purpose of maintaining hedge coverage that matches changes in forecast electric load. This includes the ability of the CPA to use liquid market products to hedge average loads over a defined time period and then later modify its hedges to more precisely match load.

#### **4.1.2 Renewable Energy**

In order to cost-effectively meet its GHG-reduction and renewable energy goals, CPA intends to meet a growing share of its energy supply requirements with renewable energy, a large portion of which will be Product Content Category 1 (PCC1) renewable energy. PCC1 renewable energy is sourced from a renewable generator that is either directly interconnected to the California Independent System Operator (CAISO) or another California Balancing Authority or directly scheduled into CAISO without use of substitute energy. CPA shall diversify its renewable energy portfolio further by incorporating Portfolio Content Category 2 (PCC2) renewable energy purchases. PCC2 renewable energy is sourced from renewable generators located outside the state of California where that generation is “firmed and shaped” for delivery into California. PCC2 purchases are typically less expensive and shorter in term than PCC1, so they provide a cost-effective and flexible method of augmenting CPA’s renewable energy purchases to meet renewable portfolio content commitments to customers. However, not all PCC2 renewable energy is emissions-free; therefore, CPA must assess the value of PCC2s against its respective emissions intensity. In addition, RPS compliance rules set minimum requirements for PCC1 and PCC2 as a percentage of the total RPS compliance portfolio, which CPA will abide by in its procurement of both products.

In order to manage price risk of long-term renewable energy, and to allow CPA to prudently and methodically build a portfolio of long-term assets, CPA intends to meet its renewable energy targets with a blend of short and long-term contracts. CPA intends to fully comply with long-term contracting requirements mandated by SB 350; therefore, executed and planned long-term renewable contracts will be reflected in CPA’s renewable energy positions.

CPA shall observe the following schedule while hedging its renewable energy requirements. This hedge schedule shall first be measured on December 1, 2020 and then on December 1 of each subsequent year for the Prompt Calendar year and the two following calendar years.

Time Period	Minimum Hedge %	Maximum Hedge %
Prompt Calendar Year	65	100
PY + 1	45	95
PY + 2	30	90
PY + 3	30	85
PY + 4	30	80

**4.1.3 Carbon Free Energy**

In pursuit of its GHG-reduction objections, CPA shall augment its renewable energy purchases outlined above with energy purchases from carbon-free energy generating facilities, which are typically hydro-electric resources located in California that are too large to qualify as Eligible Renewable Resources (30 MW or greater) or located outside of California. Similar to PCC2 renewable energy contracts, carbon-free energy purchases are typically short-term, most frequently one to three years in length.

CPA may have the opportunity to receive free carbon free allocations from SCE. Hedging activity should consider these allocations and expected allocations should be included in the hedging percentage.

CPA will observe the following schedule when hedging its Carbon-Free renewable energy requirements. The hedge schedule shall be measured on December 1 of each year for the Prompt Calendar year and the two subsequent calendar years.

Time Period	Minimum Hedge %	Maximum Hedge %
Prompt Calendar Year	75	100
PY + 1	50	<del>100</del> 75
PY + 2	25	<del>75</del> 50
PY + 3	0	<del>50</del> 40
PY + 4	0	<del>50</del> 40

In setting the above targets, it is important to note that the purchase of Carbon Free Energy is a voluntary requirement set by the CPA Board to exceed SCE’s GHG emissions goals. In determining the total volume of Carbon Free Energy to be hedged, the CPA Board may elect to increase or reduce the total quantity of Carbon Free Energy included in CPA’s portfolio as it seeks to balance multiple program objectives, including financial goals such as targets for financial reserves and retail rates.

**4.1.4 Resource Adequacy Capacity**

As a Load-Serving Entity (LSE) in California, CPA is required to demonstrate both annually and monthly that it has secured sufficient energy capacity to provide for its share of California’s energy load; this capacity is referred to as Resource Adequacy (RA). Because CPA serves customers in SCE’s service territory, CPA has local RA requirements specific to the Los Angeles Basin and Big Creek/Ventura local areas, as well as general RA requirements for Southern California (“South of Path 26 System”), a portion of which must

be Flexible RA. Flexible RA requirements ensure resources are available on the grid to provide ancillary services such as ramping and regulation.

RA is typically transacted via contracts that vary in length from one month to three years, and it is currently bought and sold via a bilateral market, which not only provides cost-effective contracting opportunities but also proves at times to be fragmented and volatile. While a waiver process exists to excuse LSEs from their RA requirements, it is the goal of CPA to meet all RA requirements, including local, flex, and system products, and not use the RA waiver process.

CPA will observe the following schedule when hedging its RA requirements. The hedge schedule shall be measured for the system RA product by month that CPA is required to procure on December 1 of each year for the Prompt Calendar year and the two subsequent calendar years.

<b>Time Period</b>	<b>Minimum Hedge % (applicable to all months)</b>	<b>Maximum Hedge % (applicable to peak month only)<sup>4</sup></b>
Prompt Calendar Year	90	100
PY + 1	50	95
PY + 2	30	90
PY + 3	20	80
PY + 4	20	80

#### 4.1.5 Congestion Revenue Rights (CRRs)

As a CAISO market participant, CPA has congestion risk associated with serving its customer load. CPA manages congestion risks by preferring day ahead scheduling of energy delivered at SP-15, and by resource assessment and selection consistent with this Policy. Once energy is procured, CPA manages congestion risk through the prudent management of CRRs, which are financial instruments used to hedge against transmission congestion costs encountered in the CAISO day-ahead market. The RMT is responsible for overseeing the management of CRRs and CRR trading. The CRR portfolio will be managed by CPA's Front Office with support from CPA's Scheduling Coordinator ~~as directed by the RMT~~. CRRs are transacted to effectively manage portfolio congestion risk. Trading of CRRs for speculative purposes is not permitted.

<sup>4</sup> Due to the variable nature of CPA's monthly RA requirements, non-peak months may exceed the applicable Maximum Hedge %.

## 5.1 Hedge Program Metrics

The success of the Energy Risk Hedging Strategy will be measured by realizing power supply costs in line with the budgeted power supply costs used to set customer rates, as well as by reducing CPA's exposure to commodity price risk.

Current projected power supply costs will be compared to budgeted power supply costs where budgeted costs will be based on the assumptions used at the time customer generation rates are set. Current power supply costs shall use all fixed priced contracts executed as of the date of the report. All open positions will be marked to market and compared to the budgeted power supply costs.

The Front and Middle Office will use a variety of industry standard metrics to evaluate open positions and potential hedge transactions. RMT will review these metrics when making price-driven or opportunistic hedging decisions to ensure that the transactions are consistent with the goals of the Energy Risk Hedging Strategy. These metrics will be updated and reported on a monthly basis.

## 6.1 Reporting Requirements

The following reporting is required to manage the hedge program and to ensure its success:

- Net position report for each product
- Current projected power supply costs compared to budget
- Gross margin at Risk
- GHG intensity

## Appendix C: AUTHORIZED TRANSACTION TYPES

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All transaction types listed below must be executed within the limits set forth in the ERMP. Definitions for each product are provided in Appendix A.

- **CAISO Market Products**
  - **Day-Ahead Market Energy** (Energy purchased from the CAISO Day-Ahead Market.)
  - **Real-Time Market Energy** (Energy purchased from the CAISO in the Real-Time Market)
  - **Congestion Revenue Rights** (A point-to-point financial instrument in the Day-Ahead Energy Market that entitles the holder to receive compensation for or requires the holder to pay certain congestion related transmission charges that arise when the transmission system is congested.)
  - **Convergence Bids** (Financial positions, either demand or supply, taken in the Day-ahead Market and liquidated in the Real-Time Market.)
  - **Inter-Scheduling Coordinator Trades** (A trade between two Scheduling Coordinators that is a settlement service that CAISO offers to parties of a bilateral contract as a means of offsetting CAISO settlement charges against bilateral contractual payment responsibilities.)
- **Physical Energy Products**
  - **Short-Term Energy** (Energy traded in the CAISO market or bilaterally for a duration less than one year.)
  - **Long-Term Energy** (Energy traded in the CAISO market or bilaterally for a duration greater than one year.)
  - **Physical Over-the-Counter (OTC) Options** (Call options that give the buyer the right, but not the obligation, to buy an underlying power product at agreed upon terms as detailed in a confirmation agreement; or put options that give the seller the right, but not the obligation, to sell an underlying power product at agreed upon terms as detailed in a confirmation letter.)
- **Resource Adequacy Capacity** (A capacity product whereby a Seller commits to a must offer obligation of its generator in the CAISO market and on behalf of a specified Load Serving Entity.)
- **Import Capability Rights** (Entitles an LSE to count Resource Adequacy products at a specified import location toward its Resource Adequacy Requirements.)
- **Physical Environmental Products**
  - **PCC1, PCC2 and PCC3 Renewable Energy** (see definition in Appendix A)<sup>5</sup>
  - **Carbon Free Energy** (see definition in Appendix A)
  - **Air Resource Board Allowances** (An allowance is a tradeable permit issued by the California Air Resource Board to emit one metric ton of a carbon dioxide equivalent greenhouse gas emission.)
- **Financial Hedging Products**
  - **Futures Contracts** (A contract to buy or sell a commodity (electricity) at a predetermined price at a specified time in the future. Futures Contracts are standardized for quality and quantity to facilitate trading on a futures exchange (e.g., Intercontinental Exchange).)

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<sup>5</sup> Clean Power Alliance's Joint Power's Agreement discourages the purchase and use of PCC3 products. PCC3 products will only be acquired under exceptional circumstances requiring the use of this product to achieve the agency's environmental and financial goals.

- **Swaps** (Financial contracts in which one party agrees to pay a cash flow calculated by multiplying a fixed volume by a fixed price (fixed price payer) and the other party agrees to pay a cash flow calculated by multiplying the same fixed volume times a market reference index price (floating price payer). At settlement, the party owing the higher amount pays the net difference. Swaps are transacted in over-the-counter markets.)
- **Call and Put Options** (Call options give the buyer the right, but not the obligation, to purchase energy or other instruments. Put options give the buyer the right, but not the obligation, to sell energy or other instruments.)
- **Options on Swaps (Swaptions)** (call options give the buyer the right, but not the obligation, to enter into a swap transaction as the fixed price payer. A put option gives the buyer the right, but not the obligation, to enter into a swap transaction as the floating priced payer.)
- **Transmission** (The reservation and transmission of capacity and energy between two points on a transmission provider's system.)
- **Tolling Agreements** (Agreement between a power buyer and a power generator, under which the buyer supplies the fuel, either physically or financially, and receives an amount of power generated based on an assumed conversion rate at an agreed cost.)

## Appendix D: NEW TRANSACTION TYPE APPROVAL FORM

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### New Transaction Type Approval Form

Prepared By:

Date:

New Transaction Type Name:

Business Rationale and Risk Assessment:

- Product description – including the purpose, function, expected impact on net revenues (i.e., increase, manage volatility, control variances, etc.) and/or benefit to CPA
- Identification of the in-house or external expertise that will be relied upon to manage and support the new or non-standard transaction
- Assessment of the transaction’s risks, including any material legal, tax or regulatory issues
- How the exposures to the risks above will be managed by the limit structure
- Proposed valuation methodology (including pricing model, where appropriate)
- Proposed reporting requirements, including any changes to existing procedures and system requirements necessary to support the new product
- Proposed accounting methodology
- Proposed Middle Office work flows/methodology, including systems
- Brief description of the responsibilities of various departments within CPA who will have any manner of contact with the new or non-standard transaction

Reviewed by:

\_\_\_\_\_  
~~Director of Power Planning & Procurement~~  
Vice President, Power Supply

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chief Operating Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
~~Executive Director~~  
Chief Executive Officer

\_\_\_\_\_  
Date

## Appendix E: NOTICE OF CONFLICT OF INTEREST

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To: [insert title]

### Declaration of Conflict of Interest

I understand that I am obligated to give notice in writing to Clean Power Alliance of any interest or relationship that I may have in any counterparty that seeks to do business with Clean Power Alliance, and to identify any real or potential conflict of interest such counterparty has or may have with regard to any existing or potential contract or transaction with Clean Power Alliance, within 48-hours of becoming aware of the conflict of interest.

I would like to declare the following existing/potential conflict of interest situation arising from the discharge of my duties concerning Clean Power Alliance activities covered by the scope of the ERMP:

- a) Persons/companies with whom/which I have official dealings and/or private interests:

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- b) Brief description of my duties which involved the persons/companies mentioned in item a) above.

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Position and Name: \_\_\_\_\_

Signature: \_\_\_\_\_

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

## Appendix F: CODE OF MARKETING AND TRADING PRACTICES

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See next page.

**Clean Power Alliance of  
Southern California  
Code of Marketing and Trading Practices  
July 12, 2018**

**Definitions**

*Marketing and Trading Employee* – Any employee, contractor, consultant, or agent of CPA who engages in procurement activity.

**Scope of Code**

This Code of Marketing and Trading Practices (the “Code”) applies to all CPA Marketing and Trading Employees. Each person subject to this Code is required to read, understand, and abide by the provisions contained in this Code.

**Purpose**

In addition to demonstrating CPA’s commitment to ethical business practices, this Code is designed to ensure that CPA complies with its obligations under state and federal laws, rules and regulations promulgated by various governmental agencies, and applicable policies adopted by CPA. This Code defines and affirms the values and principles that CPA’s Marketing and Trading Employees must follow in conducting their business activities. The Code is intended to complement the other policies, procedures and processes of CPA and to guide traders and marketers as they negotiate transactions, arrange for transmission, and manage risk.

Compliance with the Code allows CPA to assure its counterparties, potential customers, regulators, and the public that its business activities are, and will continue to be, conducted with integrity and unlawful/unethical trading practices will not be tolerated.

Questions about compliance with industry and company regulations as well as with this Code should be referred to CPA’s General Counsel.

**Policy**

CPA’s Marketing and Trading Employees shall:

1. Conduct business in good faith and in accordance with all applicable laws, regulations, tariffs and rules.
2. Endeavor to always act in the best interests of CPA’s customers.
3. Not disseminate, cause to be disseminated or facilitate the dissemination of known false or misleading information, or engage in transactions in order to exploit known false or misleading information.
4. Engage only in transactions with legitimate business purposes.
5. Not knowingly arrange or execute wash trades.
6. Not engage in any activity with the intent to alter any market price or otherwise interfere with the normal operation of a well-functioning competitive market.
7. Not engage in price reporting or furnishing transaction prices to any entity that collects prices to be used in the calculation of a price index or for distribution to subscribers, without prior written approval of CPA’s General Counsel.
8. Not collude with other market participants to: (i) affect the price of any commodity; (ii) allocate territories, customers or products; or (iii) otherwise restrain competition.

9. Not engage in transactions for commodities or services without the intention of providing those specific commodities or services.
10. Not reserve service, attempt to reserve service, access information, or attempt to access information from any transmission service provider except through means available to all eligible customers.
11. Successfully complete yearly CPA compliance training.
12. Comply with requirements that trading and marketing activities are recorded and retained.
13. Cooperate with any audit or investigation into trading and marketing activities.

**Duty to Report Violations and Non-Retaliation Clause**

A Marketing and Trading Employee who believes that a violation of the Code has occurred is required to promptly notify CPA’s Chief Operating Officer. CPA shall make every effort to ensure the confidentiality of the reporting Marketing and Trading Employee. If the reporting Marketing and Trading Employee is a CPA employee, CPA shall not discharge, suspend, demote, harass, layoff, deny a promotion, or take any other retaliatory action against that employee solely as a result of the act of reporting a suspected violation of the code. This in no way affects CPA’s rights as an employer with respect to all other issues. CPA will monitor and follow up to ensure that employees who have reported alleged violations have not been subject to retaliation.

**Disciplinary Action**

Any failure to abide by this Code, including the Duty to Report Violations, will result in disciplinary action. All potential violations are handled on a case-by-case basis and will result in a full review by, at minimum, the following individuals: the CPA employee’s immediate supervisor and CPA’s General Counsel. Factors that are considered in setting the disciplinary action plan include but are not limited to: source of violation discovery (self-reported, peer-reported, reported by a third party, via internal procedures, or the result of an audit), intent (accidental or intentional), type and magnitude of risk that the CPA employee exposed CPA to (financial, reputation, etc.), and frequency of the violation (first offense or history of multiple offenses). The disciplinary actions taken may involve demotion, loss of compensation (suspension without pay), and termination of employment.

I have read CPA’s Code of Marketing and Trading Practices, understand its requirements, and agree to abide by its provisions.

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Signature

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Printed Name

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Date

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**Appendix G: CEO SIGNING AUTHORITY DELEGATION FORM**

<u>Signing Authority Delegated To:</u>	
<u>Effective Date:</u>	
<u>Expiration Date:</u>	
<u>Product:</u>	
<u>CPA Buys/Sells</u>	
<u>Delivery Term:</u>	
<u>Maximum Volume (per transaction):</u>	
<u>Maximum Price:</u>	
<u>Maximum Notional (cumulative):</u>	
<u>Other Notes/Guidelines:</u>	

Chief Executive Officer approval signature:



## Staff Report – Agenda Item 4

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Kate Freeman, Financial Strategy & Initiatives Manager  
**Approved by:** Ted Bardacke, Chief Executive Officer  
**Subject:** Selection of Bond Issuer for Energy Prepayment Transaction  
**Date:** July 7, 2022

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### **RECOMMENDATION**

Adopt Resolution No. 22-07-037 approving the selection of California Community Choice Financing Authority (CCCFA), a joint powers authority, as the Bond Issuer for a potential CPA energy prepayment financing transaction and authorizing CPA to join the CCCFA as a Founding Member (Attachment 1).

The recommendation was supported by the Finance Committee at its June 22, 2022 meeting.

### **BACKGROUND**

At the April 7, 2022 Board of Directors meeting, staff presented a project timeline for CPA to evaluate and prepare for a potential energy prepayment financing. An initial prepay transaction is expected to save CPA approximately \$2 - \$3 million annually in energy costs, with the potential for CPA to realize further savings in the future by completing additional prepay transactions.

On May 11, 2022, the Board approved contracts with Municipal Capital Markets (MCM) and Chapman & Cutler (Chapman) to assist CPA with evaluating potential Bond Issuers and Prepay Suppliers and assist with the structuring and eventual closing of a prepay transaction.

In keeping with the project timeline, staff conducted a competitive solicitation process to identify a Bond Issuer, which is necessary to execute a prepayment transaction. MCM and Chapman supported staff with evaluating potential Bond Issuers.

On June 15, 2022, the Executive Committee discussed the selection of a Bond Issuer. On June 22, 2022, CPA's Finance Committee recommended the selection of CCCFA as Bond Issuer to the Board of Directors.

### **BOND ISSUER**

The role of the Bond Issuer in a prepayment transaction is to:

- Issue the prepayment bonds and use the proceeds to a) pay the Prepaid Supplier in exchange for a long-term supply of energy and b) compensate the other service providers involved in the transaction
- Deliver energy from the Prepaid Supplier to CPA in exchange for monthly energy payments
- Make regular principal and interest payments to the prepayment bondholders
- Make required bond disclosures or continuing disclosures, as appropriate.

In March 2022, staff conducted a competitive solicitation for qualified Bond Issuers. After interviews with two shortlisted vendors, staff recommends the selection of CCCFA as the Bond Issuer for CPA's potential transaction. CCCFA served as the Bond Issuer for each of the two CCA energy prepay transactions that were completed in 2021 and represents a proven, low-cost vehicle for issuing prepay bonds.

The CCCFA JPA was founded in 2021 by four Northern California CCAs – (i) Marin Clean Energy, (ii) 3CEnergy, (iii) East Bay Community Energy, and (iv) Silicon Valley Clean Energy (each a Founding Member) for the purpose of assisting members in financing or refinancing energy prepayments by issuing bonds on behalf of its members. The Board of CCCFA consists of one director representing each Founding Member. A majority vote is sufficient to take action on most items before the Board, with a 2/3 majority vote required for some actions including the addition of more Founding Members, terminating

a Founding or Associate member, terminating the JPA, or amending specific portions of the JPA.

CCCFA's joint powers agreement ("JPA") specifies that pursuant to Section 6508.1 of the Government Code, no debt, liability or obligation of CCCFA shall be a debt, liability or obligation of a CCCFA Member. Any bonds issued by CCCFA do not constitute general obligations of CCCFA and the costs and expenses of each prepay transaction are allocated solely to the members participating in such prepay transaction. CPA would not be liable for any other member's prepay-related obligations.

CCCFA has no permanent staff. A "working group" consisting of staff from Founding Member CCAs perform or oversee essential operating activities. CCCFA also contracts with a small number of professional service providers, such as an accounting firm to prepare audited financial statements and an auditor to perform the annual financial audit. A CPA staff member would be expected to participate in the "working group", with a time requirement estimated to be on average five hours per month. Time served by CPA staff on the "working group" is reimbursable to CPA at hourly rate approximately equal to CPA's fully loaded staffing cost. CCCFA adopts an annual budget covering operating expenses, which are allocated equally to each member. CCCFA has expressed an intent to keep operating costs and overhead low in order to maximize prepay savings for its members which, in general, is consistent with CPA's objectives. Consistent with this goal, the JPA specifies that CCCFA will not have the power to and will not enter into any retirement contract with any public retirement system for any reason.

### **FISCAL IMPACT**

The costs of joining CCCFA will comprise a one-time up-front \$50,000 membership fee as well as an equal share (one-fifth, given current CCCFA membership) of ongoing general and administrative costs. Annual ongoing costs are estimated at \$20,000 per member. The \$50,000 one-time joining fee is intended to represent CPA's share of CCCFA's start-up costs and is approximately equal to the initial amount contributed by the other Founding Members. This amount is included in the approved FY 2022/23 budget.

**NEXT STEPS**

Joining CCCFA as a Founding Member requires the following steps:

- CPA to adopt a Resolution of Board authorizing CPA to join CCCFA
- CPA to execute CCCFA's Joint Powers Agreement (see Attachment 2).
- CPA to request that CCCFA accept CPA joining CCCFA as a Founding Member
- CCCFA's Board to approve CPA's membership request with a 2/3<sup>rd</sup> vote of the CCCFA Board.
- CPA to pay a one-time \$50,000 membership fee and agrees to pay, on an ongoing basis, CPA's share of CCCFA's annual operating costs, estimated at \$20,000.

Either CPA's CEO or their designee would be CPA's representative on the CCCFA Board.

Current members of the CCCFA Board include three CEOs and one Director of Finance.

**ATTACHMENTS**

1. Resolution No. 22-07-037
2. CCCFA Joint Powers Authority Agreement
3. CCCFA JPA Bylaws

**RESOLUTION NO. 22-07-037**

**RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (CLEAN POWER ALLIANCE) TO APPROVE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA JOINING CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY (CCCFA) AS A FOUNDING MEMBER AND TO APPROVE THE ENTRY INTO A JOINT POWERS AGREEMENT RELATED THERETO AND DELEGATING AUTHORITY TO THE CLEAN POWER ALLIANCE AUTHORIZED REPRESENTATIVES TO EXECUTE AND DELIVER SUCH JOINT POWERS AGREEMENT AND RELATED DOCUMENTS**

**THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:**

**WHEREAS**, Clean Power Alliance of Southern California (“**Clean Power Alliance**” or “**CPA**”) 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.* (the “**JPA Law**”);

**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 is a community choice aggregator (as defined in Section 331.1 of the Public Utilities Code of the State of California (the “**Public Utilities Code**”), and is a public agency (as defined in the JPA Law) that has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code, and possesses the power to purchase and sell electric energy and enter into related contracts for such purposes;

**WHEREAS**, Clean Power Alliance, acting pursuant to the JPA Law, may enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them and, pursuant to Government Code Section 6588, to exercise certain additional powers;

**WHEREAS**, Marin Clean Energy, Central Coast Community Energy, East Bay Community Energy, and Silicon Valley Clean Energy, each a public agency under the JPA Law and a community choice aggregator under the Public Utilities Code, have created and established a joint exercise of powers agency pursuant to the JPA Law known as California Community Choice Financing Authority (“**CCCFA**”), for the purpose of undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of its members by, among other things, issuing or incurring bonds and entering into related contracts with its members;

**WHEREAS**, Clean Power Alliance is considering an energy prepayment transaction and using CCCFA as the issuer of bonds for the purpose of financing such transaction, and in connection therewith has determined that it is in the best interests of Clean Power Alliance to join CCCFA as a Founding Member (as defined in the CCCFA JPA Agreement hereinafter) and to execute and deliver the CCCFA JPA Agreement in order to establish such membership; and

**WHEREAS**, there has been submitted to this meeting (i) a copy of the Joint Powers Agreement, dated June 25, 2021, creating and establishing CCCFA, as in effect on the date hereof (the “**CCCFA JPA Agreement**”), and (ii) the by-laws of CCCFA as in effect on the date hereof (the “**CCCFA By-Laws**”).

**NOW, THEREFORE, IT IS HEREBY DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE** as follows:

Section 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**”):

<b><u>NAMES</u></b>	<b><u>TITLES</u></b>
Julian Gold	Chair of the Board
Ted Bardacke	Chief Executive Officer
David McNeil	Chief Financial Officer
Nancy Whang	General Counsel

Section 2. **AUTHORIZATION TO JOIN CCCFA AS A FOUNDING MEMBER.** The Board of Directors of Clean Power Alliance does hereby authorize and approve Clean Power Alliance joining CCCFA as a Founding Member, subject to approval by CCCFA by a two-thirds vote of the Board of Directors of CCCFA as required by the CCCFA JPA Agreement.

Section 3. **JOINT POWERS AGREEMENT AND BY-LAWS.** The CCCFA JPA Agreement, attached hereto as Exhibit A, and the CCCFA By-Laws, attached hereto as Exhibit B, are hereby approved.

Section 4. **ACTIONS AUTHORIZED.** Any one of the Authorized Representatives is authorized and approved to (a) execute and deliver the CCCFA JPA Agreement and

any documents needed to join CCCFA as a Founding Member, (b) pay any and all fees and costs and execute and deliver such other documents and agreements as may be required of a Founding Member under the terms of the CCCFA JPA Agreement or the CCCFA By-Laws, and (c) do and perform such other acts and things as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to comply with the terms and intent of the CCCFA JPA Agreement and to carry into effect the provisions of this Resolution.

**IT IS HEREBY FURTHER DETERMINED AND ORDERED** that the Authorized Representatives are duly elected, appointed, or employed by or for Clean Power Alliance, as the case may be. This Resolution now stands of record on the books of 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.

**IT IS HEREBY FURTHER DETERMINED AND ORDERED** that this Resolution shall take effect upon its passage, shall be continuing and shall remain in full force and effect unless and until expressly revoked by further resolution of the Board of Directors.

**ADOPTED AND APPROVED** this \_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Julian Gold, Chair

**ATTEST:**

\_\_\_\_\_  
Gabriela Monzon, Secretary

**EXHIBIT A**

**JOINT POWERS AGREEMENT**

(see attached)

**EXHIBIT B**

**BY-LAWS**

(see attached)

## **CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY JOINT POWERS AGREEMENT**

This Joint Powers Agreement (this “Agreement”) is made by and among those public agencies who are signatories to this Agreement, and those public agencies which may hereafter become signatories to this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to herein as the “Members” and those parties initially executing this Agreement are referred to as the “Founding Members”), creating a separate joint powers agency, which is named “California Community Choice Financing Authority” (“CCCFA”).

### **WITNESSETH**

WHEREAS, each Member is a “community choice aggregator,” as that term is defined in Section 331.1 of the Public Utilities Code of the State of California (the “Public Utilities Code”), having duly adopted, established and implemented a community choice aggregation program pursuant to Section 366.2 of the Public Utilities Code, with the authority to group retail electricity customers to solicit bids, broker, and contract for electricity and energy services for those customers, and to enter into agreements for services to facilitate the sale and purchase of electricity and other related services, and to study, promote, develop, conduct, operate and manage energy-related programs; and

WHEREAS, each Member is a “public agency,” as that term is defined in Section 6500 of the Government Code of the State of California (the “Government Code”); and

WHEREAS, Chapter 5 of Division 7 of Title 1 of the Government Code, being Section 6500 and following (the “Act”), authorizes a joint exercise by two or more public agencies of any power which is common to each of them and the creation of an entity that is separate from the parties to the joint exercise of powers agreement; and

WHEREAS, it is to the mutual benefit of the Members and in the public interest that an agency by the name of the California Community Choice Financing Authority be created, by which the Members jointly exercise for their common benefit and for the purposes specified herein certain powers that they have in common or are otherwise provided for by applicable law, including but not limited to (i) the acquisition and operation of power supplies, resource adequacy and renewable attributes, and (ii) the provision of other energy services or programs which may be of benefit to one or more Members; and

WHEREAS, the Act conveys upon joint exercise of powers authorities certain additional powers, including but not limited to the power to issue revenue bonds and incur other evidences of indebtedness for such purposes as are specified in the Act; and

WHEREAS, CCCFA’s purpose is to assist Members by undertaking the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds on behalf of one or more of the Members by, among other things, issuing or incurring Bonds (as such term is defined herein) and entering into related contracts with Members.

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do hereby agree as follows:

## **Article I. DEFINITIONS**

In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified throughout this Agreement.

**Section 1.01** “**Act**” means Chapter 5 of Division 7 of Title 1 of the Government Code (Section 6500 *et seq.*), as supplemented and amended from time to time, including without limitation the Marks-Roos Local Bond Pooling Act of 1985.

**Section 1.02** “**Agreement**” means this Joint Powers Agreement, as it may be supplemented and amended from time to time in accordance with the terms hereof.

**Section 1.03** “**Associate Member**” means any Public CCA Agency that is a signatory to this Agreement and that has met the requirements of Section 3.02 below to become an Associate Member. The term “Associate Member” shall, however, exclude any Associate Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below.

**Section 1.04** “**Board**” means the Board of Directors of CCCFA as established by this Agreement.

**Section 1.05** “**Bonds**” means bonds, notes, commercial paper, installment purchase, lease purchase and similar agreements and certificates of participation therein, and any other evidences of indebtedness.

**Section 1.06** “**CCCFA**” means the California Community Choice Financing Authority, the Joint Powers Authority established by this Agreement.

**Section 1.07** “**Director**” means each Director duly appointed and serving on the Board as provided in Article IV of this Agreement.

**Section 1.08** “**Founding Member**” means each of the Public CCA Agencies initially executing this Agreement, and any Public CCA Agency that becomes a Founding Member pursuant to Section 3.01 below. The term “Founding Member” shall, however, exclude any Founding Member which shall have withdrawn or been excluded from CCCFA pursuant to Section 3.04 below. The initial Founding Members are Central Coast Community Energy, East Bay Community Energy, Marin Clean Energy, and Silicon Valley Clean Energy.

**Section 1.09** “**Government Code**” means the Government Code of the State of California.

**Section 1.10** “**Member**” means a Founding Member or an Associate Member.

**Section 1.11** “**Prepayment Project**” means, in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations: (i) the purchase and sale of electric energy and associated capacity and environmental attributes, (ii) the design, acquisition, maintenance, or operation of any Public Capital Improvement (as defined in the Act) or other facility or improvement, or the leasing thereof, (iii) the provision of working capital, and (iv) any other project, program, public capital improvement or purpose authorized by the Act or other law to be undertaken, financed, or refinanced by CCCFA, subject to CCCFA’s approval of an application from one or more Members for support of such project, program, public capital improvement or authorized purpose and in connection with the financing or refinancing of energy prepayments that can be financed with tax advantaged bonds and other obligations.

**Section 1.12** “**Prepayment Project Contract**” means a contract among any Members and CCCFA in connection with the undertaking, financing or refinancing of a Prepayment Project by such Members and CCCFA in accordance with the terms of this Agreement.

**Section 1.13** “**Public CCA Agency**” means any community choice aggregator, as such term is defined in Section 331.1 of the Public Utilities Code, that is a public agency, as such term is defined in the Act, which has implemented a CCA program pursuant to Section 366.2 of the Public Utilities Code.

**Section 1.14** “**Public Utilities Code**” means the Public Utilities Code of the State of California.

## **Article II. FORMATION OF AUTHORITY**

**Section 2.01 Creation of CCCFA.** Pursuant to the Act, there is hereby created a public entity, to be known as the “California Community Choice Financing Authority,” which shall be a public entity separate and apart from its Members. The debts, liabilities and obligations of CCCFA shall not constitute debt, liabilities or obligations of any Member.

**Section 2.02 Purpose.** This Agreement is made, and CCCFA is being established, pursuant to the Act to provide for the joint exercise of powers common to the parties hereto to assist the Members in financing or refinancing energy prepayments that can be financed with tax advantaged bonds and other obligations on behalf of one or more of the Members, including by undertaking, financing or refinancing Prepayment Projects on behalf of one or more of the Members and/or CCCFA, all as further described in Section 2.03 hereof. CCCFA will fulfill the purposes of this Agreement by, among other things, undertaking the sale and issuance or incurrence of Bonds to finance or refinance Prepayment Projects on behalf of one or more of the Members and/or CCCFA in accordance with the Act. CCCFA is not being formed for the purposes of providing municipal services within the meaning of Section 6503.6 or Section 6503.8 of the Act.

**Section 2.03 Powers.** CCCFA, in its own name, shall have any and all power to undertake Prepayment Projects on behalf of one or more of the Members and/or CCCFA, and to finance or refinance such Prepayment Projects through the sale and issuance or incurring of Bonds for the purposes set forth in Section 2.02 hereof. CCCFA is empowered to exercise any and all common powers of the Members, and any other powers provided to it by any applicable laws, beneficial for the issuance or incurrence from time to time of such Bonds pursuant to Article VII hereof. Without limiting the generality of the foregoing, CCCFA, in its own name, shall have the power:

- (a) to acquire, purchase, finance, operate, maintain, utilize and/or dispose of one or more Prepayment Projects and any facilities, programs or other authorized costs relating thereto;
- (b) to make and enter contracts (including without limitation interest rate, commodity, basis and similar hedging contracts intended to hedge payment, rate, cost or similar exposure);
- (c) to employ agents and employees;
- (d) to acquire, manage, maintain or operate any building, works or improvements;
- (e) to acquire, hold, lease or dispose of property;
- (f) to incur debts (including without limitation through the issuance or incurrence of Bonds), liabilities or obligations (which shall not constitute debts, liabilities, or obligations of any of the Members);
- (g) to sue and be sued in its own name;
- (h) to receive gifts, contributions and donations of real or personal property, funds, services and other forms of assistance from any source;
- (i) to receive, collect, invest and disburse moneys;
- (j) to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
- (k) to make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer energy-related programs;
- (l) to defend, hold harmless, and indemnify, to the fullest extent permitted by law, each Member from any liability, claims, suits, or other actions;

(m) to exercise any other power and take any other action permitted by law to accomplish the purposes of this Agreement.

Such powers shall be exercised by CCCFA subject only to such restrictions upon the manner of exercising such power as are imposed upon Silicon Valley Clean Energy in the exercise of similar powers, as provided in Section 6509 of the Act, and, should Silicon Valley Clean Energy withdraw or be excluded from this Agreement pursuant to Section 3.04 hereof, the manner of exercising any power shall be subject only to the restrictions upon the manner of exercising such powers as are imposed upon Marin Clean Energy in the exercise of similar powers; *provided, however*, that nothing herein shall limit the powers of CCCFA under Article 4 of the Act.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred, as further described in Article VII hereof. Such Bonds shall not constitute debts, liabilities or obligations of the Members.

Any of the Prepayment Projects acquired, financed or refinanced by CCCFA shall be operated by a Member or CCCFA for and on behalf of CCCFA, either directly or pursuant to contract or agreement with a third party designated by the applicable Member or Members and approved by CCCFA. None of the Members or CCCFA shall have liability for the breach, negligence or willful misconduct of any such third party.

### **Article III. MEMBERSHIP**

**Section 3.01 Founding Members.** A Public CCA Agency will be qualified to join as a Founding Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as parties to this Agreement and become Founding Members, and existing Associate Members may be elevated to Founding Members, upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as a Founding Member of CCCFA; (2) the approval at a regular or special meeting of the Board by at least two-thirds (2/3) of the entire Board, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as a Founding Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing. Upon completion of the foregoing, the Public CCA Agency shall become a Founding Member for all purposes of this Agreement.

**Section 3.02 Associate Members.** A Public CCA Agency will be qualified to join as an Associate Member only if it possesses the power to purchase and sell electric energy and enter into related contracts for such purposes. Public CCA Agencies may be added as Associate Members of CCCFA upon: (1) the filing by such Public CCA Agency with the Board of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public CCA Agency approving this Agreement and the execution and delivery hereof, and requesting to be added as an Associate Member of CCCFA; (2) the approval at a regular or special meeting of the Board by a majority vote of the Directors in attendance, provided a quorum is established and maintained, and the adoption of a resolution of the Board approving the addition of such Public CCA Agency as an Associate Member; and (3) the deposit with, or the written agreement to pay to, CCCFA a share of organization, planning and other costs and charges as determined by the Board to be appropriate, if any. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing. Upon completion of the foregoing, the Public CCA Agency shall become an Associate Member for all purposes of this Agreement.

**Section 3.03 Cost Allocations.**

- (a) Unless otherwise determined by a two-thirds (2/3) vote of the entire Board, each Member shall pay an equal share of one Member one share for general and administrative costs as determined by the Board associated with all operations of CCCFA. General and administrative costs do not include any costs that relate solely to any specific Prepayment Project Contract.
- (b) The costs of each Prepayment Project shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Contract relating to such Prepayment Project.

**Section 3.04 Withdrawal or Exclusion of Member.**

- (a) Any Member may withdraw from CCCFA upon the following conditions:
  - (i) The Member shall have filed with the Board Secretary a certified copy of a resolution of its governing body expressing its desire to so withdraw. If a Founding Member files a resolution to withdraw with the Board Secretary, that Founding Member no longer has any voting rights on the Board;
  - (ii) Members undertaking or participating in Prepayment Projects or on whose behalf CCCFA undertakes a Prepayment Project shall remain subject to the cost allocation, participation and withdrawal terms and conditions, as applicable, set forth in the applicable Prepayment Project Contract; and
  - (iii) Prior to the Board accepting the Member's filing of such resolution, any Member so terminating shall be obligated to pay its share of general and administrative costs then due. However, this obligation shall take into account any refunds due to the Member and shall not extend to debts, liabilities and obligations of CCCFA. The debts, liabilities and obligations of CCPFA shall not constitute debt, liabilities or obligations of any Member.
  - (iv) No such withdrawal shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.
- (b) Upon compliance with the conditions specified in Section 3.04(a), the Board shall accept the withdrawing Member's resolution and the withdrawing Member shall no longer be considered a Member for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate. The withdrawal of a Member shall not affect any obligations of such Member under any Prepayment Project Contract or other program agreement.
- (c) Any Member which has (i) defaulted under this Agreement, a Prepayment Project Contract, or other program agreement, (ii) if such Member is a Founding Member, failed to appoint a Director to serve on the Board in accordance with Section 4.02 below, or (iii) failed to pay any required share of costs in accordance with Sections 3.01, 3.02, and 3.03 above, may have its rights under this Agreement terminated and may be excluded from participation in CCCFA by the vote (taken at a regular or special meeting of the Board) of at least two-thirds (2/3) of the entire Board (including the Director representing the defaulting Member, if such Member is a Founding Member). Prior to any vote to terminate participation of any Member, written

notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 60 days prior to the Board meeting at which such matter shall first be discussed as an agenda item. The written notice of the proposed termination shall specify the particular provisions of this Agreement or a Prepayment Project Contract or other program agreement which the Member has allegedly defaulted on, or whether the proposed termination is based on failure to appoint a Director (if such Member is a Founding Member) or pay any required share of costs. The Member subject to possible termination shall have the opportunity to cure the violation prior to the meeting at which termination will be considered. At the meeting where termination of the Member is considered, the Member shall be given the opportunity to respond to any reasons and allegations that may be cited as a basis for termination prior to a termination vote. Any excluded Member shall continue to be liable for its obligations under any Prepayment Project Contract or other program agreement and for any unpaid contribution, payment, or advance approved by the Board prior to such Member's exclusion. No such termination shall, or shall be permitted if it would, result in (a) CCCFA having fewer than three Founding Members; or (b) the dissolution of CCCFA so long as any Bonds remain outstanding under any resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

- (d) The withdrawal or termination of a Member shall not affect the provisions or obligations set forth in Article VIII or Section 11.04 below.

**Section 3.05 Contributions and Advances.** Contributions or advances of public funds and of personnel, equipment or property may be made to CCCFA by any Member for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of such purpose. Any such advance shall be made subject to repayment, and shall be repaid in the manner agreed upon by such Member and CCCFA at the time of making such advance. It is mutually understood and agreed that no Member is under any obligation to make advances or contributions to CCCFA to provide for the costs and expenses of administration of CCCFA, even though any Member, in its sole discretion, may do so. Any Founding Member may allow the use of personnel, equipment or property in lieu of other contributions or advances to CCCFA.

#### **Article IV. POWERS OF BOARD & MANAGEMENT OF CCCFA**

**Section 4.01 Board.** CCCFA shall be administered by a Board which shall consist of one Director representing each Founding Member. Such Board shall be the governing body of this CCCFA, and, as such, shall be vested with the powers set forth in this Agreement, and shall execute and administer this Agreement in accordance with the purposes and functions provided herein. The Board shall have the authority to provide for the general management and oversight of the affairs, property and business of CCCFA.

**Section 4.02 Appointment and Vacancies.** Each Director shall be the Chief Executive Officer, General Manager, Executive Director, or designee of the Chief Executive Officer, General Manager, or Executive Director, of each Founding Member and shall be appointed by and serve at the pleasure of the Founding Member that the Director represents, and may be removed as Director by such Founding Member at any time. If at any time a vacancy occurs on the Board, a replacement shall be appointed by the Founding Member to fill the position of the previous Director in accordance with the provisions of this Article IV within 60 days of the date that such position becomes vacant or the Founding Member shall be subject to the exclusion procedures in Section 3.04(c) above. Each Director may appoint an alternate to serve in their absence.

**Section 4.03 Notices.** The Board shall comply with the applicable provisions of Sections 6503.5, 6503.6 and 53051 of the Government Code requiring the filing of notices and a statement with the Secretary of State and the State Controller.

**Section 4.04 Committees.** The Board may create committees to provide advice to the Board or conduct the business of CCCFA subject to delegation of authority from the Board as permitted in the bylaws and any applicable laws.

**Section 4.05 Director Compensation.** Compensation for work performed by Directors, including alternates, on behalf of CCCFA shall be borne by the Founding Member that appointed the Director. The Board, however, may adopt by resolution a policy relating to the reimbursement of expenses incurred by Directors.

**Section 4.06 Board Officers.** At its first meeting in every second calendar year, the Board shall elect or re-elect a Chair and a Vice-Chair, each of whom shall be selected from among the Directors and shall also appoint or re-appoint a Secretary, and a Treasurer/Controller, each of whom may, but need not, be selected from among the Directors.

- (a) **Chair and Vice-Chair.** The duties of the Chair shall be to preside over the Board meetings, sign all ordinances, resolutions, contracts and correspondence adopted or authorized by the Board, and to help ensure the Board's directives and resolutions are carried out. In the absence or inability of the Chair to act, the Vice Chair shall act as Chair.
- (b) **Treasurer/Controller.** The Board shall appoint a qualified person to act as the Treasurer/Controller, who does not need to be a Director. Where a certified public accountant has been designated as Treasurer/Controller of CCCFA, the auditor of one of the Founding Members or of a county in which one of the Founding Members is located shall be designated as auditor of CCCFA. Subject to the provisions of any resolution, indenture, trust agreement or other instrument providing for a trustee or other fiscal agent in connection with any Bonds, and, except as may otherwise be specified by resolution of CCCFA, the Treasurer/Controller shall be the depository of CCCFA to have custody of all the money of CCCFA, from whatever source, and, as such, shall have the powers, duties and responsibilities specified in Section 6505.5 of the Government Code. The Treasurer/Controller is hereby designated as the public officer or person who has charge of, handles, or has access to any property of CCCFA, and such officer shall file an official bond in an amount determined from time to time by the Board as required by Section 6505.1 of the Government Code. The Treasurer/Controller shall cause an independent audit to be made by a certified public accountant, or public accountants, in compliance with Section 6505 of the Government Code. The Treasurer/Controller shall also create or caused to be created a report in writing on the first day of each fiscal quarter to CCCFA and each Founding Member, which report shall describe the amount of money held by the Treasurer/Controller, the amount of receipts since the last such report, and the amount paid out since the first such report.
- (c) **Secretary.** The Secretary shall be responsible for keeping the minutes of all meetings of the Board and all other official records of CCCFA, and responding to public records requests of the JPA.

**Section 4.07 Management of CCCFA.** The Board may appoint a part-time or full-time General Manager, and may appoint one or more part-time or full-time Assistant General Managers, to serve at the pleasure of the Board. If a General Manager has been appointed, the General Manager shall be responsible for the day-to-day operation and management of CCCFA. If no General Manager shall have been appointed, the Treasurer/Controller shall be responsible for the day-to-day operation and management of CCCFA. The General Manager, if any, and the Treasurer/Controller may each enter into and execute contracts in accordance with the policies established and direction provided by the Board, and shall file an official bond in the amount determined from time to time by the Board.

**Section 4.08 Other Officers and Employees.** The Board shall have the power to appoint such other officers, deputies, legal counsel (which may be the legal counsel to one or more of the Members) and staff as it may deem necessary who shall have such powers, duties and responsibilities as are determined by the Board, and to retain independent accountants, legal counsel, engineers and other consultants. The Founding Members may contract with CCCFA to provide staff to perform services for CCCFA, but such employees shall at all times, and for all purposes including benefits and compensation, remain employees of the Founding Member only.

**Section 4.09 Budget.** The budget shall be approved by the Board. The Board may revise the budget from time-to-time as may be reasonably necessary to address contingencies and expected expenses. All subsequent budgets of CCCFA shall be approved by the Board in accordance with rules as may be adopted by the Board from time to time. All expenditures must be made in accordance with the adopted budget.

**Section 4.10 Fiscal Year.** Unless changed by resolution of the Board, the fiscal year of CCCFA shall be the period from January 1 of each year to and including the following December 31.

## **Article V. MEETINGS OF THE BOARD**

**Section 5.01 Regular Meetings.** The Board shall hold at least one regular meeting per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution of the Board. Regular meetings may be adjourned to another meeting time.

**Section 5.02 Special Meetings.** Special and emergency meetings of the Board may be called in accordance with the provisions of Government Code Sections 54956 and 54956.5, as amended.

**Section 5.03 Brown Act Compliance.** All meetings of the Board shall be conducted in accordance with the provisions of the Ralph M. Brown Act (Government Code Section 54950 *et seq.*), and as augmented by rules of the Board not inconsistent therewith. Directors may participate in meetings telephonically or by other electronic means, with full voting rights, to the extent permitted by law.

**Section 5.04 Minutes.** The Secretary shall cause to be kept minutes of the meetings of the Board, both regular and special, and shall cause a copy of the minutes to be forwarded promptly to each Director.

**Section 5.05 Quorum.** A quorum of the Board shall consist of a majority of the Directors, except that less than a quorum may adjourn from time to time in accordance with law.

**Section 5.06 Voting.** Each Founding Member shall have one vote, which may be cast on any matter before the Board by each Director or alternate. Except to the extent otherwise specified in this Agreement, or by law, a vote of the majority of the Directors in attendance shall be required and sufficient to constitute action, provided a quorum is established and maintained.

**(a) Special Voting Requirements as specified in this Agreement:**

- (i)** Action of the Board on the matters set forth in Section 3.01 related to addition of Founding Members shall require the affirmative vote of at least two-thirds (2/3) of the Entire Board.
- (ii)** Action of the Board on the matters set forth in Section 3.04(c) related to involuntary termination of a Member shall require the affirmative vote of at least two-thirds (2/3) of the entire Board.

- (iii) Action of the Board on the matters set forth in Section 9.01 related to termination of this Agreement shall require the affirmative vote of at least two-thirds (2/3) of the entire Board approved by resolution of each Founding Member's governing body.
- (iv) Action of the Board to amend any other provision of this Agreement shall be subject to the voting requirements set forth in Section 11.03 below.

**Section 5.07 Rules and Regulations.** CCCFA may adopt, from time to time, by resolution of the Board such bylaws, policies or rules and regulations for the conduct of its meetings and affairs as may be required.

#### **Article VI. PREPAYMENT PROJECTS**

**Section 6.01 Prepayment Projects.** The Board has the power, upon majority vote of the Directors in attendance, provided a quorum is established and maintained, to approve the application of any Member for the undertaking, financing, or refinancing of any Prepayment Projects within the purpose and power of CCCFA and to adopt guidelines for their implementation.

**Section 6.02 Prepayment Project Contract.** The costs and other expenses of each Prepayment Project, including without limitation applicable administrative costs of CCCFA with respect to the Prepayment Project, shall be allocated solely to the Member or Members undertaking or participating in such Prepayment Project or on whose behalf CCCFA undertakes such Prepayment Project, which allocation shall be described in a Prepayment Project Contract relating to such Prepayment Project, which will be separate and distinct from this Agreement.

#### **Article VII. BONDS AND OTHER INDEBTEDNESS**

In addition to the other powers conferred on CCCFA by this Agreement, CCCFA shall have the power to issue, incur, sell and deliver Bonds in accordance with the provisions of the Act and other applicable laws for the purpose of acquiring, undertaking, financing, or refinancing one or more Prepayment Projects. The terms and conditions of the issuance or incurrence of any such bonds or indebtedness shall be set forth in a resolution, indenture trust agreement, or other instrument pursuant to which the Bonds are issued or incurred, as required by law and as approved by the Board. CCCFA's debts, liabilities and obligations with respect to Bonds issued or incurred under this Agreement and contracts or obligations entered into to carry out the purposes for which Bonds are issued or incurred, shall not constitute a debt, liability or obligation of any of the Members.

Any Bonds issued or incurred by CCCFA shall not constitute general obligations of CCCFA, but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred.

#### **Article VIII. LIMITATION ON LIABILITY OF MEMBERS**

**Section 8.01** Pursuant to Section 6508.1 of the Government Code, no debt, liability or obligation of CCCFA shall be a debt, liability or obligation of any Member. Nothing contained in this Article VIII shall in any way diminish the liability of any Member with respect to any Prepayment Project Contract such Member enters into pursuant to this Agreement.

**Section 8.02** Notwithstanding anything to the contrary in this Agreement or otherwise, CCCFA shall not have the power to and shall not enter into any retirement contract with any public retirement system (as defined in Section 6508.1 of the Government Code) for any reason. The provision in this paragraph is intended to

benefit Members and to be a confirming, irrevocable obligation of CCCFA which may be enforced by Members individually or collectively.

## **Article IX. TERM; TERMINATION; LIQUIDATION; DISTRIBUTION**

**Section 9.01 Term and Termination.** This Agreement shall become effective when at least three Founding Members execute this Agreement. This Agreement shall continue in full force and effect until terminated as provided in this Article; *provided, however*, this Agreement cannot be terminated while either (a) any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds. This Agreement may be terminated by a two-thirds (2/3) vote of the entire Board that is approved by resolution of each Founding Member's governing body; *provided, however*, that this Agreement and CCCFA shall continue to exist after termination for the purpose of disposing of all claims, distribution of assets and all other functions necessary to conclude the obligations and affairs of CCCFA. In any event, CCCFA shall cause all records regarding its formation, existence, the Prepayment Projects, any Bonds issued or incurred by it and proceedings pertaining to its termination to be retained for at least six years (or as otherwise required by law) following termination of CCCFA or final payment of any Bonds issued or incurred by CCCFA, whichever is later.

**Section 9.02 Liquidation; Distribution.** Upon termination of this Agreement, the Board shall liquidate the business and assets and the property of CCCFA as expeditiously as possible, and distribute any net proceeds, after the conclusions of all debts and obligations of CCCFA, to any Members in proportion to the contributions made or in such manner as otherwise provided by law. The Board is vested with all powers of CCCFA for the purpose of concluding and dissolving the business affairs of CCCFA. Notwithstanding the foregoing, no dissolution of CCCFA shall be permitted while either (a) any Bonds of CCCFA remain outstanding, or (b) CCCFA is the owner, lessor or lessee of any real or personal property financed from the proceeds of any Bonds.

## **ARTICLE X. ACCOUNTS AND REPORTS**

**Section 10.01 Establishment and Administration of Funds.** CCCFA is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, including without limitation Section 6505 of the Government Code. CCCFA shall establish and maintain such funds and accounts as may be required by good accounting practice or by any provision of any resolution, indenture or other instrument of CCCFA securing its bonds or other indebtedness, except insofar as such powers, duties and responsibilities are assigned to a trustee appointed pursuant to such resolution, indenture or other instrument. The books and records of CCCFA shall be open to inspection at all reasonable times to each Member and its representatives.

**Section 10.02 Annual Audits and Audit Reports.** The Treasurer/Controller shall cause an annual independent audit of the accounts and records of CCCFA to be made by a certified public accountant or public accountant in accordance with all applicable laws. If permitted by applicable law and authorized by the Board, the audit(s) may be conducted at the longer interval authorized by applicable law. A report of the financial audit will be filed as a public record with each Member not later than 270 days after the close of the fiscal year or fiscal years under examination. CCCFA will pay the cost of the financial audit and charge the cost against the Members in the same manner as other administrative costs.

## **ARTICLE XI. GENERAL PROVISIONS**

**Section 11.01 Conflict of Interest Policy.** CCCFA, unless otherwise exempt, shall adopt a conflict of interest policy as required under applicable laws of the State of California. Counsel to CCCFA for financing

matters, including bond counsel, shall not be considered a consultant or other designated position for purposes of the conflict of interest policy.

**Section 11.02 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, neither a Member nor CCCFA may assign any right or obligation under this Agreement without the consent of all other Members.

**Section 11.03 Amendments.** Subject to any requirements of law, a two-thirds (2/3) vote of the entire Board will be required to amend Articles II, III, VIII, and IX of this Agreement, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of the entire Board. Once an amendment of Articles II, III, VIII, or IX is adopted by the Board, the amendment must be approved by two-thirds of the Founding Members pursuant to each Founding Member's applicable approval process, and an amendment of Section 8.02 and Section 11.03 of this Agreement shall require an affirmative vote of all Founding Members pursuant to each Founding Member's applicable approval process. All other provisions of this Agreement may be amended at any time or from time to time by an amendment approved by at least two-thirds (2/3) vote of the entire Board. Written notice shall be provided to all Members of proposed amendments to this Agreement, including the effective date of such amendments, at least thirty (30) days prior to the date upon which the Board votes on such amendments. Each Member hereby agrees to take any actions necessary on its part to approve any amendment adopted pursuant to this Section 11.03, and if any Member fails to perform any such actions, such Member shall be deemed to have submitted a resolution of withdrawal pursuant to the provisions of Section 3.04 hereof.

Notwithstanding the foregoing, this Agreement shall not terminate while any Bonds of CCCFA remain outstanding under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which such Bonds are issued or incurred.

**Section 11.04 Indemnification and Insurance.** To the fullest extent permitted by law, CCCFA shall defend, indemnify, and hold harmless the Members and each Director, alternate, officer, employee and agent from any and all claims losses damages, costs, injuries and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of CCCFA under this Agreement to the extent not otherwise provided under a Prepayment Project Contract. CCCFA shall acquire such insurance coverage as the Board deems is necessary and appropriate to protect the interests of CCCFA and the Members.

**Section 11.05 Waiver of Personal Liability.** No member, director, commissioner, officer, agent or employee of CCCFA or the Members, respectively, past, present or future, shall be individually or personally liable for the observance or performance of any terms, conditions or provisions hereof or for any claims, losses, damages, costs, injury and liability of any kind, nature or description arising from the actions of CCCFA or the actions undertaken pursuant to this Agreement; provided, however, that nothing herein shall relieve any such person from the performance of any official duty provided hereby or by applicable provision of law.

**Section 11.06 Limitation of Rights.** All of the covenants, agreements, terms and conditions in this Agreement to be observed or performed by or on behalf of CCCFA or the Members shall be for the sole and exclusive benefit of CCCFA and the Members, whether so expressed or not, and nothing contained herein, express or implied, is intended to or shall give any other person other than CCCFA and the Members any legal or equitable right, remedy or claim hereunder.

**Section 11.07 Notices.** The Board shall designate its principal office as the location at which it will receive notices, correspondence, and other communications, and shall designate one of its Directors or staff as an officer for the purpose of receiving service of process on behalf of CCCFA. Any notice given pursuant to this Agreement shall be in writing and shall be dated and signed by the Member giving such notice. Notice to each Member under this Agreement is sufficient if mailed to the Member, and separately to the Director appointed by such Founding Member, to their respective addresses on file with CCCFA.

**Section 11.08 Severability.** Should any portion, term, condition, or provision of this Agreement be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the remaining portions, terms, conditions, and provisions shall not be affected thereby.

**Section 11.09 Section Headings.** The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section to which they refer.

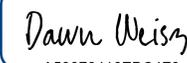
**Section 11.10 Choice of Law.** This Agreement will be governed and construed in accordance with the laws of the State of California.

**Section 11.11 Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all Members had signed the same instrument.

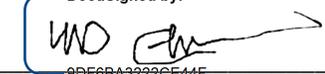
**Section 11.12 Dispute Resolution.** The Members shall make reasonable efforts to informally settle all disputes arising out of, or in connection with, this Agreement. Should such informal efforts to settle a dispute fail, the dispute shall be mediated in accordance with policies and procedures established by the Board. In the event such mediation fails to settle a dispute, the parties may pursue any remedies provided by law.

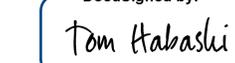
*[Signature Page Follows]*

**IN WITNESS WHEREOF**, each Member hereto has caused this Agreement to be executed as an original counterpart by its duly authorized representative on the date indicated below.

DocuSigned by:  
  
By: \_\_\_\_\_  
A59878416EBC4F8...  
Name: Dawn Weisz  
Title: CEO  
CCA Name: MCE  
Date: June 25, 2021

DocuSigned by:  
  
By: \_\_\_\_\_  
5CA64B9AC4C24C9...  
Name: Girish Balachandran  
Title: CEO  
CCA Name: silicon valley clean Energy  
Date: June 25, 2021

DocuSigned by:  
  
By: \_\_\_\_\_  
9DF6BA3222CE44F...  
Name: Nick Chaset  
Title: CEO  
CCA Name: East Bay Community Energy  
Date: June 25, 2021

DocuSigned by:  
  
By: \_\_\_\_\_  
69C253774488497...  
Name: Tom Habashi  
Title: CEO  
CCA Name: central coast community energy  
Date: June 25, 2021

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**BYLAWS OF THE  
CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY**

**Adopted June 25, 2021**

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BYLAWS OF THE CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

ARTICLE I - THE AUTHORITY

Section 1.1 Name. The official name of the Authority shall be the “California Community Choice Financing Authority.”

Section 1.2 Board Members. The Authority shall be administered by a board of directors (the “Board”) whose members (the “Directors”) shall be as set forth in Article IV of the Joint Powers Agreement, dated June 25, 2021 (the “Agreement”). Directors shall, to the extent required by law, comply with the requirements of the California Political Reform Act, as amended from time to time, the provisions of the Joint Exercise of Powers Act, as amended from time to time, and any other requirements applicable to members of the governing body of a joint powers authority.

Section 1.3 Office and Place of Meetings. The business office of the Authority shall be at 1125 Tamalpais Avenue, San Rafael, California 94901 or at such other place as may be designated by resolution by the Board. Regular meetings shall be held at 1125 Tamalpais Avenue, San Rafael, California 94901 or at such other place as the Board may designate.

ARTICLE II - OFFICERS

Section 2.1 Officers. The Officers of the Authority shall be the Chair, Vice Chair, Treasurer/Controller, and Secretary. The Officers of the Authority may also include a General Manager.

Section 2.2 Chair and Vice Chair. The Chair and Vice Chair of the Authority shall be elected by the Board. The term of office for the respective officers shall be from the date of his or her election as Chair or Vice Chair through the date of the first regular meeting of the Authority in the second succeeding calendar year following such election: provided, that each person shall serve until a successor has been duly elected. The Chair shall preside at all meetings of the Authority. If the Chair is absent, then the Vice Chair shall act in the Chair’s place.

Section 2.3 General Manager. A General Manager may be appointed by the Board and may, but need not, be a Director. The General Manager shall submit such information and recommendations to the Board as he or she may consider proper concerning the business, policies and affairs of the Authority. Except as otherwise specified by resolution of the Board, the General Manager or the General Manager's designee shall have the power to sign all contracts, deeds and other instruments executed by the Authority, shall have the power to direct employees, borrowed or seconded staff and consultants in implementing policy set by the Board, and shall have the power to perform all duties incident to the office or delegated by the Board. The General Manager may designate one or more officers of the Authority or employees of the Authority to act as his or her designee in exercising the power and performing the duties of the General Manager.

Section 2.4 Secretary. The Secretary shall be appointed by the Board, and such Secretary may, but need not, be a Director. The Secretary shall keep the records of the Authority, shall act as Secretary of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office.

Section 2.5 Treasurer/Controller. The Treasurer/Controller shall be appointed by the Board, and may, but need not, be a Director. The Treasurer/Controller shall perform the duties set forth in the Agreement. The Treasurer/Controller may submit such information and recommendations to the Board as he or she may consider proper concerning the business, policies and affairs of the Authority. The Treasurer/Controller shall be responsible for preparation and submission of any reports required to be provided to holders of the Authority's Bonds (as such term is defined in Section 1.05 of the Agreement) pursuant to any continuing disclosure undertakings entered into by the Authority. Except as otherwise specified by resolution of the Board, the Treasurer/Controller or the Treasurer/Controller's designee shall have the power to sign all contracts, deeds and other instruments executed by the Authority, shall have the power to direct employees, borrowed or seconded staff and consultants in implementing policy set by the Board,

and shall have the power to perform all duties incident to the office or delegated by the Board. The Treasurer/Controller may designate one or more officers of the Authority or employees of the Authority to act as his or her designee in exercising the power and performing the duties of the Treasurer/Controller.

Section 2.6 Election of Officers. Election of officers shall be the first order of business at the first regular meeting of the Authority held in every second calendar year; provided, that failure to elect any or all officers at such meeting shall not affect the title to office of any officer duly elected and then holding office as of such meeting.

Section 2.7 Authority to Bind Authority. No Director, officer, agent or employee of the Authority, without prior specific or general authority by a vote of the Board, shall have any power or authority to bind the Authority by any contract, to pledge its credit, or to render it liable for any purpose in any amount.

### ARTICLE III - MEETINGS

Section 3.1 Regular Meetings. The Board shall hold at least one regular meeting each year, and, by resolution, may provide for the holding of regular meetings at more frequent intervals in accordance with the provisions of Section 54956 of the Government Code of the State of California. Regular meetings shall be held as set forth in Section 1.3, on dates and at times as fixed by resolution of the Authority and at such places as are determined by the Board. If at any time any regular meeting falls on a legal holiday, such regular meeting shall be held on the next business day at the same time.

All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part I of Division 2 of Title 5 of the Government Code of the State of California (Sections 54950-54961)), as supplemented and amended, or any successor legislation hereafter enacted, and other applicable law.

The Secretary of the Authority shall cause minutes of all meetings of the Board, both special and regular, to be kept and shall cause a copy of the minutes to be forwarded promptly to each Director.

Section 3.2 Special Meetings. A special meeting may be called in accordance with the provisions of Sections 54956 and 54956.5 of the Government Code of the State of California, as amended.

Section 3.3 Closed Sessions. Nothing contained in these Bylaws shall be construed to prevent the Board from holding closed sessions during a regular or special meeting concerning any matter permitted by law to be considered in a closed session.

Section 3.4 Public Hearings. All public hearings held by the Board shall be held during regular or special meetings of the Board.

Section 3.5 Adjourning Meetings and Continuing Public Hearings to Other Times or Places. Any public hearing being held, or any hearing noticed or ordered to be held at any meeting, may by order or notice of continuance be continued or re-continued to any subsequent meeting in the same manner and to the same extent set forth herein for the adjournment of the meetings: provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing a copy of the order or notice of continuance shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made.

Section 3.6 Meetings to be Open and Public. All meetings of Directors to take action or to deliberate concerning Authority business and its conduct shall be open and public and all persons shall be permitted to attend any such meetings, except as otherwise provided or permitted by law, including as permitted by Section 3.3 of these Bylaws.

Section 3.7 Quorum, Voting Requirements, and Manner of Action. A quorum of the Board, the minimum voting thresholds for actions of the Board, and the manner in which the Board may act shall be as set forth in Article V of the Agreement.

Section 3.8 Parliamentary Procedure. The rules of parliamentary procedure set forth in Robert's Rules of Order shall govern all meetings of the Authority, except as otherwise herein provided.

## ARTICLE IV - MISCELLANEOUS

Section 4.1 Statements of Economic Interest. Each Director shall comply with the Authority's Conflict of Interest Code, fully respond to all requests from Authority staff in regard to conflict of interest issues that may arise and timely submit all applicable forms, including Statements of Economic Interest (Form 700), Assuming, Annual, and Leaving Office Statements with the Secretary. The Secretary shall make and retain copies of these forms in compliance with applicable law and the Authority's Conflict of Interest Code.

Section 4.2 No Reimbursement for Travel Expenses. Directors, officers, and employees shall not be reimbursed by the Authority for any travel expenses incurred by those persons in attending events, meetings, and conferences on behalf of the Authority. Non-reimbursable travel expenses shall include all charges for meals, lodging, airfare, and costs of travel by automobile.

Notwithstanding the foregoing, the Board may vote to permit reimbursement of any such reasonable and necessary travel expenses incurred for Directors, officers, or employees to attend non-Authority events, meetings, and conferences, only if that person's sole purpose is to attend on behalf of the Authority. "Reasonable and necessary" travel expenses, with respect to any Director, shall be only those expenses which the Director would not have incurred in performing the normal business of the Founding Member (as defined in Section 1.08 of the Agreement) that appointed such Director. The Treasurer/Controller, upon approval of the Board, shall be authorized to pay all such expenses deemed reasonable and necessary so long as sufficient funds have been budgeted therefor.

Section 4.3 Bonds and Other Indebtedness. The Authority may issue or incur Bonds (as such term is defined in Section 1.05 of the Agreement) in accordance with Article VII of the Agreement, and such Bonds shall not constitute general obligations of the Authority or a debt, liability or obligation of any of the Members (as such term is defined in Section 1.10 of the Agreement), but shall be payable solely from the moneys pledged to the payment of principal of or interest on such Bonds under the terms of the resolution, indenture, trust agreement or other instrument pursuant to which the Bonds are issued or incurred.

## ARTICLE V - AMENDMENTS

Section 5.1 Amendments to Bylaws. These Bylaws may be amended by the Authority at any regular or special meeting by majority vote of the Board, provided, that the proposed amendment to any particular section is included in the notice of such meeting.



## Staff Report – Agenda Item 5

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Kate Freeman, Financial Strategy & Initiatives Manager  
**Approved by:** Ted Bardacke, Chief Executive Officer  
**Subject:** Selection of Prepaid Supplier for Energy Prepayment Transaction  
**Date:** July 7, 2022

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### **RECOMMENDATION**

Approve the selection of Goldman Sachs & Co. LLC and J. Aron & Company, LLC (“Goldman Sachs”) as the Prepaid Supplier for a potential energy prepayment financing.

The Finance Committee recommended the selection of Goldman Sachs as CPA’s Prepaid Supplier at its June 22, 2022 meeting.

### **BACKGROUND**

At the April 7, 2022, Board of Directors meeting, staff presented a project timeline for CPA to evaluate and prepare for a potential energy prepayment financing. An initial prepay transaction is expected to save CPA approximately \$2 - \$3 million annually in energy costs, with the potential for CPA to realize further savings in the future by completing additional prepay transactions.

On May 11, 2022, the Board approved contracts with Municipal Capital Markets (MCM) and Chapman & Cutler (Chapman) to assist CPA with evaluating potential Bond Issuers and Prepay Suppliers and assist with the structuring and eventual closing of a prepay transaction.

In keeping with the project timeline, staff conducted a competitive solicitation to identify a Prepaid Supplier, the entity which will structure and execute a prepayment transaction. MCM and Chapman supported staff in staff’s evaluation of a potential Prepaid Suppliers.

On June 15, 2022, the Executive Committee discussed the selection of a Prepaid Supplier. On June 22, 2022, CPA's Finance Committee recommended the selection of Goldman Sachs as CPA's Prepaid Supplier to the Board of Directors at its July 7, 2022 Board Meeting.

### **PREPAID SUPPLIER**

The role of the Prepaid Supplier in a prepayment transaction is to:

- Assume the role of "buyer" in the PPA contracts which CPA will assign to the Prepaid Supplier
- Deliver monthly energy and Renewable Energy Certificates to CPA through the Bond Issuer
- Make monthly energy payments to PPA counterparties
- The Prepaid Supplier can serve as the prepayment funding recipient and assume responsibility for energy payments to PPA counterparties. Alternatively, a third-party prepayment funding recipient can serve this role as described below.

In May 2022, CPA issued a competitive solicitation to identify a qualified Prepaid Supplier for CPA's prepaid transaction. After interviews with four respondents, staff recommends the selection of Goldman Sachs as the Prepaid Supplier.

The Goldman Sachs team is experienced in the prepay market and has the capacity to allow CPA to issue a prepay bond before the end of the calendar year as planned. Goldman Sachs has executed 15 prepay transactions in recent years, including the clean energy prepay transaction with CCCFA and Marin Clean Energy in late 2021. Additionally, the Goldman Sachs team has proposed a prepay structure that provides transparency and market-level savings to CPA for the initial period of the prepay, as well as at each subsequent interest rate reset which is estimated to occur each 5 to 10 years over the likely 30-year bond term.

The Goldman Sachs proposal also allows CPA to elect to either use Goldman Sachs as a prepayment funding recipient or to use a 3<sup>rd</sup> party prepayment funding recipient, separate from Goldman Sachs. The flexibility to use a third-party prepayment funding

recipients may enhance CPA savings by helping ensure the participation of a prepayment funding recipient: i) whose credit is in demand from investors and/or ii) has appetite for funding at the tenor CPA prefers and/or iii) can generate the desired savings. Were CPA to elect to use a third party prepay funding recipient, Goldman would continue to serve as the supplier of electricity. With the support of MCM, staff will evaluate the opportunity to use a third party prepayment funding provider in the coming months. Staff plan to provide additional information regarding the possible use of a third-party prepayment recipient to the Executive and Finance Committees and to the Board of Directors at future meetings should the selection of a third-party funding recipient appear advantageous to CPA.

Compensation to the Prepaid Supplier will be contingent upon the successful closing of a prepay transaction and would be paid out of bond proceeds and not by CPA.

### **FISCAL IMPACT**

Compensation to the Prepaid Supplier will be paid out of bond proceeds and not by CPA, no fees would be owed to the Prepaid Supplier. Accordingly, there will be no fiscal impact to the budget.

### **NEXT STEPS**

In the coming months, staff will work with Goldman Sachs with the support of MCM, Chapman, and bond and tax counsel retained by the Bond Issuer to prepare documentation supporting a prepay transaction. Staff anticipates that all documentation and transaction parameters, including potential minimum savings thresholds for CPA, will be presented to the Board later in 2022 at which time staff will seek authorization to execute a prepay transaction according to those parameters and thresholds.

### **ATTACHMENT**

None.



## Staff Report – Agenda Item 6

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**To:** Clean Power Alliance (CPA) Board of Directors

**From:** Natasha Keefer, Vice President, Power Supply

**Approved by:** Ted Bardacke, Chief Executive Officer

**Subject:** Task Order with Ascend Analytics for 2022 Mid-Term Reliability RFO Support Services

**Date:** July 7, 2022

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### **RECOMMENDATION**

Authorize the Chief Executive Officer to execute Task Order No. 4 with Ascend Analytics for 2022 Mid-Term Reliability RFO support services for a not-to-exceed amount of \$172,500.

### **BACKGROUND**

CPA will be launching a solicitation for long-term renewable energy and energy storage contracts (“2022 Mid-Term Reliability RFO”) in July 2022 to comply with the California Public Utilities Commission (CPUC) procurement order for all load-serving entities to procure new reliability capacity, including long-duration storage and baseload renewable energy.<sup>1</sup> The Mid-Term Reliability RFO 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 2022 Mid-Term Reliability RFO from a diverse set of projects proposing highly complex offer structures.

In support of CPA’s 2022 Mid-Term Reliability RFO, staff issued a Task Order Solicitation under its Request for Qualifications (“RFQ”) process for Mid-Term Reliability RFO

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<sup>1</sup> 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.

Support Services. The purpose of the Task Order Solicitation was to acquire consulting 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 all of CPA's pre-qualified providers and following a review process, staff recommends Ascend Analytics. In making this recommendation, staff considered Ascend Analytics' cost and experience on similar tasks, including the fact that Ascend Analytics is an energy consulting firm offering specialized experience and knowledge in the valuation of energy resources, particularly with regard to energy storage technology, which is a focus of the 2022 Mid-Term Reliability RFO. Ascend Analytics' services 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, 2020 Clean Energy RFO, and 2021 Mid-Term Reliability RFO. The fees for the base services (\$152,500) are the same as those paid to Ascend Analytics in 2021. For 2022, the Task Order authorizes optional services in the event that CPA needs services for (i) production of CAISO market data or (ii) analysis of an additional 10 proposals. If CPA chooses to utilize these optional services, the amount of fees would reach the not-to-exceed amount of \$172,500.

### **FISCAL IMPACT**

At a not-to-exceed amount of \$172,500 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 FY2022/23 Budget.

### **ATTACHMENT**

1. Ascend Analytics Task Order No. 4



**Total Maximum Amount**      **\$ 172,500.00** \_\_\_\_\_

B. Contractor shall satisfactorily provide and complete all required deliverables in accordance with Exhibit C1-A 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: Theodore Bardacke
Title: _____	Title: Chief Executive Officer
Date: _____	Date: _____

**EXHIBIT C1-A****ASCEND TASK ORDER DESCRIPTION****Long-Term RFO Support Services for 2022 Mid-Term Reliability RFO Task Order****Summary**

Contractor shall provide support for the Clean Power Alliance of Southern California (“CPA”) 2022 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****TASKS:**

- 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:**

- a. Final solicitation process and schedule
- b. Framework and protocol for offer qualification and selection criteria
- c. Pre-launch bidder 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. Provide feedback on CPA’s 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 2021 Mid-Term Reliability 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:**

- a. Written RFO protocol that clearly articulates CPA goals and preferences
- b. RFO offer form that captures all key information while allowing automated screening
- c. Host website and infrastructure to post all RFO information and materials, manage bidder registration, and manage project submissions
- d. Preparation, execution, recording, and posting of Q&A webinar
- e. Compilation, preparation, and coordination of answers for Q&A document
- f. 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 CPA<sup>1</sup>. Proposals should describe in detail how the tool will function and include valuation methodology for both RPS-only, RPS plus storage, and storage only offers.
- 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 team<sup>2</sup> 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 up to ten (10) offers that may have variations to standard RFO protocol terms. For example, variations on project sizing or term length.
- b. Provide additional offer valuations or market data, if approved in advance, in writing, by CPA

#### Task 4 Deliverables:

- a. Evaluation of one-off non-conforming offer variants as compared to both the original offer and the broader longlist valuation
- b. Valuation of individual offers for up to ten (10) offers
- c. Optional: Additional offer valuations, in blocks of ten (10) additional offers, if approved in advance, in writing, by CPA
- d. Optional: Ascend Fundamental Price Curve (CAISO v. 3.2) – hourly price curve to be provided in Microsoft Excel file format, if approved in advance, in writing, by CPA

<sup>1</sup> 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.

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

**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 2022 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.

<b>Key Event Dates (2022-2023)</b>	<b>Action</b>
July 7, 2022	CPA Board Meeting - Board approves Mid-Term Reliability RFO Services Task Order
July 11, 2022	Task Order kick-off with consultant
July 15, 2022	Complete Task 1: Solicitation design
July 22, 2022	Complete Tasks 2a and 2b: Finalize bidder materials
August 1, 2022	Complete Task 2c: Launch RFO
August 10, 2022	Complete Task 2d: Conduct RFO Webinar
August 19, 2022	Close Q&A bidder submission window
August 31, 2022	Complete Task 2e: Post Q&A responses
September 9, 2022	Offers Due
September 23, 2022	Task 3a: Complete QA/QC of RFO responses and Task 3c: Longlist Summary
September 28, 2022	CPA Energy Committee – Review RFO Longlist trends
October 2022	Complete 3c: Perform individual contract and portfolio analysis and 3d Valuation Ranking
Early November 2022	Shortlist selection recommendation by CPA's RFO review team
Mid-November 2022	CPA Energy Committee – Approve shortlist
November 2022 – March 2023	Task 4: Ongoing valuation support as needed through PPA negotiations
April 6, 2023 <sup>3</sup>	CPA Board meeting - Approve negotiated PPAs

<sup>3</sup> April 6<sup>th</sup> is the target date for PPA approvals. PPA negotiations may extend through the Summer of 2023.

***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**

CONTRACTORNAME: Ascend Analytics LLC

Task Order No. 4                      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

Task Order No. 4

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

Task Order No. 4

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:

Task Order No. 4

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)):

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\*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**

<b>County/City</b>	<b>Regular Directors</b>
<b>1. Agoura Hills</b>	Deborah Klein Lopez
<b>2. Alhambra</b>	Jeff Maloney
<b>3. Arcadia</b>	Sho Tay
<b>4. Beverly Hills</b>	Julian Gold
<b>5. Calabasas</b>	Mary Sue Maurer
<b>6. Camarillo</b>	Susan Santangelo
<b>7. Carson</b>	Jawane Hilton
<b>8. Claremont</b>	Corey Calaycay
<b>9. Culver City</b>	Daniel Lee
<b>10. Downey</b>	Catherine Alvarez
<b>11. Hawaiian Gardens</b>	Luis Roa
<b>12. Hawthorne</b>	Alex Monteiro
<b>13. LA County</b>	Sheila Kuehl
<b>14. Malibu</b>	Mikke Pierson
<b>15. Manhattan Beach</b>	Hildy Stern
<b>16. Moorpark</b>	Janice Parvin
<b>17. Ojai</b>	Betsy Stix
<b>18. Oxnard</b>	Bert Perello
<b>19. Paramount</b>	Vilma Cuellar Stallings
<b>20. Redondo Beach</b>	Christian Horvath
<b>21. Rolling Hills Estates</b>	Steve Zuckerman

<b>22. Santa Monica</b>	Gleam Davis
<b>23. Sierra Madre</b>	Robert Parkhurst
<b>24. Simi Valley</b>	Ruth Luevanos
<b>25. South Pasadena</b>	Diana Mahmud
<b>26. Temple City</b>	Fernando Vizcarra
<b>27. Thousand Oaks</b>	Kevin McNamee
<b>28. City of Ventura</b>	Sofia Rubalcava
<b>29. Ventura County</b>	Linda Parks
<b>30. West Hollywood</b>	Lindsey Horvath
<b>31. Westlake Village</b>	Ned Davis
<b>32. Whittier</b>	Fernando Dutra

#### ALTERNATE DIRECTOR(S)

<b>County/City</b>	<b>Alternate Director(s)</b>
<b>1. Agoura Hills</b>	Linda Nothrup Louis Celaya
<b>2. Alhambra</b>	Adele Andrade-Stadler
<b>3. Arcadia</b>	Dominic Lazzaretto
<b>4. Beverly Hills</b>	Robert Wunderlich
<b>5. Calabasas</b>	David Shapiro Michael McConville
<b>6. Camarillo</b>	Sean Mulchay Tony Trembley
<b>7. Carson</b>	Cedric L. Hicks Sr. Reata Kulcsar
<b>8. Claremont</b>	Jennifer Stark
<b>9. Culver City</b>	Yasmine-Imani McMorris Joe Susca
<b>10. Downey</b>	Donald La Plante
<b>11. Hawaiian Gardens</b>	Ramie L. Torres

<b>12. Hawthorne</b>	Akbar Farokhi Selena Acuna
<b>13. LA County</b>	Holly Mitchell
<b>14. Malibu</b>	Steve Uhring
<b>15. Manhattan Beach</b>	Joe Franklin Carrie Tai
<b>16. Moorpark</b>	Jessica Sandifer
<b>17. Ojai</b>	Michelle Ellison
<b>18. Oxnard</b>	Vianey Lopez Kathleen Mallory
<b>19. Paramount</b>	Isabel Aguayo Adriana Figueroa
<b>20. Redondo Beach</b>	Ted Semaan Todd Lowenstein
<b>21. Rolling Hills Estates</b>	Debby Stegura Greg Grammar
<b>22. Santa Monica</b>	Pam O'Connor
<b>23. Sierra Madre</b>	Kelly Kriebs
<b>24. Simi Valley</b>	Keith Mashburn Samantha Argabrite
<b>25. South Pasadena</b>	Michael Cacciotti Kim Hughes
<b>26. Temple City</b>	William Man Tom Chavez
<b>27. Thousand Oaks</b>	Cliff Finley Helen Cox
<b>28. City of Ventura</b>	Mike Johnson Joe Yahner
<b>29. Ventura County</b>	Carmen Ramirez
<b>30. West Hollywood</b>	Lauren Meister Rachel Dimond
<b>31. Westlake Village</b>	Susan McSweeney Phillippe Eskandar
<b>32. Whittier</b>	Octavio Martinez Vicki Smith

**EXHIBIT D6  
CALIFORNIA PUBLIC RECORDS ACT  
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 7

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Cara Rene, Director, Communications & Marketing  
**Approved by:** Ted Bardacke, Chief Executive Officer  
**Subject:** Communications Report (February – April 2022)  
**Date:** July 7, 2022

---

### **RECOMMENDATION**

Receive and file.

### **ATTACHMENT**

1. Quarterly Report



# Marketing, Communications and Community Outreach

## Quarterly Update

March - April - May



# Highlights

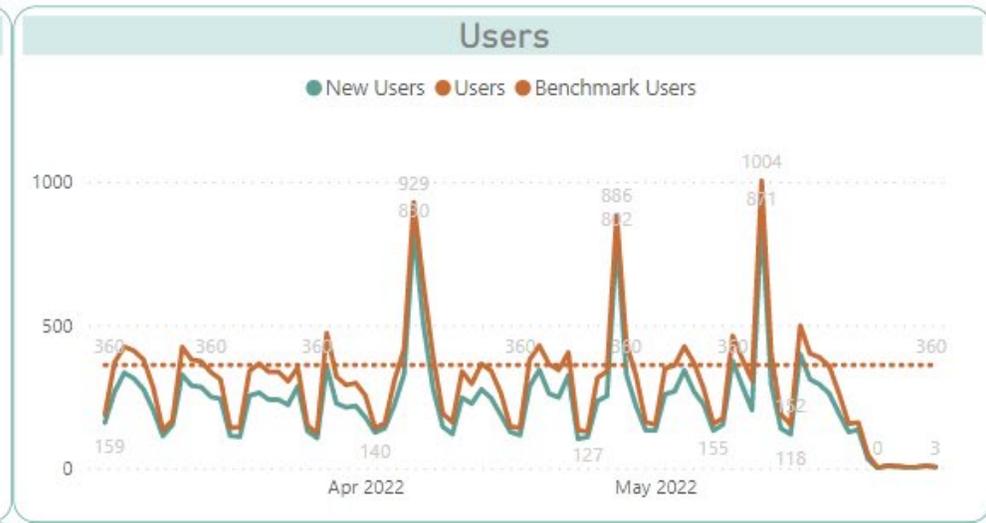
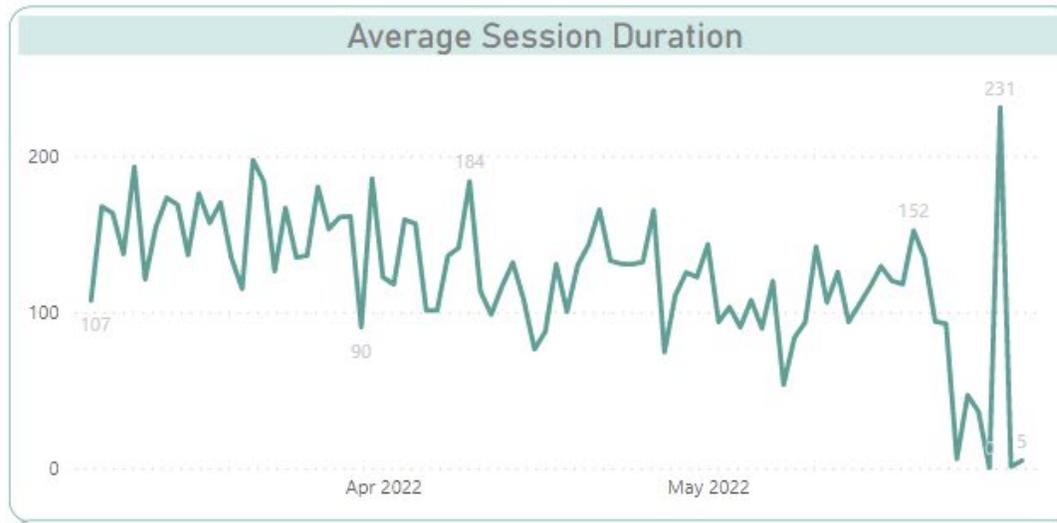
- More than \$200,000 will be available for the 2022 **Community Reinvestment Grant**, up from \$75,000 in 2021. Application period August 1 – September 16.
- Expanded social media reach and brand visibility with the additional of **Instagram** in April. Garnered more than 46,500 impressions since the launch.
- Sponsored or supported 10 **Earth Day** events
- **Earned media** sentiment continued to be almost exclusively positive; bolstering CPA's positive brand image
- Newsletter **open rates** continued to outperform average open rates for all industries, fostering reach in messaging and building understanding among our 2,047 subscribers
- Spikes in **website visitors** continued when promoting programs such as Power Share via email and paid media that drove traffic to the website.
- **Growth and engagement** of followers continued for all social media platforms; LinkedIn continues to be strongest performer with tailored content for audience largely comprised of business and political leaders.

# Performance Dashboard

Metrics	2022 (March – May)	2022 (Jan-Feb)	2021 (April – June)	2021 (July – Sept)	2021 (Oct - Dec)
Power Share (enrollments)	2815/6300 goal	2208/6300	487/6300	1164/6300	1843/6300
Website Traffic (views)	131,023	136,311	69,210	87,239	88,070
Social Media Engagement Rate	4% (excludes FB)	4.2% (excludes FB)	6.1%	31%	39.5%
Newsletter open rate	43%	45%	29.5%	27.6%	31.5%
Public Relations Impressions	267.7 M impressions	207.6 M	2M	53.5 M	381.1 M

# Website Metrics

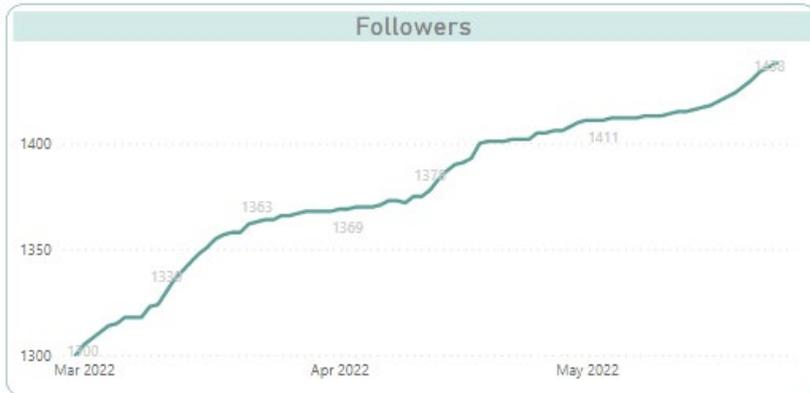
Spikes in April and May align with posting of the Impact Report, monthly Power Share outreach, and email recruitment campaign for the Power Response program.



# Social Media Metrics

Audiences continued to grow on each platform. LinkedIn remains a top performer with content tailored for an engaged audience largely comprised of business and political leaders.

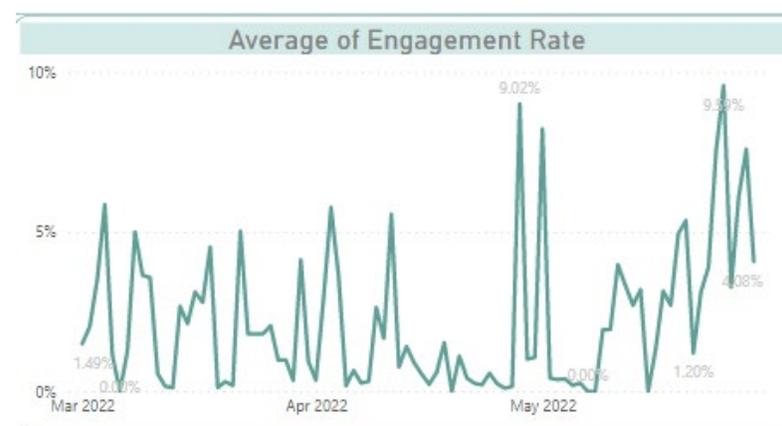
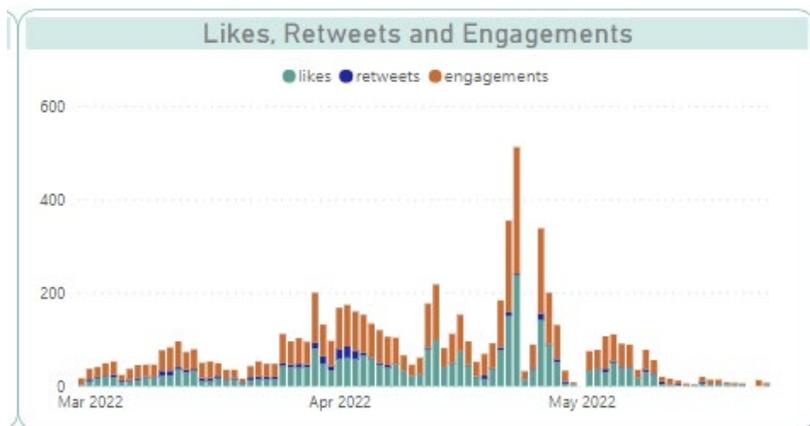
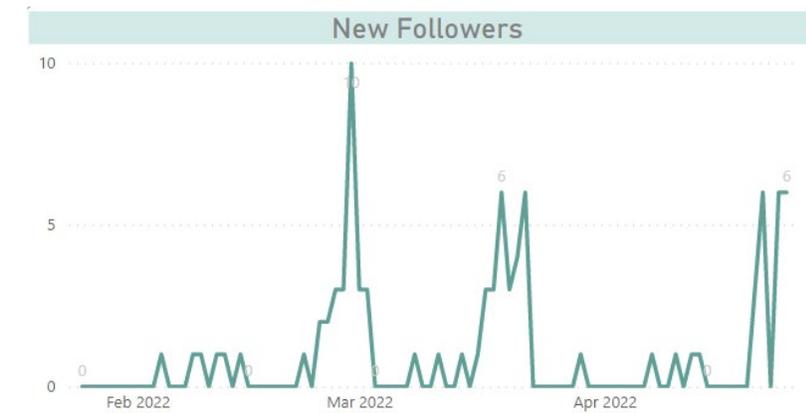
## TWITTER



## LINKEDIN



## FACEBOOK

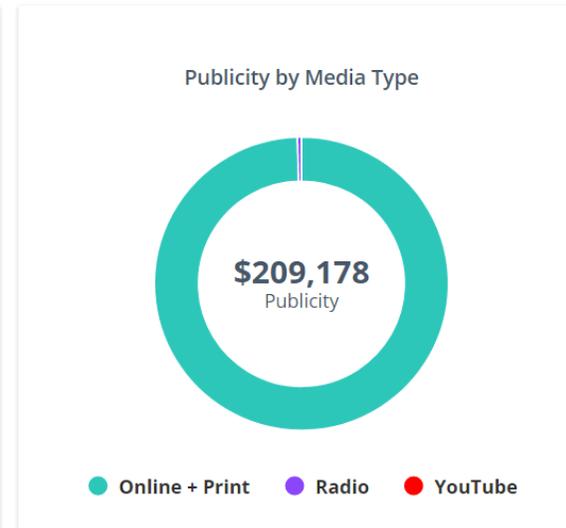
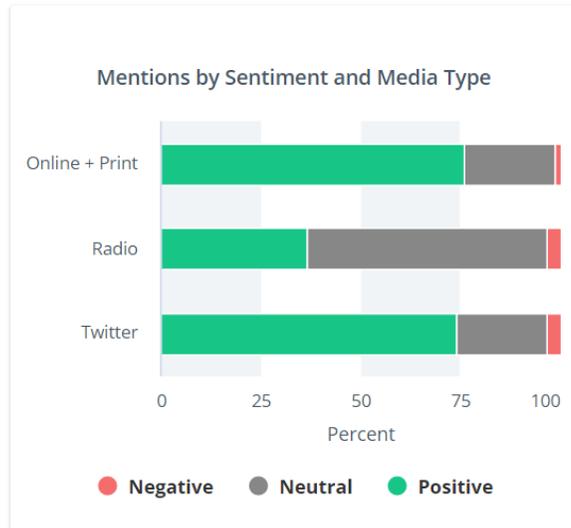


# Earned Media Metrics

Positive mentions and sentiment support a positive brand image.

## EA Quarterly Report 3-1-22 to 5-31-22

### Mention Analytics



 **Total Radio Audience**  
364,435

**Total Publicity Value**  
USD \$888

 **Total Online + Print Audience**  
267,691,060

**Total Online + Print Publicity**  
USD \$208,278

 **Total Social Followers**  
1,359,530

**Total Social Publicity**  
USD \$12



# Community Reinvestment Grant

## ⚡ 2022 Grant Cycle

- Approximately \$200,000 will be awarded in 2022 (versus \$75,000 in 2021)
- Grants will range from \$10,000-\$35,000
- Applications period to open August 1-September 16
- Applications will be available on CPA's website
- Recipients to be announced by Thanksgiving



# Community Engagement

- ⚡ Continued to be active throughout Los Angeles and Ventura Counties
- ⚡ 3 presentations
- ⚡ 15 community events
- ⚡ 3 membership meetings

# A Look Ahead

- Finalize Default Rate Change materials and begin outreach in some communities
- New website navigation and search function
- Update content on highly visited customer webpages
- Marketing outreach for electric vehicle charging station incentives project in Ventura County

## July

## August

- Community Reinvestment Grant kickoff
- Launch marketing outreach for Power Response, Demand Response and Multifamily programs
- Finalize materials for Joint Rate Comparison



# Spreading the Word on Clean Energy!

## Earth Day 2022





**Staff Report – Agenda Item 8**

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Christian Cruz, Community Outreach Manager  
**Approved by:** Ted Bardacke, Chief Executive Officer  
**Subject:** Community Advisory Committee (CAC) Report  
**Date:** July 7, 2022

---

**RECOMMENDATION**

Receive and file.

**CAC OFFICER NOMINATIONS**

Staff opened the call for CAC officer nominations, with nominations due by Friday, June 24, 2022. As specified in CPA’s bylaws, the CAC shall appoint one Chair and two Vice-Chairs from among themselves by a majority vote of those members present, to align with the new CAC two-year terms. At least one of the Vice-Chairs shall be a member representing the Ventura County region. An election for CAC Chair and Vice-Chairs will be conducted on July 21, 2022, at the regularly scheduled CAC meeting.

<b>CAC Officer Nominees</b>	
<b>Chair</b>	<b>Vice-Chair(s)</b>
Committee Member Neil Fromer (LA Unincorporated Region)	Committee Member Angus Simmons (East Ventura/West LA Region)
Committee Member Lucas Zucker (West/Unincorporated Ventura Region)	Committee Member Jennifer Burke (East Ventura/West LA Region)
Committee Member David Lesser (South Bay Region)	Committee Member Lucas Zucker (West/Unincorporated Ventura Region)
Committee Member David Haake (West Side Region)	Committee Member Genaro Bugarin (Gateway Region)
	Committee Member David Haake (West Side Region)

	Committee Member Kristie Hernandez (LA Unincorporated Region)
	Committee Member David Lesser (South Bay Region)

### **2022 SUMMER RELIABILITY**

The CAC received an informational presentation on the 2022 summer reliability landscape. The presentation highlighted:

- The key factors impacting summer reliability
- CPA's procurement and programs that contribute to reliability
- CPA's perspectives on reliability and the California energy market

The presentation also reviewed CPA's efforts to mitigate project development delays and increase summer reliability. The CAC was informed that between October 2021 and June 2022 an additional 200 MW of new generation resources and 150 MW of new battery storage came online to increase CPAs 2022 summer reliability. An additional 232 MW of battery storage will come online before the end of summer 2022. CPA staff has also been in communication with the governor's office and California Public Utilities Commission (CPUC) staff regarding project delays due in part to COVID-19, supply chain issues, and Department of Commerce Withhold Release Orders (WRO) related to forced labor.

The CAC requested that CPA continue to inform customers about demand response programs, which help customers reduce or shift their electricity usage during peak periods.

### **ATTACHMENT**

1. CAC Meeting Attendance

Community Advisory Committee Attendance											
2022											
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov
<b>East Ventura/West LA County</b>											
Angus Simmons (Vice Chair)	✓	✓	✓	✓	✓	✓					
Jennifer Burke	✓	✓	✓	✓	✓	✓					
Debbie West	A	✓	✓	✓	✓	✓					
<b>San Gabriel Valley</b>											
Richard Tom	✓	✓	✓	✓	✓	✓					
Kim Luu	✓	A	A	✓	A	✓					
<b>West/Unincorporated Ventura County</b>											
Lucas Zucker	A	A	A	A	✓	✓					
Vern Novstrup	A	✓	✓	✓	✓	✓					
<b>South Bay</b>											
David Lesser	✓	✓	✓	✓	✓	A					
Emmitt Hayes	A	✓	✓	A							
<b>Gateway Cities</b>											
Irella Perez						✓					
Genaro Bugarin	✓	✓	✓	A	✓	✓					
<b>Westside</b>											
Cris Gutierrez	✓	✓	✓	✓	✓	✓					
David Haake (Chair)	✓	✓	A	✓	✓	✓					
<b>Unincorporated LA County</b>											
Neil Fromer	✓	✓	✓	✓	✓	A					
Kristie Hernandez	✓	✓	✓	✓	A	✓					

**Major Action Items and Presentations**

**January**

CEO Update  
Diversity, Equity, and Inclusion Plan Update

**February**

CEO Update  
Net Energy Metering 3.0  
CAC Final Draft Workplan

**March**

CEO Update  
CPA Bill Positions

**April**

CEO Update  
2022/2023 Rates  
2022/2023 Budget Priorities

**May**

CEO Update  
CPA Local Programs Update

**June**

CEO Update  
Call for Officer Nominations  
2022 Summer Reliability Landscape



## Staff Report – Agenda Item 10

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Natasha Keefer, Vice President, Power Supply  
**Approved By:** Ted Bardacke, Chief Executive Officer  
**Subject:** Amendments to Long-Term Renewable and Storage PPAs  
**Date:** July 7, 2022

---

### **RECOMMENDATION**

Approve the following amendments to long-term Power Purchase Agreements (PPAs) and authorize the Chief Executive Officer to execute the following amendments:

- a) Second amendment to Arlington Energy Center II, LLC (Arlington) Renewable Power Purchase and Sale Agreement (Attachment 2)
- b) First amendment to Resurgence Solar II, LLC (Resurgence) Renewable Power Purchase and Sale Agreement (Attachment 4)
- c) First amendment to Estrella Solar, LLC (Estrella) Renewable Power Purchase and Sale Agreement (Attachment 6)

### **BACKGROUND**

Per CPA's Energy Risk Management Policy, any power purchase transactions greater than five years and any material amendments to those agreements, including changes to Commercial Operation Dates (CODs), require approval by the Board.

Renewable energy developers are currently facing a confluence of unprecedented challenges in delivering on new build projects, particularly for projects with 2022-2024 online dates, including:

- Interconnection delays
- Ongoing pandemic-related supply chain impacts
- U.S. trade actions, including the U.S.'s withhold release order (WRO) on Chinese polysilicon supply and the recently modified Department of Commerce

investigation of alleged circumvention of antidumping and countervailing duties by solar manufacturers in Cambodia, Malaysia, Thailand, and Vietnam (“Auxin investigation”)

- Rising commodity prices for key components for renewable and storage plants, further exacerbated by the Ukraine War

These challenges have resulted in supply shortages, delays in delivery timelines, and significantly increased costs for materials needed to construct clean energy resources, including solar panels and battery modules.

Due to these challenges, several of CPA’s projects with near-term online dates are experiencing delays and are unable to meet their originally contracted Guaranteed CODs. To reduce the risk that these contracts would be terminated, CPA has negotiated amendments to the PPAs that will allow the projects to come online under feasible timelines and relieve sellers from potential liquidated damages that would be owed to CPA as a result of the delays.

A summary of the projects for which staff is seeking Board authorization to amend contracts at today’s Board meeting is provided below:

<b>Project Name</b>	<b>Counterparty</b>	<b>Facility</b>	<b>Location</b>	<b>Original COD</b>	<b>Proposed Amended COD</b>
Arlington	NextEra	233 MW solar + 132 MW storage <sup>1</sup>	Blythe, Riverside County	10/1/2022	6/1/2023
Resurgence	NextEra	48 MW solar + 40 MW storage	Boron, San Bernardino County	3/1/2023	6/1/2023
Estrella	AES	56 MW solar + 28 MW storage	Los Angeles County	6/1/2022	12/31/2023

<sup>1</sup> As part of the proposed amendment, the project size would be reduced to 140 MW solar and 120 MW storage.

**SUMMARY OF PROPOSED AMENDMENTS****Arlington Solar Plus Storage PPA (“Arlington PPA”)**

Located near the City of Blythe within unincorporated Riverside County, CA, Arlington is a solar plus storage project developed by NextEra. On June 28, 2019, the Board approved the Arlington PPA for the output of a 233 MW solar photovoltaic facility to come online by October 1, 2022. On October 1, 2020, the Board approved an amended and restated PPA to add a 132 MW storage facility to the solar facility, with the following phased online schedule:

- 100 MW solar by December 31, 2021
- 132 MW storage by August 1, 2022
- Remaining 133 MW solar by October 1, 2022

The PPA was further amended in June 2022 (First Amendment) to reflect a change to the management of meter data. This was an administrative amendment.

The Arlington project’s construction schedule has been significantly impacted by several supply chain disruptions, including COVID-19 related solar panel factory shutdowns, delays in panel deliveries due to the WRO, and a March 2022 trucking strike in Spain which delayed the delivery of the battery inverters to the project. Arlington was able to deliver the first 100 MW of solar to CPA on March 21, 2022, and is currently expected to bring 120 MW of storage online by September 2022. In addition, due to the Auxin investigation and resulting supply shortage and increased price of solar panels, Arlington is no longer able to deliver the full 133 MW remaining solar capacity to CPA under the terms of the original agreement.

The parties entered negotiations to amend the second amended Arlington PPA by which Arlington will deliver 40 additional MW of solar capacity to CPA by June 1, 2023. This would result in an overall facility of 140 MW solar plus 120 MW storage, down from the original project size of 233 MW solar and 132 MW storage.

In consideration of the schedule relief and project size reduction, Arlington is providing the following benefits to CPA:

- \$500,000 one-time payment to CPA for community benefits funding
- Increase in the PPA term from 15 to 16 years
- Reduction in future delays allowable under the contract

- Right of first offer (ROFO) on the remaining 93 MW solar and 12 MW storage originally contracted to CPA. Arlington will provide an offer to CPA for this capacity at a new price by September 2022.<sup>2</sup>
- Additional minor revisions to contract terms

### **Resurgence Solar Plus Storage PPA (“Resurgence PPA”)**

Located near the City of Boron within San Bernardino County, Resurgence is a 48 MW solar and 40 MW storage facility developed by NextEra. The Board approved the Resurgence PPA on June 3, 2021. The original online date for the Resurgence project was March 31, 2023. The online date has now been delayed to June 30, 2023. The delay is caused by NextEra being unable to procure panel supply as a result of the solar supply chain challenges previously discussed. The new online date reflects NextEra’s new panel delivery schedule.

The parties entered negotiations to amend the Resurgence PPA by which Resurgence will move its guaranteed COD to June 30, 2023. In consideration of the schedule relief, Resurgence is providing the following benefits to CPA:

- \$100,000 one-time payment to CPA for community benefits funding
- Increase in the PPA term from 20 to 21 years
- Reduction in future delays allowable under the contract
- Additional minor revisions to contract terms

### **Estrella Solar Plus Storage PPA (“Estrella PPA”)**

Located in the North Antelope Valley within unincorporated Los Angeles County, CA, Estrella is a 56 MW solar plus 28 MW storage developed by AES<sup>3</sup>. The Board approved the Estrella PPA on November 5, 2020. The original online date for the Estrella project was June 1, 2022. The online date has now been delayed to December 31, 2023, due to two significant issues:

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<sup>2</sup> Should CPA reject the offer, NextEra will be able to market the remaining 93 MW solar and 12 MW storage to another buyer.

<sup>3</sup> The original developer of the project was sPower. sPower and AES merged in November 2020.

- The project incurred a significant delay in receiving a Franchise Agreement from Los Angeles County for a power transmission line in the Antelope Valley needed to connect the project to the CAISO system.
- Due to supply chain issues previously discussed, the Estrella project incurred a significant delay in its solar panel delivery schedule, impacting the overall project design and construction schedule.

The parties entered negotiations to amend the Estrella PPA by which Estrella will move its project milestone schedule to achieve a COD of December 31, 2023.

In consideration of the schedule relief, Estrella is providing the following benefits to CPA:

- \$500,000 one-time payment to CPA<sup>4</sup>
- Increase in the PPA term from 15 to 16 years
- Reduction in future delays allowable under the contract
- 28 MW of July through September 2023 Resource Adequacy (RA) product to account for the RA CPA is losing due to the project delay
- Additional minor revisions to contract terms benefitting CPA

## **RATIONALE**

### *Reliability and Regulatory Compliance*

The CAISO grid is currently facing reliable capacity shortages in the 2022-2026 timeframe. To address this need, the CPUC issued its Mid-Term Reliability Decision ordering load-serving entities to procure 11,500 MW of new reliable capacity resources. Under the order, CPA is required to procure the following amounts of new build resources by the following dates:

	<b>Aug. 2023</b>	<b>June 2024</b>	<b>June 2025</b>	<b>June 2026</b>	<b>Total</b>
CPA Procurement Need (MW)	118	254	89	118	679

<sup>4</sup> CPA intends to use this payment for community benefits funding. Spending priorities for these and other community benefits funds realized as a result of PPA renegotiations will be discussed with the Board at a later date.

The Arlington, Resurgence, and Estrella projects are critical resources to contribute to grid reliability and enable CPA to make progress towards meeting its 2023 and 2024 Mid-Term Reliability compliance.

*Commitment to New Build Resources in Southern California*

In addition, given the industry-wide challenges for clean energy development, prices for new renewable and battery projects are now significantly elevated compared to pricing that CPA previously executed for contracts in the 2018-2021 timeframe. Allowing for some schedule relief will allow CPA to retain these attractively priced contracts located in Southern California for the long-term, while demonstrating commitment to its mission of bringing new clean energy resources to the grid despite challenging market conditions.

**ATTACHMENTS**<sup>5</sup>

1. PPA Amendment Presentation
2. Second amendment to Arlington Energy Center II, LLC Renewable Power Purchase and Sale Agreement
3. Amended and Restated Renewable Power Purchase and Sale Agreement with Arlington Energy Center II, LLC **(for reference only)**
4. First amendment to Resurgence Solar II, LLC (Resurgence) Renewable Power Purchase and Sale Agreement
5. Renewable Power Purchase and Sale Agreement with Resurgence Solar II, LLC **(for reference only)**
6. First amendment to Estrella Solar, LLC (Estrella) Renewable Power Purchase and Sale Agreement
7. Renewable Power Purchase and Sale Agreement with Estrella Solar II, LLC **(for reference only)**

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<sup>5</sup> Consistent with industry practice, portions of the agreements have been redacted to protect market sensitive information.

# Amendments to Long-Term Renewable and Storage PPAs

July 7, 2022



# Executive Summary

- ⚡ Renewable energy developers are currently facing a confluence of challenges in delivering on new build projects
- ⚡ Due to these challenges, several of CPA's projects with near-term online dates are experiencing delays and are unable to meet their originally contracted guaranteed online dates
- ⚡ CPA is seeking Board approval of PPA amendments for three previously contracted solar plus storage projects to reflect development schedule delays
  - Per CPA's Energy Risk Management Policy, any power purchase transactions greater than five years and any material amendments to those agreements, including changes to Commercial Operation Dates (CODs), require approval by the Board
- ⚡ These projects are critical resources for grid reliability and enable CPA to make progress towards meeting its procurement targets and compliance obligations



# Agenda

- ⚡ Background
- ⚡ Overview of PPA Amendments
- ⚡ Requested Action

# Background



# Conditions Impacting Clean Energy Development

- ⚡ Renewable energy developers are facing several challenges in delivering on new build projects, particularly for projects with 2022-2024 online dates
  - Interconnection delays
  - Ongoing pandemic-related supply chain impacts
  - U.S. trade actions, including the Uyghur Forced Labor Prevention Act and Dept. of Commerce investigation into solar panels tariff circumvention
  - Rising commodity prices, further exacerbated by the Ukraine War
- ⚡ Any one of these factors could impact project risk; compounded, they are posing uncommon challenges for even highly experienced and well capitalized developers



# Impact to CPA's Portfolio

- ⚡ Due to these challenges, several of CPA's projects with near-term online dates are experiencing delays and are unable to meet their originally contracted Guaranteed CODs
- ⚡ To reduce the risk that these contracts would be terminated, CPA has negotiated amendments to the PPAs that will allow the projects to come online under feasible timelines given the current circumstances
- ⚡ These amendments will relieve sellers from potential liquidated damages that would be owed to CPA as a result of the delays



# Overview of PPA Amendments



# Overview of PPA Amendments

⚡ CPA is seeking Board approval of three amendments to previously executed long-term contracts:

Project Name	Counterparty	Facility	Location	Original COD	Proposed Amended COD
Arlington	NextEra	233 MW solar + 132 MW storage	Blythe, Riverside County	10/1/2022	6/1/2023
Resurgence	NextEra	48 MW solar + 40 MW storage	Boron, San Bernardino County	3/1/2023	6/1/2023
Estrella	AES	56 MW solar + 28 MW storage	Los Angeles County	6/1/2022	12/31/2023



# Arlington Solar + Storage PPA

- ⚡ 233 MW solar + 132 MW storage PPA with an original COD of October 1, 2022
- ⚡ 100 MW of solar from this project has already come online, but due to a number of supply chain challenges, Arlington is unable to meet the original construction schedule for the remainder of the project
- ⚡ Arlington is seeking a revised COD of June 1, 2023 and project size reduction down to 140 MW solar and 120 MW storage
- ⚡ In exchange for the PPA amendment, CPA will be receiving:
  - \$500,000 one-time payment for community benefits funding
  - Increase in the PPA term from 15 to 16 years
  - Reduction in future delays allowable under the contract
  - Right of first offer (ROFO) on the remaining 93 MW solar and 12 MW storage originally contracted to CPA. Arlington will provide an offer to CPA for this capacity at a new price by September 2022



# Resurgence Solar + Storage PPA

- ⚡ 48 MW solar + 40 MW storage PPA with an original COD of March 31, 2023
- ⚡ Due to a number of supply chain challenges, Resurgence is unable to meet the original construction schedule for the project and is seeking a revised COD of June 1, 2023
- ⚡ In exchange for the PPA amendment, CPA will be receiving:
  - \$100,000 one-time payment for community benefits funding
  - Increase in the PPA term from 20 to 21 years
  - Reduction in future delays allowable under the contract



# Estrella Solar + Storage PPA

- ⚡ 56 MW solar + 28 MW storage PPA with an original COD of June 1, 2022
- ⚡ Due to a number of supply chain challenges as well as delayed approval of a Franchise Agreement from LA County for a power transmission line in the Antelope Valley, Estrella is unable to meet the original construction schedule for the project and is seeking a revised COD of December 31, 2023
- ⚡ In exchange for the PPA amendment, CPA will be receiving:
  - \$500,000 one-time payment
  - Increase in the PPA term from 15 to 16 years
  - Replacement Resource Adequacy product for Q3 2023
  - Reduction in future delays allowable under the contract



# Rationale

- ⚡ These renewable resources paired with storage contribute to grid reliability
- ⚡ Under the CPUC's Mid-Term Reliability Decision, CPA is required to procure 679 of new build reliability capacity resources; these projects help CPA make progress towards meeting this compliance target
- ⚡ Due to elevated pricing resulting from market disruptions, these contracts are attractively priced compared to pricing CPA would receive for newly contracted resources
- ⚡ Allowing for some schedule relief will allow CPA to retain these attractive contracts located in Southern California for the long-term, while demonstrating commitment to its mission of bringing new clean energy resources to the grid despite challenging market conditions



# Requested Action



# Requested Action

- ⚡ Approve the following amendments to long-term PPAs and authorize the CEO to execute the following amendments:
  - Second amendment to Arlington PPA
  - First amendment to Resurgence PPA
  - First amendment to Estrella PPA

## SECOND AMENDMENT TO POWER PURCHASE AGREEMENT

This Second Amendment (the “**Amendment**”) to the Agreement (as defined below), is dated as of July 8, 2022 (the “**Amendment Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Arlington Energy Center II, LLC, a Delaware limited liability company (“**Seller**”). Seller and Buyer are each a “**Party**” and together the “**Parties**”.

### RECITALS

- A. The Parties entered into that certain Renewable Power Purchase and Sale Agreement, dated as of October 2, 2020 (as amended by that certain First Amendment to Renewable Power Purchase Agreement, dated as of June 15, 2022, the “**Agreement**”).
- B. Pursuant to Article 10 and Section 4 of Exhibit B of the Agreement, Seller has claimed significant delays to the Milestone schedule with respect to achieving Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date (“**GFCOD**”) known to have affected the GFCOD Milestone schedule as of the Amendment Effective Date, as more particularly set forth in Attachment 1 (the “**GFCOD Development Cure Period Claims**”).
- C. The Parties intend to resolve all matters with respect to Seller’s GFCOD Development Cure Period Claims and potential liquidated damages for related GFCOD Development Cure Period Claims unexcused delays which might be owed by Seller to Buyer by entering into this Amendment on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
2. **Amendments to the Agreement**.
  - (a) The Description of the Facility on the Cover Sheet and in **Exhibit A** are replaced in its entirety with the following:

A solar photovoltaic electric generating facility with a net nameplate capacity of 140 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 132 MW AC/528 MWh located near the City of Blythe within unincorporated Riverside County, California, as further described in **Exhibit A** (with an option, as described in this Agreement, to expand the Generating Facility capacity from 140 MW AC to 233 MW AC).
  - (b) In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:

Milestone	Expected Date for Completion
<b>Expected Full Commercial Operation Date for additional 40 MW PV*</b>	June 1, 2023
<b>Expected Storage CAISO Commercial Operation</b> (pursuant to CAISO’s Commercial Operation for Markets methodology)	August 15, 2022
<b>Expected Storage Commercial Operation Date</b>	August 21, 2022

\* Seller may elect to achieve Commercial Operation for that 40 MW PV pursuant to the CAISO’s Commercial Operation for Markets methodology. Seller may also elect to achieve Commercial Operation, whether under the Agreement or the CAISO Tariff as applicable, for any Additional PV Capacity Seller elects to add to the Facility at one (1) or more subsequent dates pursuant to the CAISO’s Commercial Operation for Markets methodology.

- (c) The number of Contract Years specified for the Delivery Term on the Cover Sheet shall be changed from “Fifteen (15)” to “Sixteen (16)”.
- (d) The Full Facility – Expected Energy table on the Cover Sheet, is replaced in its entirety with the following:

Contract Year	Expected Energy (MWh) for 140 MW
1	453,313
2	████████
3	████████
4	████████
5	████████
6	████████
7	████████
8	████████
9	████████
10	████████

11		██████
12		██████
13		██████
14		██████
15		██████
16		██████

- (e) The Guaranteed Capacity as set forth on the Cover Sheet is reduced from “365 MW” to “272 MW”.
- (f) The Guaranteed Full PV Capacity as set forth on the Cover Sheet is reduced from “233 MW” to “140 MW”.
- (g) The Guaranteed Efficiency Rate table on the Cover Sheet, is amended to add the following row to the end of the table:

Contract Year	Guaranteed Storage Efficiency Rate
16	██████

- (h) In Section 1.1, the following new defined term is added: ““**Additional PV Capacity**’ has the meaning set forth in Section 3.14.”
- (i) In Section 1.1, the following new defined term is added: ““**Additional PV Renewable Rate**’ has the meaning set forth in Section 3.14.”
- (j) In Section 1.1, the following new defined term is added: ““**Commercial Operation for Markets**’ has the meaning provided to it in the ‘CAISO’s Business Practice Manual for Generator Management’ revised May 5, 2022, as the same may be amended or modified from time to time.”
- (k) In Section 1.1, the defined term “**Full Facility**” is modified to replace the figure “233” and replace it with the figure “140”.
- (l) In Section 1.1, the following new defined term is added: ““**RPS Energy**’ has the meaning set forth in Section 3.10(b).”
- (m) In Section 1.1, the following new defined term is added: ““**Second Tier Storage Capacity**’ has the meaning set forth in Section 3.14.”

(n) In Section 1.1, the following new defined term is added: “**Second Tier Storage Rate**’ has the meaning set forth in Section 3.14.”

(o) A new sentence shall be added at the end of Section 3.8(a) as follows:

Notwithstanding the foregoing, unless and until the Parties agree to add the Additional PV Capacity as part of Buyer’s Guaranteed Full PV Capacity pursuant to Section 3.14 or 11.6 (in which case this sentence shall no longer be applicable), Seller shall be excused from owing any RA Deficiency Amount that results from a reduction in the Facility’s NQC solely due to an insufficient amount of PV Energy being available during any period when the Facility is subject to a Charging Notice, and such insufficiency is due solely to the level or extent of insolation or is otherwise excused under this Agreement (and not due to a portion of the Facility being unavailable).

(p) Section 3.10 is replaced in its entirety with the following:

**3.10 Eligibility.**

(a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(b) “Project” as used in Section 3.10(a) means the Generating Facility and the phrase “the Project’s output” means all Facility Energy delivered at the Delivery Point, net of storage losses if required by Law (“**RPS Energy**”).

(q) Section 3.14 is replaced in its entirety with the following:

3.14 **Additional PV Capacity.** Notwithstanding anything to the contrary herein, and subject to Section 11.6, Seller shall submit a written offer to Buyer on or before September 1, 2022 to: (x) increase the amount of Guaranteed Full PV Capacity by selling to Buyer at an increased Renewable Rate (the “**Additional PV Renewable Rate**”) up to ninety-three (93) MW AC of additional PV capacity in addition to the 140 MW AC of existing Guaranteed Full PV Capacity remaining at the existing Renewable Rate (not to exceed a total of 233 MW AC of Guaranteed Full PV Capacity) (such additional PV capacity, the “**Additional PV Capacity**”); and (y) provide for an increased Storage Rate (the “**Second Tier Storage Rate**”) for any portion of the Guaranteed Storage Capacity in excess of 120 MW AC of Installed Storage Capacity, up to twelve (12) MW AC (the “**Second Tier Storage Capacity**”). Buyer shall provide Notice to Seller on or before September 28, 2022 stating whether Buyer accepts or rejects Seller’s offer. If Buyer accepts Seller’s offer, the Parties shall, within thirty-five (35) days thereafter, amend and restate this Agreement to include the changes specified in Exhibit T and any other terms reasonably necessary in connection with such sale and purchase to account for the actual MW AC of such Additional

PV Capacity (which shall result in an increase in the amount of Buyer's Guaranteed Capacity and Guaranteed Full PV Capacity) at the Additional PV Renewable Rate and the Second Tier Storage Capacity at the Second Tier Storage Rate. If Buyer rejects Seller's offer, the Parties shall use commercially reasonable efforts to amend and restate this Agreement on or before December 15, 2022 to include the following changes: (a) reduce the Installed Storage Capacity and Guaranteed Storage Capacity to 120 MW/480 MWh; (b) provide one hundred percent (100%) of the Capacity Attributes associated with the Facility to Buyer, not to exceed the sum of (i) 120 MW for the Storage Facility and (ii) the QC associated with the 140 MW of the Generating Facility (with Seller owning, and having the right to sell in accordance with Section 11.6, any remainder of Capacity Attributes associated with the Facility); (c) recognizing and accommodating Seller's ownership, and right to sell in accordance with Section 11.6, all other Products associated with the Additional PV Capacity and Second Tier Storage Capacity; and (d) such other terms as the Parties mutually agree are advisable to fully implement the foregoing terms in clauses (a)-(c), including proportional reduction of Seller's Performance Security and reasonable and equitable parameters for the actions of the Scheduling Coordinator with respect to the respective portions of the Facility.

(r) Section 4.10(g) is replaced in its entirety with the following:

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(s) A new Sections 4.10(i) is added as follows:

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

(t) Section 11.6 is replaced in its entirety with the following:

**11.6 Limitation on Seller's Ability to Make or Agree to Certain Third-Party Sales of the Additional PV Capacity.** Neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Additional PV Capacity or Second Tier Storage Capacity to a third party(ies) other than Buyer prior to December 31, 2024, unless prior to selling, marketing or delivering any such Product, or entering into the agreement to sell, market or deliver any such Product, as applicable, to a third party(ies) other than Buyer, Seller or Seller's Affiliates first provide Buyer with a written offer to sell any such Product to Buyer and Buyer fails to accept such offer in writing within sixty (60) days after receipt thereof; *provided*, if Buyer rejects or fails to accept such offer, and Seller or Seller's Affiliate thereafter proposes to enter into one or more agreements on or before December 31, 2024 with a third party(ies) to sell any such Product [REDACTED], either (i) if the weighted average

proposed price with respect to such agreement(s) is lower than the price Seller previously offered to Buyer, Seller shall first offer to sell such Product to Buyer at such price and for a similar term, or (ii) an officer of Seller shall certify in writing to Buyer that the weighted average price with respect to such third party(ies)' agreement(s) was greater than or equal to the price previously offered to Buyer.

To the extent any Additional PV Capacity is actually placed into service, the Parties shall, within thirty (30) days thereafter, amend and restate this Agreement to reflect those changes including without limitation the description of the Facility on the Cover Sheet and in Exhibit A, and the diagram in Exhibit R.

(u) A new Section 13.5 is added as follows:

13.5 Community Benefits Funding. Seller shall, on or before October 6, 2022, pay to Buyer five hundred thousand dollars (\$500,000) for Buyer to use for community benefits as determined by Buyer in its sole discretion.

(v) The final paragraph of Section 4 of Exhibit B is replaced in its entirety by the following:

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 sixty (60) days for the Guaranteed Storage Commercial Operation Date, or sixty (60) days for the Guaranteed Full Commercial Operation Date, for any reason, including a Force Majeure Event. The cumulative extensions granted to the Guaranteed Storage 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 one hundred fifty (150) days for the Guaranteed Storage Commercial Operation Date, or one hundred fifty (150) days for the Guaranteed Full Commercial Operation Date regardless of reason. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

(w) Section II of Exhibit Q is replaced in its entirety by new Sections II, III and IV of Exhibit Q attached hereto as Attachment 2.

3. GFCOD Development Cure Period Claims. As of the Amendment Effective Date, all of the GFCOD Development Cure Period Claims are resolved by this Amendment. Seller acknowledges and agrees that no additional day-for-day extensions of the GFCOD will be granted with respect to any GFCOD Development Cure Period Claims identified in Attachment 1 occurring prior to the Amendment Effective Date. Seller represents and warrants that neither it nor any of its Affiliates are aware of any past or existing facts or circumstances that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GFCOD, other than as expressly excluded in Attachment 1.

4. Return of Surplus Portion of Development Security. Within ten (10) Business Days of the Amendment Effective Date, Buyer shall return to Seller the surplus portion of the Development Security currently held by Buyer for the Full Facility in the amount of \$5,580,000 (i.e., \$60/kw x

93MW). To the extent requested by Seller to effectuate the return to Seller of such surplus amount, Buyer shall promptly sign any commercially reasonable documents to the extent requested by Seller reducing the total amount of the Development Security held by Buyer as of the Amendment Effective Date by the amount of \$5,580,000.

5. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Amendment Effective Date, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein” or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

6. Miscellaneous.

- (a) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.
- (b) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.
- (c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- (e) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- (f) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

*[Signature Page Follows]*

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

**“SELLER:”**

**ARLINGTON ENERGY CENTER II, LLC**

By: \_\_\_\_\_

Printed Name:

Title:

**“BUYER:”**

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_

Printed Name:

Title:

**ATTACHMENT 1**

**GFCOD Development Cure Period Claims**

1. Seller’s inability to obtain sufficient equipment, materials or other resources to build or operate the Facility resulting in delays and/or inability to timely achieve the Full Commercial Operation Date arising from the decision of the U.S. Department of Commerce issued on March 28, 2022, to initiate an anti-circumvention investigation in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People’s Republic of China*, Petition filed February 8, 2022 by Auxin Solar, Inc. in four separate DOC dockets: A-570-979 Malaysia; Thailand; Cambodia; and Vietnam (the “**Auxin Investigation**”).

2. The delays described in that certain Notice of Force Majeure Event Pursuant to Section 10.3 of the PPA from Seller to Buyer, dated April 1, 2022, or in that certain Force Majeure Claim Assessment Form (Claim) submitted by Seller to Buyer, dated June 3, 2022.

This Attachment 1 and this Amendment do not address, nor does the term “GFCOD Development Cure Period Claims” include, any Seller Development Cure Period Claims pertaining to [REDACTED]

## ATTACHMENT 2

### II. FACILITY OPERATING RESTRICTIONS

- 1) Maximum energy throughput of [REDACTED] per Contract Year.
  - a) Beginning at Storage Commercial Operation, this cumulative annual energy throughput will be communicated by a tag in the Real Time SCADA Points List.
- 2) [REDACTED]
  - a) Beginning at Storage Commercial Operation, this annual average State of Charge will be communicated by a tag in the Real Time SCADA Points List.
- 3) Dispatch Communications Protocols and SCADA
  - a) Storage Facility Dispatch
    - i) Ancillary Services
      - (1) Ancillary Services dispatch will occur based on communications from CAISO to the Storage Facility Remote Intelligent Gateway (RIG).
    - ii) Energy
      - (1) Buyer's Scheduling Coordinator will provide Seller access to CAISO Automated Dispatch System (ADS) to obtain dispatch operating target (DOT) MW setpoint and instruction time.
  - b) Real-Time SCADA
    - i) The Real-Time SCADA points list, a representation of which is provided in Exhibit 1, will be provided from the Seller to the Buyer's Scheduling Coordinator via Remote Terminal Unit (RTU) connection.
    - ii) Seller will provide and maintain CAISO real time telemetry from the Storage Facility.

### III. STORAGE AND GENERATING FACILITY SCHEDULING AND NOTIFICATIONS

- 1) Storage Facility Scheduling
  - a) Buyer will be responsible for scheduling of the Storage Facility by delivering Charging Notices and Discharging Notices to the Seller in accordance with the Agreement, including Exhibit D.
- 2) Forecasting of the Generating System and the Storage System
  - a) Seller will provide to Buyer the (i) Annual Forecast of Energy and (ii) Monthly Forecast of Energy and Availability Capacity in accordance with Agreement Sections 4.3(a) and 4.3(b) by email.
  - b) Seller will provide to Buyer's Scheduling Coordinator the Day-Ahead Forecast in accordance with Agreement Sections 4.3(c) via email.
  - c) Seller will provide to Buyer's Scheduling Coordinator the Real-Time Forecasts in accordance with Agreement Sections 4.3(d) via submitting an outage template to the Buyer's Scheduling

Coordinator, a representation of which is included within Exhibit 2.

**IV. CONTACTS**

**Clean Power Alliance of Southern California (Buyer)**

**Tenaska Operations Desk (Buyer's Scheduling Coordinator)**

Functional Area	Title	Name	Phone Number	Email
Contract Mgt/Daily Operations	Asset Manager	Alexandra Caryotakis	(323) 640-7663	acaryotakis@cleanpoweralliance.org cc: EnergyContracts@cleanpoweralliance.org
Contract Mgt/Daily Operations	Director, Structured Contracts	John McNamara	(323) 640-7662	jmcnamara@cleanpoweralliance.org
Scheduling	Scheduling Coordinator RT Desk	Tenaska Ops Desk	(817) 462-1509	TenaskaComm@tnsk.com
Billing	PM, Settlements	Cody Walding	(713) 264-5378	settlements@cleanpoweralliance.org
Scheduled Outage and Maintenance	Scheduled Outage and Maintenance Outage Coordinator	Tenaska Outages		outage@tnsk.com
Scheduled Outage and Maintenance	PM, Resource Optimization	Sean Hernandez	(213) 595-7950	shernandez@cleanpoweralliance.org cc: Outage@cleanpoweralliance.org

**Arlington Energy Center II, LLC (Seller)**

Functional Area	Title	Name	Phone Number	Email
Settlements	Sr. Manager of Accounting	Melanie Powers	561-304-5731	NEER-Revenue-Team@nee.com Melanie.Powers@nee.com
Business Management Operations	Director, Business Management Operations	Emre Ergas	561-691-2866	Emre.Ergas@nee.com Cc: DL-NEXTERA-WEST-INTERNATIONAL-REGION@nee.com
Site	Site Manager	Josh Heveron	760-922-7823	Joshua.Heveron@nee.com
System Controls and Monitoring	24-hour operations center	Renewable Operations Control Center (ROCC)	866-375-3737	ROCC@nee.com Cc: NEER-SYSTEM-OPERATIONS@nee.com

**Exhibit 1: Representative Real-Time SCADA points list**

Device I/O (if applicable)	OrionLX - TAG Name	Point Index	Protocol	Object	Variation	Type	Engineering Units
	Remote Control	0	DNP	1	2	Binary Input	
	Curtailement Enable Feedback	1	DNP	1	2	Binary Input	
	AGC Control	2	DNP	1	2	Binary Input	
	Plant High Side Circuit Breaker 52T2	3	DNP	1	2	Binary Input	
	Feeder Circuit Breaker 52F5	4	DNP	1	2	Binary Input	
BESS PPC	BESS_CONTROLS_PLACE	5	DNP	1	2	Binary Input	
	Feeder Circuit Breaker 52F8	6	DNP	1	2	Binary Input	
	Feeder Circuit Breaker 52F9	7	DNP	1	2	Binary Input	
	AGC Curtailement Setpoint (Power Demand) Echo	0	DNP	30	1	Analog Input	MW
	High Operating Limit	1	DNP	30	1	Analog Input	MW
	Low Operating Limit	2	DNP	30	1	Analog Input	MW
	High Ramp Rate Limit	3	DNP	30	1	Analog Input	MW/Min
	Ramp Rate	4	DNP	30	1	Analog Input	MW/Min
	Real Power at POI	5	DNP	30	1	Analog Input	MW
	Reactive Power at POI	6	DNP	30	1	Analog Input	MVAR
MET 1	Wind Speed	7	DNP	30	1	Analog Input	m/s
MET 1	Wind Direction	8	DNP	30	1	Analog Input	Degrees
MET 1	Air Temperature	9	DNP	30	1	Analog Input	Celcius
MET 1	Module Surface Temperature	10	DNP	30	1	Analog Input	Celcius
MET 1	Barometric Pressure	11	DNP	30	1	Analog Input	mm Hg
MET 1	Relative Humidity	12	DNP	30	1	Analog Input	%
MET 1	Precipitation (Rain Rate)	13	DNP	30	1	Analog Input	mm/hr
MET 1	Global Horizontal Irradiance	14	DNP	30	1	Analog Input	W/m^2
MET 1	Plane of Array Irradiance	15	DNP	30	1	Analog Input	W/m^2
MET 2	Wind Speed	16	DNP	30	1	Analog Input	m/s
MET 2	Wind Direction	17	DNP	30	1	Analog Input	Degrees
MET 2	Air Temperature	18	DNP	30	1	Analog Input	Celcius
MET 2	Module Surface Temperature	19	DNP	30	1	Analog Input	Celcius
MET 2	Barometric Pressure	20	DNP	30	1	Analog Input	mm Hg
MET 2	Relative Humidity	21	DNP	30	1	Analog Input	%
MET 2	Precipitation (Rain Rate)	22	DNP	30	1	Analog Input	mm/hr
MET 2	Global Horizontal Irradiance	23	DNP	30	1	Analog Input	W/m^2
MET 2	Plane of Array Irradiance	24	DNP	30	1	Analog Input	W/m^2
BESS PPC	PLANT_HEARTBEAT	25	DNP	30	1	Analog Input	
BESS PPC	BESS_PLANT_STATUS	26	DNP	30	1	Analog Input	ENUM
BESS PPC	BESS_MW_FB	28	DNP	30	1	Analog Input	MW
BESS PPC	BESS_MVAR_FB	29	DNP	30	1	Analog Input	MVAR
BESS PPC	BESS_CHARGE_CAPABILITY	30	DNP	30	1	Analog Input	MW
BESS PPC	BESS_DISCHARGE_CAPABILITY	31	DNP	30	1	Analog Input	MW
BESS PPC	BESS_CAPACITY	32	DNP	30	1	Analog Input	MWh
BESS PPC	SERVICE_SOC	33	DNP	30	1	Analog Input	%
BESS PPC	BESS_SP	34	DNP	30	1	Analog Input	MW
BESS PPC	CAISO_DOT_BESS_SP_CURRENT	35	DNP	30	1	Analog Input	MW
BESS PPC	CAISO_DOT_BESS_SP_TARGET	36	DNP	30	1	Analog Input	MW
BESS PPC	CAISO_TARGET_TIME	37	DNP	30	1	Analog Input	SECONDS - EPOCH
BESS PPC	Cumulative Annual Energy Throughput MWh	38	DNP	30	1	Analog Input	MWh
BESS PPC	Annual Average State of Charge (%)	39	DNP	30	1	Analog Input	%
	AGC Curtailement Enable Request	0	DNP	12	1	Binary Output	
	BIAS	0	DNP	40	1	Analog Output	MW



## RENEWABLE POWER PURCHASE AGREEMENT

### COVER SHEET

**Seller:** Arlington Energy Center II, LLC

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

**Description of Facility:** A solar photovoltaic electric generating facility with a net nameplate capacity of 233 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 132 MW AC/528 MWh located near the City of Blythe within unincorporated Riverside County, California, as further described in Exhibit A.

**Guaranteed Interim Commercial Operation Date** has the meaning set forth in Exhibit B.

**Guaranteed Storage Commercial Operation Date** has the meaning set forth in Exhibit B.

**Guaranteed Full Commercial Operation Date** has the meaning set forth in Exhibit B.

**Milestones:**

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 Agreement	Complete
Financial Close	██████████
Expected Construction Start Date	██████████
Initial Synchronization	September 30, 2021
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	August 31, 2021

<b>Milestone</b>	<b>Expected Date for Completion</b>
<b>Expected Interim Commercial Operation Date</b>	December 31, 2021
<b>Expected Storage Commercial Operation Date</b>	August 1, 2022
<b>Expected Full Commercial Operation Date</b>	October 1, 2022

**Delivery Term:** Fifteen (15) Contract Years, as further defined in Section 1.1.

**Interim Facility - Expected Energy:** An amount of MWh calculated from the table below as the sum of the Expected Energy in each month constituting the Interim Facility Contract Period, as may be adjusted as described in Section 4.7.

<b>Month</b>	<b>Expected Energy (MWh)</b>
January	17,372
February	19,489
March	27,300
April	29,841
May	33,329
June	33,275
July	31,295
August	29,875
September	26,662
October	23,600
November	18,092
December	15,765

**Full Facility - Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
----------------------	------------------------------

1	718,220
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████

**Guaranteed Capacity:** 365 MW of total Facility capacity

**Guaranteed Storage Capacity:** 132 MW of Installed Storage Capacity at four (4) hours of continuous discharge

**Guaranteed Interim PV Capacity:** 100 MW of PV capacity

**Guaranteed Full PV Capacity:** 233 MW of PV capacity

**Guaranteed Efficiency Rate:**

<b>Contract Year</b>	<b>Guaranteed Storage Efficiency Rate</b>
1	██████
2	██████

3	████
4	████
5	████
6	████
7	████
8	████
9	████
10	████
11	████
12	████
13	████
14	████
15	████

**Contract Price**

The Renewable Rate shall be:

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

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 15	\$████/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
    - a) RA Guarantee Date: Interim Commercial Operation Date

**Scheduling Coordinator:** Buyer

**Security and Guarantor**

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

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

Guarantor: NextEra Energy Capital Holdings, Inc.

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**AMENDED AND RESTATED  
RENEWABLE POWER PURCHASE AGREEMENT**

This Amended and Restated Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of July 10, 2020 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

**RECITALS**

WHEREAS, the Parties entered into that certain Power Purchase and Sale Agreement dated as of July 1, 2019 (the “**Original PPA**”), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, on the terms and conditions set forth in the Original PPA, the Product (as defined in the Original PPA);

WHEREAS, the Parties desire to amend and restate the Original PPA in accordance with the terms of the transaction as set forth in this Agreement;

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

**ARTICLE 1  
DEFINITIONS**

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

“**Additional Guaranteed PV Capacity**” has the meaning set forth in Section 3.14.

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

“**Adjusted Facility Energy**” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Storage Facility Loss Factor.

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

**“After-Tax Basis”** means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the “Base Payment”), supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

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

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

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

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

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

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

**“Availability Notice”** means the portion of the Forecasted Product with respect to the Storage Facility.

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

**“Bankrupt”** means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or 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 Bid Curtailment”** means the occurrence of all of the following:

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

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Facility:

(i) not having submitted a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) having submitted an Energy Supply Bid and the MW subject to the reduction were not awarded a schedule in connection with such Energy Supply Bid; or

(iii) having submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Facility Energy that was not

generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.



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

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

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

**“Buyer Dispatched Test”** has the meaning in Section 4.9(c).

**“Buyer’s Indemnified Parties”** has the meaning set forth in Section 18.2.

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

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

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

**“CAISO Certification”** means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

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

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

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including

the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by FERC.

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

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

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

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

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

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

“**CEC**” means the California Energy Commission or its successor agency.

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

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

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

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

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

**“Charging Energy”** means the as-available Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

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

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

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

**“Commercial Operation Delay Damages”** means an amount equal to (a) for the Interim Commercial Operation Date, five hundred dollars (\$500) per day for each MW of Delayed Capacity, (b) for the Full Commercial Operation Date, one thousand dollars (\$1000) per day for each MW of Delayed Capacity, and (c) for the Storage Commercial Operation Date, one thousand dollars (\$1500) per day for each MW of Delayed Capacity.

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

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

**“Compliance Actions”** has the meaning set forth in Section 3.12.

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

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

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

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



limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

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

To the extent permitted by CAISO, Buyer shall use commercially reasonable efforts to deliver Charging Energy to the Storage Facility during such Curtailment Order.

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

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

**"Damage Payment"** means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Full Commercial Operation Date, in a dollar amount equal to the Development Security amount required hereunder. For avoidance of doubt, any Delay Damages paid by Seller to Buyer under Exhibit B shall not be subtracted from the Damage Payment amount.

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

**"Day-Ahead Market"** has the meaning set forth in the CAISO Tariff.

**"Day-Ahead Schedule"** has the meaning set forth in the CAISO Tariff.

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

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

**“Deficient Month”** has the meaning set forth in Section 4.10(e).

**“Delay Damages”** means Daily Delay Damages and Commercial Operation Delay Damages.

**“Delayed Capacity”** means the positive difference between (a) the Guaranteed Interim PV Capacity, the Guaranteed Storage Capacity, or the Guaranteed Full PV Capacity, as applicable, and (b) the current Installed PV Capacity at the time of the Guaranteed Interim Commercial Operation Date, Installed Storage Capacity at the time of the Guaranteed Storage Commercial Operation Date, and Installed PV Capacity at the time of the Guaranteed Full Commercial Operation Date, as applicable.

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

**“Delivery Term”** shall commence on the Interim Commercial Operation Date and continue through the period of Contract Years set forth on the Cover Sheet following the Full Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

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

**“Discharging Energy”** means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses and Station Use, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

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

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

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

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

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

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

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

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (a) delivery of PV Energy to the Delivery Point, and (b) delivery of Discharging Energy to the Delivery Point.

**“Eligible Intermittent Resource Protocol”** or **“EIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

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

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

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

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

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

**“Energy Supply Bid”** has the meaning set forth in the CAISO Tariff.



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

**“Exercise Period”** has the meaning set forth in Section 10.5(b)

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

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

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

“**Expected Energy**” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during the Interim Facility Contract Period and each Contract Year (assuming no Charging Energy or Discharging Energy in such Contract Year), which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Full PV Capacity to Installed PV Capacity, if applicable.

“**Expected FCDS Date**” means the date set forth in the Milestones Section of the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

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

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

“**Facility Energy**” means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter.

“**Facility Meter**” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the high voltage side of the main step up transformer and will be subject to adjustment to measure Facility Energy at the Delivery Point in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses.

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

“**Financial Close**” means Seller and/or one of its Affiliates on Seller’s behalf has obtained approval from its operating committee to commit capital sufficient for the full construction of the Facility and Seller has delivered to Buyer documentation reasonably satisfactory to Buyer evidencing the foregoing.

“**Fitch**” means Fitch Ratings Ltd., or its successor.

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

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

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

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

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

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

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

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

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

**“Full Facility”** means the 233 MW AC solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver photovoltaic Energy to the Delivery Point.

**“Future Environmental Attributes”** shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

**“Generating Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii)

Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to such avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

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

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

**“Green-e Certification”** or **“Green-e Certified”** means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard by Buyer after delivery by Seller of such Green Attributes to Buyer.

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

**“Green-e Tracking Attestation”** means that certain Green-e Energy Attestation Form, as described in the Green-e Energy National Standard.

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

“**Guaranteed Construction Start Date**” means the Expected Construction Start Date, as such date may be extended pursuant to Exhibit B.

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

“**Guaranteed Energy Production**” has the meaning set forth in Section 4.7(d).

“**Guaranteed Interim Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Guaranteed Full Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Guaranteed Storage Commercial Operation Date**” has the meaning set forth in Exhibit B.

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

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

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

“**Guaranteed Storage Capacity**” means the maximum dependable operating capability of the Storage Facility to discharge electric Energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“**Guarantor**” means, with respect to Seller, any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) has a Credit Rating of BBB- or better from S&P or Fitch, or a Credit Rating of Baa3 or better from Moody’s, (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer. If ratings by S&P, Moody’s and Fitch are not equivalent, the lowest rating shall apply.

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

“**Imbalance Energy**” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

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

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

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

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

**“Installed PV Capacity”** means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that achieves Interim Commercial Operation or Full Commercial Operation, as applicable, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

**“Installed Storage Capacity”** means the lesser of (a) P<sub>MAX</sub>, and (b) maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B.

**“Inter-SC Trade”** or **“IST”** has the meaning set forth in the CAISO Tariff.

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

**“Interconnection Capacity Limit”** means the maximum instantaneous amount of Energy that can be delivered to the Delivery Point, in the amount of 269 MW.

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

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

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

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

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

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

**“Interim Facility”** means the initial one hundred (100) MW AC portion of the Full Facility.

“**Interim Facility Contract Period**” means the period of time commencing on the Interim Commercial Operation Date and continuing until the occurrence of the Full Commercial Operation Date.

“**Interim Guaranteed Energy Production**” has the meaning set forth in Section 4.7(c).

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

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“**Joint Powers 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- from S&P or A3 from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

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

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

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

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

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

“**Master Data File**” has the meaning set forth in the CAISO Tariff.

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

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

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

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

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

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

“**NEER**” means NextEra Energy Resources, LLC.

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

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

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

“**Non-Buyer Dispatch**” means a dispatch by Seller pursuant to a Seller Initiated Test.

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

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

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

“**Original PPA**” has the meaning in the Recitals.

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

“**Performance Measurement Period**” means each two (2) full Contract Year period beginning on the Full Commercial Operation Date.

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

“**Permitted Transfer**” means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided* (i)(A) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (B) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility, and (ii) if Seller is not the surviving entity, the transferee (A) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (B) meets the Seller Security requirements;

(b) A Change of Control of Ultimate Parent;

(c) Any change of economic and voting rights triggered in Seller’s organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender;  
or

(e) A transfer of the Facility packaged with any of the following: (i) all or substantially all of the assets of NEER or Ultimate Parent; (ii) all or substantially all of NEER’s or Ultimate Parent’s renewable energy generation portfolio; or (iii) all or substantially all of NEER’s or Ultimate Parent’s solar generation and/or energy storage portfolio; provided, that in the case of each of (i), (ii) and (iii): (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller’s duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller Security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a qualified operator.

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

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; provided that if ratings by S&P, Moody’s and Fitch are not equivalent, the lowest rating shall apply; and

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

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect subsidiaries.

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

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

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

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

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

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

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

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

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource

consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

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

**“Portfolio Financing”** means any tax equity or debt transaction entered into by an Affiliate of Seller that is secured only by a Portfolio.

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

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

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

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

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

**“PV Energy”** means that portion of Energy that is delivered directly from the Generating Facility to the Delivery Point and is not Discharging Energy.

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

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

**“RA Guarantee Date”** means the date set forth in the deliverability Section of the Cover

Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

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

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

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

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

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

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

**“Remedial Action Plan”** has the meaning set forth in Section 2.6.

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

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

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

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

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

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that

the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

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

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

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

**“ROFR Offer”** has the meaning set forth in Section 10.5(a).

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

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

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

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

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

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

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

**“Seller Initiated Test”** has the meaning set forth in Section 4.9(c).

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

**“Settlement Amount”** means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed

its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

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

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

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

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

**"SOC"** or **"State of Charge"** means the level of charge of the Storage Facility relative to its maximum capacity.

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

**"Station Use"** means:

(a) The Energy produced or discharged by the Facility (and not otherwise included in the Efficiency Rate) that is used within the Facility to power information technology, telecommunications, lights, motors, temperature control systems, facility control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility's electric energy distribution system as losses.

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

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

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

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

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

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

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

“**Storage Facility Loss Factor**” shall be the greater of (i) the Guaranteed Efficiency Rate set forth on the Cover Sheet, or (ii) the percentage calculated by dividing Discharging Energy in the applicable month of the Delivery Term by Charging Energy in the same month of the Delivery Term.

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

“**Storage Facility Metering Points**” means the locations of the Storage Facility Meters shown on Exhibit R.

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

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

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

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

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

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

**“Test Energy”** means with respect to (1) the Interim Facility, Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid, and (b) ending upon the occurrence of the Interim Commercial Operation Date; and (2) the Full Facility, Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO from the Full Facility and (ii) the first date that the Transmission Provider informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO Grid for the Full Facility and (b) ending upon the occurrence of the Full Commercial Operation Date, as applicable.

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

**“Third Party Offer”** has the meaning set forth in Section 10.5(a).

**“Third Party Transaction”** has the meaning set forth in Section 10.4.

**“Total YTD Calculation Settlement Intervals”** has the meaning set forth in Exhibit C.

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

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

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

“**Ultimate Parent**” means NextEra Energy, 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 Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

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

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

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

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

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

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

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

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

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

## **ARTICLE 2 TERM; CONDITIONS PRECEDENT**

### **2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2 for the Interim Facility, Section 2.3 for the Storage Facility, and Section 2.4 for the Full Facility.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties,

obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

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

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

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

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

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Interim Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

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

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

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

(h) Seller has delivered the Performance Security for the Guaranteed Capacity of the Interim Facility to Buyer in accordance with Section 8.8; and

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

2.3 **Conditions Precedent to Storage Commercial Operation.** Seller shall achieve Storage Commercial Operation upon completion, to Buyer's reasonable satisfaction, of each of the

following conditions:

(a) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H for Storage Commercial Operation and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-2 setting forth the Installed Capacity on the Storage Commercial Operation Date;

(b) All applicable regulatory authorizations, approvals and permits for the operation of the Storage Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(c) Seller has obtained CAISO Certification for the Storage Facility;

(d) Seller has delivered the Performance Security for the Guaranteed Capacity of the Storage Facility to Buyer in accordance with Section 8.8;

(e) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Delay Damages; and

(f) Seller shall have achieved Interim Commercial Operation for Installed PV Capacity of not less than 100 MW, unless reduced in accordance with Section 5(a) of Exhibit B.

#### 2.4 **Additional Conditions Precedent to Full Commercial Operation.**

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

(b) All applicable regulatory authorizations, approvals and permits for the operation of the Full Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(c) Seller has obtained CAISO Certification for the Full Facility;

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

(e) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Full Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Full Facility within the WREGIS system, and shall reasonably have assisted Buyer to complete any other requirements to enable Buyer to use the Product toward fulfilling its RPS requirements;

(f) Seller has delivered the Performance Security for the Guaranteed Capacity of the Full Facility to Buyer in accordance with Section 8.8; and

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

2.5 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Full Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.6 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Interim Commercial Operation Date, Guaranteed Full Commercial Operation Date, or the Guaranteed Storage Commercial Operation Date, as applicable; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Interim Commercial Operation Date, Guaranteed Full Commercial Operation Date, and the Guaranteed Storage Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

### ARTICLE 3 PURCHASE AND SALE

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

submit the Product, and/or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

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

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of

further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. No less than thirty (30) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy and provide a forecast in accordance with Section 4.3(b). If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 and Section 2.4 are not applicable to the Parties' obligations under this Section 3.6.

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

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

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

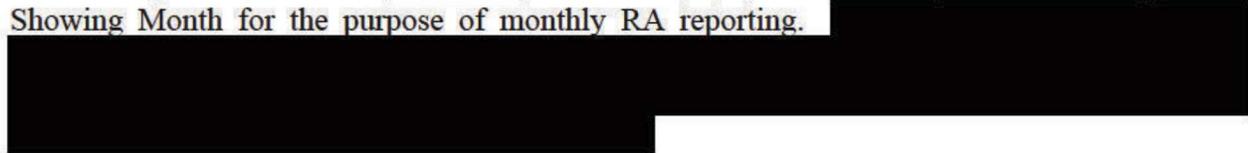
(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use all of the Capacity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

3.8 **Resource Adequacy Failure**.

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

[REDACTED] provided further, Seller will pursue Interim Deliverability Status in the event that Seller anticipates that it will not achieve FCDS by the Expected FCDS Date.

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the Guaranteed Capacity), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the lesser of (A) the Storage Rate and (B) the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("**CPM Price**"); *provided*, Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that the amount of Replacement RA shall not, in any given twelve (12) month period, exceed ten percent (10%) of the aggregate amount of Qualifying Capacity for such twelve (12) month period, and provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.



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

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term

“commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

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

3.12 **Compliance Expenditure Cap**. If a change in Laws occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity (“**Compliance Expenditure Cap**”).

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

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

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

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

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; provided that neither Party shall be obligated to agree to

any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

3.14 **Additional Guaranteed Capacity.** Notwithstanding anything to the contrary herein, Seller may elect to increase the amount of Guaranteed Full PV Capacity by up to thirty-six (36) additional MW AC from 233 MW AC (not to exceed 269 MW AC) (such additional capacity, “**Additional Guaranteed PV Capacity**”) at any time between the Effective Date and December 31, 2020, by providing not less than sixty (60) days’ prior Notice thereof to Buyer, which Additional Guaranteed Capacity Buyer shall acknowledge acceptance of in a writing to Seller, and the Parties shall, within thirty (30) days thereafter, amend and restate this Agreement to include the changes specified in Exhibit T solely to account for the actual MWh of such Additional Guaranteed Capacity.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1 **Delivery.**

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

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

### 4.2 **Title and Risk of Loss.**

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

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

4.3 **Forecasting.** Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format

reasonably acceptable to Buyer (or Buyer's designee).

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

(b) Monthly Forecast of Energy and Available Capacity. No less than thirty (30) days before the first day on which Test Energy is expected to be available from the Facility, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) Energy produced by the Generating Facility, (iii) available Effective Storage Capacity, and (iv) available Storage Capability (items (i) - (iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable ("**Monthly Forecast**").

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

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product ("**Real-Time Forecast**") that directly result from a Forced Facility Outage or Force Majeure, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy produced by the Generating Facility shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage

or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

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

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

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

#### 4.4 Dispatch Down/Curtailment.

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

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

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a

Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

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

#### 4.5 Energy Management.

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically; *provided*, Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing the Facility with an updated Charging Notice.

(c) Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice, (b) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), or (c) charges the Storage Facility in connection with maintenance of the Storage Facility or to achieve any Operating

Restrictions (which charging shall not be a violation of the first sentence of this Section 4.5(c)), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice.

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

(f) If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder, it shall be a breach by Seller and Seller shall hold Buyer harmless from and indemnify Buyer against all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then it shall be an Event of Default under Article 11.

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

4.6 **Reduction in Energy Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.** Seller will provide to Buyer written schedules for Planned Outages for the Interim Facility Contract Period and for each Contract Year no later than thirty (30) days prior to the first day of the Interim Facility Contract Period and applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to change any Planned Outages within the current Contract Year if such changes are required to comply with Prudent Operating Practices, or by providing at least sixty (60) days' notice, in both cases subject to consent by Buyer not to be unreasonably withheld, conditioned or delayed. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Notwithstanding anything in this Agreement to the contrary, no outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.

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

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

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

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

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

#### 4.7 **Guaranteed Energy Production.**

(a) During the Delivery Term, Seller shall deliver to Buyer an amount of Adjusted Facility Energy equal to no less than (i) the Interim Guaranteed Energy Production (as defined below) in the Interim Performance Measurement Period and (ii) the Guaranteed Energy Production in each Performance Measurement Period.

(b) Seller shall be excused from achieving the Interim Guaranteed Energy Production during the Interim Performance Measurement Period and the Guaranteed Energy

Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Transmission System Outage, Buyer Default or other Buyer failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Interim Guaranteed Energy Production or the Guaranteed Energy Production, as applicable, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (1) any Deemed Delivered Energy plus (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“**Lost Output**”) plus (3) the amount of undelivered Energy during such Interim Performance Measurement Period or Performance Measurement Period, as applicable, with respect to which Seller has already (A) paid liquidated damages or (B) provided Replacement Product in accordance with this Section 4.7(b) and Exhibit G. If Seller fails to achieve the (i) Interim Guaranteed Energy Production during the Interim Performance Measurement Period or (ii) the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Interim Guaranteed Energy Production or the Guaranteed Energy Production during such Contract Years, (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

(c) “**Interim Guaranteed Energy Production**” means an amount of Adjusted Facility Energy, as measured in MWh, equal to seventy (70%) of the total aggregate amount of Expected Energy for the Interim Facility Contract Period as such Expected Energy is shown on the Cover Sheet. The amount may be adjusted, upward or downward, to the extent that the Interim Facility Contract Period includes a partial month. For example, if the Interim Facility Contract Period begins on January 1, 2022 and ends on September 15, 2022, the Interim Guaranteed Energy Production shall be the sum of the Expected Energy for January through August, and 15/30ths of the Expected Energy for September.

(d) “**Guaranteed Energy Production**” means an amount of Adjusted Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the Performance Measurement Period.

#### 4.8 **Storage Facility Availability; Ancillary Services.**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [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 Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that

is less than the Guaranteed Efficiency Rate is established in the definitions of the Storage Facility Loss Factor and Adjusted Facility Energy as applied in Section (a) of Exhibit C.

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

(d) Seller shall operate and maintain the Storage Facility throughout the Contract Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Operating Restrictions and the Storage Facility's CAISO Certification associated with the Installed Storage Capacity. To the extent the Storage Facility is unable to provide Ancillary Services for any reason not excused hereunder during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval, then as exclusive remedies, the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%).

#### 4.9 Storage Facility Testing.

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

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

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

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

(c) Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). Any other test of the Facility (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that

Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “**Seller Initiated Test**”.

(i) For any Seller Initiated Test other than a Storage Capacity Test, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) Buyer shall be responsible for all Charging Energy and shall be entitled to all CAISO revenues associated with a Buyer Dispatched Test. Seller shall be responsible for all Charging Energy at the Renewable Rate [REDACTED] and shall be entitled to all CAISO revenues associated with a Seller Initiated Test, and all Green Attributes associated therewith shall be for Buyer’s account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the Facility Energy during such Seller Initiated Test, [REDACTED]

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller, which shall be provided by Seller to Buyer in writing. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Project or Site solely to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access.

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

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

(a) Prior to the Interim Commercial Operation Date, Seller shall register the Interim Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the

WREGIS Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

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

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

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

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

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

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

4.11 **Financial Statements.** If requested by Buyer, and not publicly available on Ultimate Parent's website, Seller shall deliver within one hundred twenty (120) days following the end of each fiscal year of Ultimate Parent: (i) a copy of Ultimate Parent's annual report or 10K report, and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Ultimate Parent's quarterly report containing unaudited consolidated financial statements for such fiscal quarter, in each case unless otherwise publicly available. If any such statements shall not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements.

## **ARTICLE 5 TAXES**

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

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

## **ARTICLE 6 MAINTENANCE OF THE FACILITY**

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

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

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

## **ARTICLE 7 METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. Seller shall separately meter all Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

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

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

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

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid

is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon Seller's delivery of the Performance Security for Interim Commercial Operation, Buyer shall return the Guaranteed Capacity portion of the Development Security for Interim Commercial Operation to Seller, less the amounts drawn in accordance with this Agreement. Upon Seller's delivery of the Performance Security for Storage Commercial Operation, Buyer shall return the Guaranteed Capacity portion of the Development Security for Storage Commercial Operation to Seller, less the amounts drawn in accordance with this Agreement. Upon the earlier of (i) Seller's delivery of the Performance Security for Full Commercial Operation, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the remaining Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security (i) for the Guaranteed Capacity for Interim Commercial Operation to Buyer on or before the Interim Commercial Operation Date, (ii) for the Guaranteed Storage Capacity for Storage Commercial Operation to Buyer on or before the Storage Commercial Operation Date, and (iii) for the Guaranteed Capacity for Full Commercial Operation to Buyer on or before the Full Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting);

Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

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

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

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

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

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

[Redacted]

**ARTICLE 9  
NOTICES**

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

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

## **ARTICLE 10 FORCE MAJEURE**

### **10.1 Definition.**

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

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

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions or changes in Law that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or

operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

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

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

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

(a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal one hundred eighty (180) days for the Guaranteed Interim Commercial Operation Date, one hundred eighty (180) days for the Guaranteed Storage Commercial Operation Date, or one hundred eighty (180) days for the Guaranteed Full Commercial Operation Date, and Seller has demonstrated to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions, then Seller may terminate this Agreement upon written Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

(b) If a Force Majeure Event has occurred after the Full Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the either Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event; provided that, in the case of Seller as the Party electing to terminate this Agreement, for a period of two (2) years from the date of the termination of this Agreement, Seller shall not, and shall cause its Affiliates and any successors or assign to not, following such termination directly or indirectly enter into any agreement or consummate any transaction relating to the sale of Facility Energy with any Person other than Buyer (a “**Third Party Transaction**”) except in compliance with the terms and conditions of Section 10.5. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b) and this Section 10.4, and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

#### 10.5 **Right of First Refusal.**

(a) Following a termination by Seller under Section 10.4, if Seller receives a bona fide written offer for a Third Party Transaction that Seller desires to accept (each, a “**Third Party Offer**”), Seller shall immediately notify Buyer in writing (the “**Offer Notice**”) of, subject to any confidentiality obligations that may apply to Seller, the identity of all proposed parties to such Third Party Transaction and the material financial and other terms and conditions of such Third Party Offer (the “**Material Terms**”). Each Offer Notice shall constitute an offer by Seller to enter into an agreement with Buyer on the same Material Terms of such Third Party Offer (the “**ROFR Offer**”).

(b) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the Offer Notice (the “**Exercise Period**”), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent containing the Material Terms and any standard and customary conditions applicable to a transaction of this nature, executed by Buyer; provided, however, that Buyer is not required to accept any non-financial terms or conditions contained in any Material Terms that cannot be fulfilled by Buyer as readily as by any other Person (e.g., an agreement conditioned upon the services of a particular individual or the supply of goods or services exclusively under the control of such third party offeror).

(c) If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 10.5, at any time following the expiration of the Exercise Period, Seller may consummate the Third Party Transaction with the counterparty identified in the applicable Offer Notice, on Material Terms that are the same or more favorable to Seller as the Material Terms set forth in the Offer Notice. If such Third Party Transaction is not consummated, the terms and conditions of this Section 10.5 will again apply and Seller shall not enter into any Third Party Transaction without affording Buyer the right of first refusal on the terms and conditions of this Section 10.5.

**ARTICLE 11**  
**DEFAULTS; REMEDIES; TERMINATION**

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

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

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

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

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

(iv) such Party becomes Bankrupt;

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

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

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

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

(ii) the failure by Seller to achieve (A) Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date, (B) Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date, or (C) Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date, except as each date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

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

(iv) if, in any Contract Year, the Annual Storage Capacity Availability multiplied by the Effective Storage Capacity of the applicable period is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

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

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or Fitch or A3 by Moody's, provided that if ratings by S&P, Moody's and Fitch are not equivalent, the lowest rating shall apply;

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in

no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit; or

**11.2 Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Full Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

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

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

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

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

(i) If Seller is the Defaulting Party, then in the event of an Early Termination Date occurring before the Interim Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. In the event of an Early Termination Date occurring after the Interim

Commercial Operation Date but before the Storage Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the Development Security amount for the Storage Facility as defined in the Cover Sheet and any interest accrued thereon. In the event of an Early Termination Date occurring after the Interim Commercial Operation Date but before the Full Commercial Operation Date, the Damage Payment shall be owed to Buyer and shall be equal to the Development Security amount for the portion of the Guaranteed Full PV Capacity that has not achieved Full Commercial Operation and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit the amounts held as Development Security in connection with the Damage Payment for an Early Termination prior to the Interim Commercial Operation Date, the Storage Commercial Operation Date, or the Full Commercial Operation Date, as the case may be, and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer up to the amount of the Damage Payment will be immediately due and payable by Seller to Buyer.

There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller's assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

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

11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Interim Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

(a) Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

(b) Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

11.8 **Mitigation.** Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

## **ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE

RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

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

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

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed

of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

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

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

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

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by

way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

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

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

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

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

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

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

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

## **ARTICLE 14 ASSIGNMENT**

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

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in substantially the form attached as Exhibit S (“Collateral Assignment Agreement”).

14.3 **Permitted Assignment by Seller.**

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

(i) the assignee is a Permitted Transferee;

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

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

(b) Notwithstanding anything to the contrary in Sections 14.1 and 14.3(a), Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to (1) NextEra Energy Operating Partners, LP or (2) NextEra Energy Partners, LP; if, and only if:

(i) (x) A wholly-owned indirect subsidiary of Ultimate Parent or NextEra Energy Resources, LLC or a Permitted Transferee under clause (ii) of the definition continues to operate the Facility and (y) there is no material adverse effect on the ability of Seller’s Guarantor to perform under the Performance Security;

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

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

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

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by

Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("**Buyer Assignee**") at any time upon not less than fifteen (15) Business Days' notice by delivering a written notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as **Exhibit U** ("**Assignment Agreement**"), provided that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to or greater than Baa3 from Moody's and BBB- from S&P, and if ratings by S&P and Moody's are not equivalent, the lower rating shall apply. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.5; *provided*, (a) Seller shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Seller or its financing parties, and [REDACTED]

14.6 **Permitted Transfer by Seller.** Seller may make a Permitted Transfer, without the prior written consent of Buyer, provided that Seller gives at least thirty (30) days' prior written notice to Buyer.

## ARTICLE 15 DISPUTE RESOLUTION

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

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

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

## **ARTICLE 16 INDEMNIFICATION**

### 16.1 **Indemnification.**

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

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

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

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the 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, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion

of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE 17 INSURANCE**

### **17.1 Insurance.**

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

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

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

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

(e) Builder's All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Interim Facility and the Full Facility prior to the Full Commercial Operation Date, builder's all-risk insurance covering the Facility during such construction periods.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) commercial general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried

pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and self-insure in accordance with the terms and conditions above. With respect to the required general liability, umbrella or excess liability and business automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## ARTICLE 18 CONFIDENTIAL INFORMATION

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

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent

system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

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

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

18.3 **Irreparable Injury; Remedies.** Except as provided in Section 18.2, Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Further Permitted Disclosure.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees

in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

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

## ARTICLE 19 MISCELLANEOUS

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

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

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

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

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

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

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

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

19.9 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

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

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

19.12 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this

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

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

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

ARLINGTON ENERGY CENTER II, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### FACILITY DESCRIPTION

**Site Name:** Arlington Energy Center II

**Site includes all or some of the following APNs:** 812-130-009, 812-130-012, 812-120-002,

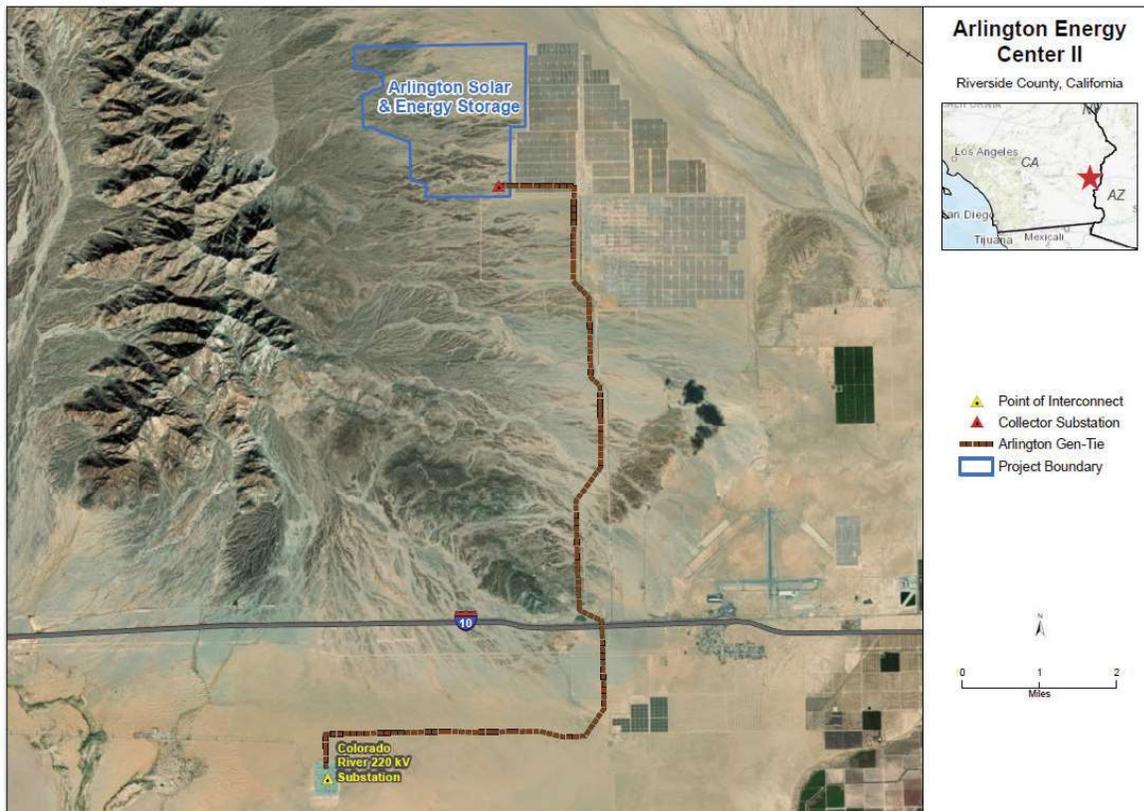
**County:** Riverside, CA

**Zip Code:** 92225

**Latitude and Longitude:** 33.6552; -114.7503

**Facility Description:** A solar photovoltaic electric generating facility with a net nameplate capacity of 233 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 132 MW AC / 528 MWh located near the City of Blythe within unincorporated Riverside County, California. Seller may install additional inverter capacity to account for production and delivery losses.

#### Site Diagram



**Delivery Point:** PNode

**Facility Meter:** See Exhibit R

**Storage Facility Meter Locations:** See Exhibit R

**P-node:** To be established prior to the Interim Commercial Operation Date at the Colorado River Substation 220kV bus. Seller shall promptly notify Buyer following the establishment of the PNode.

**Participating Transmission Owner:** Southern California Edison

**Additional Information:** None

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

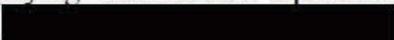
#### 1. Construction of the Facility.

- a. “**Construction Start**” will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all primary contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “**Construction Start Date**.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day for which Construction Start has not begun after the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. If Seller achieves Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller applicable to the Interim Facility prior to such date. If Seller achieves Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller applicable to the Interim Facility prior to such date. If Seller achieves Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date (not including any extensions to such date resulting from Seller’s payment of Commercial Operation Delay Damages, but as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

2. **Commercial Operation of the Facility.**

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

i. Seller shall cause the Interim Commercial Operation for the Facility to occur by the Expected Interim Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the **“Guaranteed Interim Commercial Operation Date”**). Seller shall notify Buyer that it intends to achieve Interim Commercial Operation at least sixty (60) days before the anticipated Interim Commercial Operation Date.

ii. If Seller does not achieve Interim Commercial Operation by the Guaranteed Interim Commercial Operation Date, Seller may extend the Guaranteed Interim Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day 

  
On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

b. **“Storage Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.3 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“Storage COD Certificate”**).

i. Seller shall cause the Storage Commercial Operation for the Facility to occur by the Expected Storage Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the **“Guaranteed Storage Commercial Operation Date”**). Seller shall notify Buyer that it intends to achieve Storage Commercial Operation at least sixty (60) days before the anticipated Storage Commercial Operation Date.

ii. If Seller does not achieve Storage Commercial Operation by the Guaranteed Storage Commercial Operation Date, Seller may extend the Guaranteed Storage Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Storage Commercial Operation Date until the Storage Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Storage Commercial Operation Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month

c. **“Full Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.4 of the Agreement and

provided Notice to Buyer substantially in the form of Exhibit H (the “Full COD Certificate”).

- i. Seller shall cause the Full Commercial Operation for the Facility to occur by the Expected Full Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “Guaranteed Full Commercial Operation Date”). Seller shall notify Buyer that it intends to achieve Full Commercial Operation at least sixty (60) days before the anticipated Full Commercial Operation Date.
- ii. If Seller does not achieve Full Commercial Operation by the Guaranteed Full Commercial Operation Date, Seller may extend the Guaranteed Full Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Full Commercial Operation Date until the Full Commercial Operation Date, not to exceed a total of sixty (60) days of extensions by such payment of Full Commercial Operation Delay Damages. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.



3. **Termination for Failure to Achieve Full Commercial Operation**. If the Interim Facility has not achieved Interim Commercial Operation on or before the Guaranteed Interim Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2. If the Facility has not achieved Storage Commercial Operation on or before the Guaranteed Storage Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2 for the Storage Facility, and the other applicable provisions of this Agreement shall be adjusted accordingly. If the Facility has not achieved Full Commercial Operation on or before the Guaranteed Full Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2 for the portion of Capacity that has not achieved Full Commercial Operation, and the other applicable provisions of this Agreement shall be adjusted accordingly.
4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date, the Guaranteed Interim Commercial Operation Date, the Guaranteed Storage Commercial Operation Date, and the Guaranteed Full Commercial Operation Date shall, subject to notice and documentation requirements set forth below, each be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances

are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

- a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- b. a Force Majeure Event occurs; or
- c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Interim Commercial Operation Date, the Guaranteed Storage Commercial Operation Date, or the Guaranteed Full Commercial Operation date, as applicable, despite the exercise of diligent and commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Interim Commercial Operation Date, the Guaranteed Storage Commercial Operation Date, or the Guaranteed Full Commercial Operation Date, as applicable.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days for the Guaranteed Interim Commercial Operation Date, one hundred eighty (180) days for the Guaranteed Storage Commercial Operation Date, or one hundred eighty (180) days for the Guaranteed Full Commercial Operation Date, for any reason, including a Force Majeure Event;

The cumulative extensions granted by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days for the Guaranteed Storage Commercial Operation Date, or two hundred seventy (270) days for the Guaranteed Full Commercial Operation Date regardless of reason. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

**5. Failure to Reach Guaranteed Interim/Full PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed Interim/Full PV Capacity.* If, at Interim Commercial Operation or Full Commercial Operation, as applicable, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Interim PV Capacity, or the Guaranteed Full PV Capacity, Seller shall have ninety (90) days after the Interim Commercial

Operation Date or the Full Commercial Operation Date, as applicable, to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed Interim PV Capacity, or the Guaranteed Full PV Capacity, as applicable, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed Interim PV Capacity or Guaranteed Full PV Capacity, as applicable, by such date, Seller shall pay “**PV Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Interim PV Capacity or Guaranteed Full PV Capacity, as applicable, exceeds the Installed PV Capacity, and the applicable portions of the Agreement shall be adjusted accordingly consistent with the Installed PV Capacity.

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

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

**EXHIBIT C**  
**COMPENSATION**

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

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

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

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

(d) Monthly Capacity Payment.

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

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

Storage Capacity Availability Payment True-Up Amount pursuant to subsection (d)(ii)(A) above, and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

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

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

**“Capacity Availability Factor”** means:

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

$$\text{Capacity Availability Factor} = 0$$

- (B) If (i) the YTD Annual Capacity Availability multiplied by the Effective Storage Capacity is less than (ii) the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

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

- (C) If (i) the YTD Annual Capacity Availability multiplied by the Effective Storage Capacity is less than (ii) seventy percent (70%) of the Installed Storage Capacity, then:

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

*provided that*, if the result of any of the calculations in clauses (A) through (C) above is greater than 1.0, then the Capacity Availability Factor shall be deemed to be equal to 1.0.

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

(f) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits.

Exhibit C - 2

Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

#### Scheduling Coordinator Responsibilities.

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

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

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

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

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

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

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

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

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

**EXHIBIT E**  
**PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

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

**EXHIBIT F-1**

**MONTHLY EXPECTED AVAILABLE GENERATING FACILITY CAPACITY**

[MW Per Hour] – [Insert Month]

	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 F-2**

**MONTHLY EXPECTED GENERATING FACILITY ENERGY**

[MWh Per Hour] – [Insert Month]

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

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

**EXHIBIT F-4**

**MONTHLY AVAILABLE STORAGE CAPABILITY**

[MWh Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
Day 1																									
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Day 5																									
[insert additional rows for each day in the month]																									
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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:

$$[(A - B) * (C - D)]$$

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

“**Adjusted Energy Production**” shall mean the sum of the following: Adjusted 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 during the Performance Measurement Period for which the Replacement Green Attributes are being provided, that are provided by Seller to Buyer as Replacement Product, in an amount not to exceed A - E, where E = Facility Energy + Deemed Delivered Energy + Lost Output.

“**Replacement Product**” means (a) Replacement Energy, and (b) Replacement Green Attributes.

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

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

**EXHIBIT H**

**FORM OF INTERIM, STORAGE, AND FULL COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“**Certification**”) of [**Interim**][**Storage**][**Full**] Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of \_\_\_\_\_ [DATE]\_\_\_\_\_, Engineer hereby certifies and represents to Buyer the following:

1. The [**Interim**] [**Storage**] [**Full**] Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the [**Guaranteed Interim PV Capacity**] [**Guaranteed Full PV Capacity**].
3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the [**Guaranteed Storage Capacity**].
4. Authorization to parallel the [**Interim**] Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on \_\_\_ [DATE]\_\_\_\_.
5. The Transmission Provider has provided documentation supporting full unrestricted release for [**Interim**][**Storage**][**Full**] Commercial Operation by [Name of Transmission Provider as appropriate] on \_\_\_\_\_ [DATE]\_\_\_\_.
6. The CAISO has provided notification supporting [**Interim**][**Storage**][**Full**] Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_\_ [DATE]\_\_\_\_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is \_\_ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of \_\_ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is \_\_ MW AC and shall be the “**Installed Capacity**”;  
and

(d) The Commercial Operation Storage Capacity Test demonstrated an Efficiency Rate of \_\_%, (ii) a Battery Charging Factor of \_\_%, and (iii) a Battery Discharging Factor of \_\_%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification (“**Certification**”) of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of \_\_ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) The Storage Capacity Test demonstrated (i) an Efficiency Rate of \_\_%, (ii) a Battery Charging Factor of \_\_%, and (iii) a Battery Discharging Factor of \_\_%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”);  
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [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 NextEra Energy Capital Holdings, Inc. on behalf of [name of NextEra project company], 700 Universe Blvd, Juno Beach, Florida 33408 (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5<sup>th</sup> Street, 35<sup>th</sup> Floor, Los Angeles, CA 90013, 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 officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Request.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the "ISP"). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [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 officer of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of \_\_\_\_\_ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

\_\_\_\_\_  
Name and Title of Authorized Representative

Date\_\_\_\_\_

## EXHIBIT L

### FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [\_\_\_\_\_] (the “**Effective Date**”) by and between NextEra Energy Capital Holdings, Inc., a Delaware corporation (“**Guarantor**”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

#### **Recitals**

- A. Buyer and [SELLER ENTITY], a Delaware limited liability company (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [\_\_\_\_], 2020.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### **Agreement**

**1. Guaranty.** For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

**2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to

the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

**3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment, restitution, or reimbursement.

**4. Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

**5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

**6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and

other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor's parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at   
Attn:

If delivered to Guarantor, to it at   
Attn:

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, except to the extent that the PPA is assigned in accordance with the terms

thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

**10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A FEDERAL COURT OF THE STATE OF CALIFORNIA, OR, TO THE EXTENT SUCH FEDERAL COURT LACKS SUBJECT MATTER JURISDICTION, IN A STATE COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

*[Signature on next page]*

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

NEXTERA ENERGY CAPITAL HOLDINGS,  
INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

BUYER:

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

## EXHIBIT M

### FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section [3.6] [3.8(b)] of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information<sup>1</sup>**

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		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT N**

**NOTICES**

<p><b>ARLINGTON ENERGY CENTER II, LLC,</b>  <b>a Delaware limited liability company</b>  <b>("Seller")</b></p>	<p><b>CLEAN POWER ALLIANCE OF</b>  <b>SOUTHERN CALIFORNIA, a California</b>  <b>joint powers authority ("Buyer")</b></p>
<p><b>All Notices:</b></p> <p>Street: 700 Universe Blvd  City: Juno Beach, FL 33408  Attn: Business Management</p> <p>Phone: (561) 691-3062  Facsimile: (561) 304-5161  Email: dan.couch@nee.com</p>	<p><b>All Notices:</b></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><b>Reference Numbers:</b></p> <p>Duns:  Federal Tax ID Number:</p>	<p><b>Reference Numbers:</b></p> <p>Duns:  Federal Tax ID Number:</p>
<p><b>Invoices:</b></p> <p>Attn: Business Management  Phone: (561) 691-3062  Facsimile: (561) 304-5161  E-mail: dan.couch@nee.com</p>	<p><b>Invoices:</b></p> <p>Attn: Director, Power Planning &amp; Procurement  Phone: (213) 269-5870  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Scheduling:</b></p> <p>Attn:  Phone:  Facsimile:  Email:</p>	<p><b>Scheduling:</b></p> <p>Attn:  Phone:  Email:</p>
<p><b>Confirmations:</b></p> <p>Attn:  Phone:  Facsimile:  Email:</p>	<p><b>Confirmations:</b></p> <p>Attn: Director, Power Planning &amp; Procurement  Phone: (213) 269-5870  Email: nkeefe@cleanpoweralliance.org</p>
<p><b>Payments:</b></p> <p>Attn: Business Management  Phone: (561) 691-3062  Facsimile: (561) 304-5161  E-mail: dan.couch@nee.com</p>	<p><b>Payments:</b></p> <p>Attn: Director, Power Planning &amp; Procurement  Phone: (213) 269-5870  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Wire Transfer:</b> Seller shall provide to Buyer the information below at least 60 days prior to the Interim Commercial Operation Date.  BNK: [TBD]  ABA: [TBD]  ACCT: [TBD]</p>	<p><b>Wire Transfer:</b>  BNK: River City Bank  ABA: 121-133-416  ACCT: [REDACTED]</p>

<b>ARLINGTON ENERGY CENTER II, LLC,</b> <b>a Delaware limited liability company</b> <b>("Seller")</b>	<b>CLEAN POWER ALLIANCE OF</b> <b>SOUTHERN CALIFORNIA, a California</b> <b>joint powers authority ("Buyer")</b>
<b>Emergency Contact:</b> Attn: Renewable Operations Control Center (ROCC) (24-hour coverage): Phone: (561) 694-3636 Toll Free: (866) 375-3737 Fax: (561) 694-3615	

## EXHIBIT O

### STORAGE CAPACITY TESTS

#### Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

#### Capacity Test Procedures

##### PART I. GENERAL.

- (1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "CT". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- (2) Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer's RTU and Seller's EMS interface and the ability to record SCADA data.
- (3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

## PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. For the avoidance of doubt, the Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.
- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
  - (2) Electrical input at maximum charging level at the Facility Meter (MW), as sustained until the Stored Energy Level reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Facility Meter (MW), as sustained until the Stored Energy Level reaches 100%, not to exceed five (5) hours of total charging time.
- B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:
- (1) Time;
  - (2) Net electrical energy output to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);
  - (3) Net electrical energy input from the Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter);

- (4) Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
  - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
  - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
  - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
  - (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
  - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
  - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
  - (6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% Stored Energy Level to 100% Stored Energy Level;
  - (7) Amount of Discharging Energy, registered at the Storage Facility Meter, to go from 100% Stored Energy Level to 0% Stored Energy Level.
- E. Test Conditions.
- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
  - (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.

- (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
  - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
  - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:

- (1) The total amount of Facility Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity and Efficiency Rate Test**

• Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have lapsed since the Storage Facility commenced charging.
- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter ("**Energy In**").
- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.

- (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor.
- (8) Record and store the AC Energy discharged (in MWh) as measured at the Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy as measured at the Storage Facility Meter for determining the Effective Storage Capacity. “**Energy Out**” means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter from the commencement of discharging pursuant to Section III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Section III.A.6 or Section III.A.9, as applicable.

- **Test Results**

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter.
- (2) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by four (4) hours.

**B. AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility’s maximum discharging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Storage Facility active power level at the Facility Meter.
  - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 100 MW for ten (10) minutes.
  - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Facility will be in the on-line state and at a commanded active power level of 0 MW.

**C. AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's full charging level within 1 second.
- System starting state: The Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Storage Facility active power level at the Facility Meter.
  - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of -100 MW for ten (10) minutes.
  - (3) Record and store the Storage Facility active power response (in seconds).
- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

**D. Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Storage Facility reactive power level at the Facility Meter.
  - (2) Command the Storage Facility to follow 50 MVAR for ten (10) minutes.
  - (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**E. Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Storage Facility reactive power level at the Facility Meter.

- (2) Command the Storage Facility to follow -50 MVAR for ten (10) minutes.
- (3) Record and store the Storage Facility reactive power response.

System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**EXHIBIT P**

**ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION**

(a) Commencing on the Storage Commercial Operation Date and for each applicable month of the Delivery Term Buyer shall calculate the year-to-date (YTD) “**Annual Storage Capacity Availability**” using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

“**Calculation Interval**” or “**C.I.**” means each successive five-minute interval.

“**Unavailable Calculation Intervals**” means the sum of year-to-date unavailable Calculation Intervals, where for each Calculation Interval:

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

A = the lesser of (i) available PMAX and (ii) available Effective Storage Capacity

“**Storage Capability**” means the sum of (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging charging capability (in MWh) in the applicable Calculation Interval x the Battery Discharging Factor).

During the period from the Storage Commercial Operation Date until the Full Commercial Operation Date, in all Calculation Intervals between 4:00 p.m. and 9:00 p.m., the Storage Capability shall be modified to be the lesser of the above definition and the sum of the PV Energy and Charging Energy produced by the Facility prior to 4:00 p.m. in such day multiplied by the Efficiency Rate.

“**Total YTD Calculation Intervals**” means the total Calculation Intervals year-to-date in

the applicable calendar year (commencing upon the Commercial Operation Date).

(b) The available P<sub>MAX</sub>, Effective Storage Capacity and Storage Capability in the above calculations shall be the lower of the amounts reported by (i) Seller's real-time EMS data feed to Buyer for the Storage Facility, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.10), provided that any such revised Availability Notice indicating the Storage Facility is available for the applicable Calculation Interval is submitted by Seller (a) by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, or (b) at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market. Except as otherwise provided in this Agreement, the calculations of available P<sub>MAX</sub> and Storage Capability in the foregoing sentence shall be based solely on the availability of the Storage Facility to charge or discharge Energy, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond.) For avoidance of doubt, any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS signals shall be deemed an Unavailable Calculation Interval.

(c) If the total rated power of the Storage Facility inverters is less than the Installed Storage Capacity divided by 0.95 charging and divided by 0.95 discharging expressed in kVA at 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval.

## EXHIBIT Q

### OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

#### I. STORAGE FACILITY OPERATING RESTRICTIONS

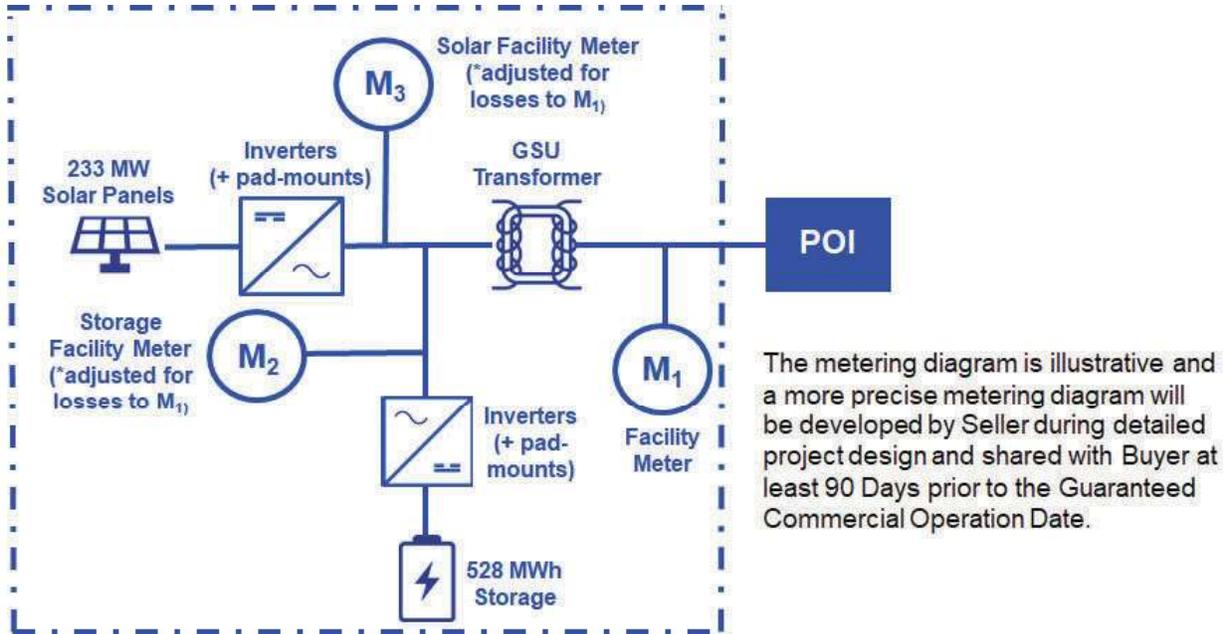
<b>File Update Date:</b>	[XX/XX/20XX]	
<b>Technology:</b>	Lithium Ion Batteries	
<b>Storage Unit Name:</b>	Arlington Energy Center II	
<b>A. Contract Capacity</b>		
<b>Guaranteed Storage Capacity (MW):</b>	132	
<b>Effective Storage Capacity (MW):</b>	132	
<b>B. Total Unit Dispatchable Range Information</b>		
<b>Interconnect Voltage (kV)</b>	220	
<b>Maximum Storage Level (MWh):</b>	528	
<b>Minimum Storage Level (MWh):</b>	0	
<b>Stored energy capability (MWh):</b>	528	
<b>Maximum Discharge (MW):</b>	132	
<b>Maximum Charge (MW):</b>	0	
<b>Maximum energy throughput (BET) (MWh/year):</b>	[REDACTED]	
<b>C. Charge and Discharge Rates</b>		
<b>Mode</b>	<b>Maximum (MW)</b>	<b>Ramp Rate (MW/min) Description</b>
<b>Energy (Charge)</b>	132	[REDACTED]
<b>Energy (Discharge)</b>	132	[REDACTED]
<b>D. Ancillary Services</b>		
<b>Frequency regulation is included:</b>	Yes	
<b>Spin is included:</b>	Yes	

#### II. GENERATING FACILITY OPERATING RESTRICTIONS

1. Maximum energy throughput of [REDACTED] /year

[REDACTED]

**EXHIBIT R**  
**METERING DIAGRAM**



## EXHIBIT S

### FORM OF COLLATERAL ASSIGNMENT AGREEMENT

#### FORM OF CONSENT TO COLLATERAL ASSIGNMENT AGREEMENT

This Consent to Collateral Assignment Agreement (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) Arlington Energy Center II, LLC, a Delaware limited liability company (the “Project Company”), and (iii) *[Name of Collateral Agent]*, a *[Legal Status of Collateral Agent]*, as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of *[Date]* *[List all amendments as contemplated by Section 3.4]* (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to CPA, and CPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain *[Insert description of financing arrangements with Lender]*, dated as of *[Date]*, among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

#### AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that, following the occurrence of a default by Project Company under the PPA, CPA is authorized to act in accordance with Collateral Agent's instructions and the terms of this Agreement, and that, other than arising due to the negligence or willful misconduct of CPA, CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a "PPA Default"), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of ninety (90) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such

PPA Default from CPA to cure such PPA Default; *provided, that*, such additional cure period for the Collateral Agent shall commence on the later of (1) the end of the Project Company's cure period under the PPA and (2) the date the Collateral Agent receives notice of the PPA Default; *provided, further*, (a) if possession of the Facility is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies CPA (such notice, a "Financing Document Default Notice") that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA's reasonable satisfaction that the Substitute Owner meets the qualifications of a Permitted Transferee under the PPA (a "Permitted Transferee"). For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to CPA's reasonable satisfaction that the Replacement Owner satisfies the requirements of a

Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Facility and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a “Person”) to which the Facility is transferred; *provided*, the proposed transferee shall have demonstrated to CPA’s reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company’s obligations under the PPA, including curing defaults, posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

##### (c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company’s obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations

against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Facility; *provided*, such limited recourse shall not limit CPA's right to seek equitable or injunctive relief against Collateral Agent, or CPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA's obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Facility is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA's obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c) consent to or accept any termination or cancellation of the PPA by Project Company.

### SECTION 2. PAYMENTS UNDER THE PPA

## 2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent's instructions. *[Collateral Agent may specific account information]*

## 2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

### 3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

### 3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

### 4.1 Organization.

Project Company is a limited liability company duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. MISCELLANEOUS

#### 6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with *[Notice Section of the PPA]* of the PPA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[ ]*, Fax: *[ ]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

## 6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

## 6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

## 6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

## 6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

## 6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CPA has been notified by Collateral Agent that all of the

obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

*[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.

ARLINGTON ENERGY CENTER II,  
LLC,

CLEAN POWER ALLIANCE OF  
SOUTHERN CALIFORNIA,

a Delaware limited liability company.

a California joint powers authority.

By: \_\_\_\_\_

By: \_\_\_\_\_

*[Name]*

*[Name]*

*[Title]*

*[Title]*

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

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

*[NAME OF COLLATERAL AGENT],*

*[Legal Status of Collateral Agent].*

By: \_\_\_\_\_

*[Name]*

*[Title]*

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

## **SCHEDULE A**

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

## **EXHIBIT T**

### **PROVISIONS TO AMEND WITH ADDITIONAL GUARANTEED CAPACITY**

If Seller provides the Additional Guaranteed Capacity in accordance with Section 3.15, the Parties shall amend and restate this Agreement to adjust the following provisions solely to account for the actual MWh of Additional Guaranteed Capacity:

1. Expected Energy (Interim Facility; Full Facility) – *see Cover Page; definitions*
2. Guaranteed Capacity – *see Cover Page; definitions*
3. Description of Facility – *see Exhibit A*
4. Average Expected Energy – *see Exhibit F*

## EXHIBIT U

### FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_\_] by and among [PPA Seller], a [\_\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

#### 1. **Limited Assignment and Delegation.**

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[**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, including but not limited to the posting of Buyer Credit Support (as defined in the PPA). To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees to make such payment to PPA Seller within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment by Financing Party from PPA Seller.
- (c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.
- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller will provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller to PPA Buyer in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product. PPA Buyer shall promptly reimburse PPA Seller

for any additional costs or expenses incurred by PPA Seller as a result of this sub-section (d).

**2. Assignment Early Termination.**

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

(1) delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;

(2) delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;

(3) delivery of a written notice by PPA Seller if any of the events described in the definition of "Bankrupt" in the PPA occurs with respect to Financing Party; or

(4) delivery of a written notice by Financing Party if any of the events described in the definition of "Bankrupt" in the PPA occurs with respect to PPA Seller.

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

(c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

**3. Notices.** Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Section [ ] of the PPA and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify Financing Party of any updates to such notice information. Notices to Financing Party shall be provided to the following address, as such address may be updated by Financing Party from time to time by notice to the other Parties:

Financing Party

\_\_\_\_\_

Email: \_\_\_\_\_

**4. Miscellaneous.** Sections 19.5 [Severability], 19.7 [Counterparts], 19.2 [Amendments] and

19.4 [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

## 5. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER

PPA BUYER

By: .....  
Name:  
Title:

By: .....  
Name:  
Title:

FINANCING PARTY

By: .....  
Name:  
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: .....  
Name:  
Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** The Power Purchase Agreement dated [\_\_\_\_\_] by and between PPA Buyer and PPA Seller.

**“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 period under the PPA<sup>1</sup>

**Assigned Product:** [Describe and define]

**Further Information:** [Include, if any]<sup>2</sup>

**Projected P99 Generation:** The “Projected P99 Generation” is attached hereto on a monthly basis.

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<sup>1</sup> 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.

<sup>2</sup> To include transfer and settlement mechanics for RECs, as applicable.

## AMENDMENT NO. 1 TO POWER PURCHASE AGREEMENT

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of July 8, 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Resurgence Solar II, LLC, a Delaware limited liability company (“**Seller**”). Seller and Buyer are each a “**Party**” and together the “**Parties**”.

### RECITALS

- A. The Parties entered into that certain Renewable Power Purchase and Sale Agreement, dated as of June 4, 2021 (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Agreement**”).
- B. Pursuant to Article 10 and Section 4 of Exhibit B of the Agreement, Seller has claimed significant delays to the Milestone schedule, including delays in achieving Construction Start by the Guaranteed Construction Start Date (“**GCSD**”) and Commercial Operation on or before the Guaranteed Commercial Operation Date (“**GCOD**”), as more particularly set forth in Attachment 1 (the “**Development Cure Period Claims**”).
- C. The Parties intend to resolve all matters with respect to Seller’s Development Cure Period Claims that Seller is aware of and could make as of the Effective Date of this Amendment and potential liquidated damages for unexcused delays which might be owed by Seller to Buyer by entering into this Amendment on the terms set forth herein.
- D. The Parties do not intend to amend, now or in the future, any pricing set forth in the Agreement except as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
2. Amendments to the Agreement.
  - (a) In the Guaranteed Commercial Operation Date section of the Cover Sheet, the phrase “3/31/2023” is deleted and replaced with “6/1/2023”.
  - (b) In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:

Milestone	Expected Date for Completion
Initial Synchronization	4/15/2023

Milestone	Expected Date for Completion
Expected Date of CAISO Commercial Operation	6/1/2023
Expected Commercial Operation Date	6/1/2023

- (c) The number of Contract Years specified for the Delivery Term on the Cover Sheet shall be changed from “Twenty (20)” to “Twenty-one (21)”.
- (d) In the Delivery Term Expected Energy table on the Cover Sheet, an additional row shall be added as follows:

Contract Year	Expected Energy (MWh)
21	

- (e) In the Guaranteed Efficiency Rate table on the Cover Sheet, an additional row shall be added as follows:

Contract Year	Guaranteed Efficiency Rate
21	

- (f) In the Contract Price section of the Cover Sheet, each reference to “1 – 20” for the applicable Contract Years in the two tables shall be changed to “1 – 21”.
- (g) Section 3.10 is replaced in its entirety with the following:

3.10 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

- (h) Section 4.10(g) is replaced in its entirety with the following:

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(i) New Sections 4.10(h) and (i) are added as follows:

(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 California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(i) Seller's obligations under Sections 3.10 and 4.10(i) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" and/or "Generating Facility" (as appropriate) as defined herein, the phrase "the Project's output" means all Facility Energy, and the term "commercially reasonable efforts" as used in Section 3.10 and Section 4.10(i) means efforts consistent with and subject to Section 3.12.

(j) In Section 10.4(a), the phrase "one hundred eighty (180)" is replaced by the phrase "one hundred twenty (120)".

(k) A new Section 13.5 is added as follows:

13.5 Community Benefits Funding. Seller shall, on or before October 6, 2022, pay to Buyer one hundred thousand dollars (\$100,000) for Buyer to use for community benefits as determined by Buyer in its sole discretion.

(l) In the final paragraph of Section 4 of Exhibit B, the phrase "one hundred eighty (180)" is replaced by the phrase "one hundred twenty (120)" and the phrase "two hundred seventy (270)" is replaced by the phrase "two hundred ten (210)".

(m) Section I.(C.) of Exhibit Q of the Agreement, regarding "Charge and Discharge Rates", shall be amended by (i) replacing the heading "Ramp Rate (MW/min) Description" with "Ramp Rate (MW/s) Description", and (ii) replacing each of the listed "██████" amounts under such heading with "██████".

3. Development Cure Period Claims. As of the Effective Date of this Amendment, all of the Development Cure Period Claims that Seller is aware of and could make as of the Effective Date of this Amendment are resolved by this Amendment. Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted with respect to any events occurring prior to the Effective Date of this Amendment that Seller is aware of and could make as of the Effective Date of this Amendment, and Buyer acknowledges and agrees that: (a) the Development Cure Period Claims shall not reduce or limit the availability of any extensions for Development Cure Period or Force Majeure Events that Seller may be entitled to under the

terms of the Agreement due to circumstances arising after the Effective Date of this Amendment or of which Seller is not aware or cannot make a related claim as of the Effective Date of this Amendment, and (b) the full amount of the limitations on extensions for Development Cure Period and Force Majeure Events set forth in the final paragraph of Section 4 of Exhibit B (as amended herein) shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller on and after the Effective Date of this Amendment. Seller represents and warrants as of the Effective Date of this Amendment that, except as set out on Attachment 1, neither it nor any of its Affiliates are aware of any facts or circumstances that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GCSD or GCOD.

4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date of this Amendment, each reference in the Agreement to “this Agreement,” “the Agreement,” “hereunder,” “hereof,” “herein” or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

5. Miscellaneous.

- (a) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.
- (b) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.
- (c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- (e) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- (f) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

*[Signature Page Follows]*

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

**“SELLER:”**

**RESURGENCE SOLAR II, LLC**

By: \_\_\_\_\_

Printed Name:

Title:

**“BUYER:”**

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_

Printed Name:

Title:

**ATTACHMENT 1**

**Development Cure Period Claims**

Seller's inability to obtain sufficient equipment, materials or other resources to build or operate the Facility resulting in delays and/or inability to timely achieve the Full Commercial Operation Date arising from the decision of the U.S. Department of Commerce issued on March 28, 2022, to initiate an anti-circumvention investigation in *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China*, Petition filed February 8, 2022 by Auxin Solar, Inc. in four separate DOC dockets: A-570-979 Malaysia; Thailand; Cambodia; and Vietnam (the "**Auxin Investigation**").

Seller is aware of



## RENEWABLE POWER PURCHASE AGREEMENT

### COVER SHEET

**Seller:** Resurgence Solar II, LLC

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

**Description of Facility:** A solar photovoltaic electric generating facility with a net nameplate capacity of 48 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 40 MW AC / 160 MWh located near the City of Boron within San Bernardino County, California, as described further in Exhibit A.

**Milestones:**

Milestone	Expected Date for Completion
<b>Documentation of Conditional Use Permit if required: CEQA [X] Cat Ex, [ ]Neg Dec, [ ]Mitigated Neg Dec, [ ]EIR</b>	12/31/2021
<b>Expected Construction Start Date</b>	██████████
<b>Initial Synchronization</b>	2/1/2023
<b>Expected Date of CAISO Commercial Operation</b>	3/31/2023
<b>Expected Commercial Operation Date</b>	3/31/2023

**Delivery Term:** Twenty (20) Contract Years

**Delivery Term Expected Energy:**

Contract Year	Expected Energy (MWh)
1	144,161
2	██████████
3	██████████
4	██████████
5	██████████

6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████
13	████████
14	████████
15	████████
16	████████
17	████████
18	████████
19	████████
20	████████

**Guaranteed Capacity:** 88 MW of total Facility capacity

**Guaranteed Storage Capacity:** 40 MW of Installed Storage Capacity at four (4) hours of continuous discharge

**Guaranteed PV Capacity:** 48 MW of Installed PV Capacity

**Guaranteed Efficiency Rate:**

<b>Contract Year</b>	<b>Guaranteed Efficiency Rate</b>
1	██
2	██████
3	██████

4		██████
5		██████
6		██████
7		██████
8		██████
9		██████
10		██████
11		██████
12		██████
13		██████
14		██████
15		██████
16		██████
17		██████
18		██████
19		██████
20		██████

**Guaranteed Construction Start Date:** 6/1/2022

**Guaranteed Commercial Operation Date:** 3/31/2023

**Contract Price**

The Renewable Rate shall be:

<b>Contract Year</b>	<b>Renewable Rate</b>
1 – 20	\$██████/MWh (flat) with no escalation

The Storage Rate shall be:

<b>Contract Year</b>	<b>Storage Rate</b>
1 – 20	\$█/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 Installed Storage Capacity

**Anticipated Flexible Capacity:** Amount: Guaranteed Storage Capacity (MW)

**Scheduling Coordinator:** Buyer

**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

Guarantor: NextEra Energy Capital Holdings, Inc. (as of the Effective Date)

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## 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 Transfer” and “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect Affiliate subsidiaries.

“**After-Tax Basis**” means, with respect to any payment received, or deemed to have been received, by any Person, the amount of such payment (the “Base Payment”), supplemented by a further payment (the “Additional Payment”) to such Person so that the sum of the Base Payment plus the Additional Payment will be equal to the Base Payment, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment

and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the payment, the Base Payment and the Additional Payment). Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the statutory rate applicable to corporations under subchapter C of the Internal Revenue Code of 1986, as amended, and subject to the highest state and local income tax rate then in effect for corporations in the states in which the Person is subject to taxation during the applicable fiscal year, and shall take into account the deductibility, if applicable (for Federal income tax purposes), of state and local income taxes.

“**Agreement**” has the meaning set forth in the Preamble and includes the Cover Sheet and any Exhibits, schedules and any written supplements hereto.

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

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

“**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 (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.

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

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

“**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.

“**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) 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 Energy forecasted in accordance with Section 4.3 to be produced from the Generating Facility for a period of time; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Generating Facility:

- (i) not having submitted a Self-Schedule or an Energy Supply Bid for the MWs subject to the reduction; or
- (ii) having submitted an Energy Supply Bid and the MWs subject to the reduction were not awarded a schedule in connection with such Energy Supply Bid; or
- (iii) having submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Generating Facility.

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 PV 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 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) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Event of Default 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 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 Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all PV Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

**“Change of Control”** means, 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;

*provided further*, a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

**“Charging Energy”** means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the

Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to Seller, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. Any 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.

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

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

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

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

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

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

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

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

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

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

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

“**Contract Price**” has the meaning set forth on the Cover Sheet. 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 the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

**“Cover Sheet”** means the cover sheet to this Agreement, which is incorporated into this Agreement.

**“COVID-19”** means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.

**“CPM Price”** has the meaning set forth in Section 3.8(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 Fitch, S&P or Moody’s. If ratings by Fitch, 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 Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs in the VER forecast for the Generating Facility during the relevant time period;

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

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

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

To the extent permitted by CAISO, Buyer shall use commercially reasonable efforts to deliver Charging Energy to the Storage Facility during such Curtailment Order.

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

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

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

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

**“Discharging Energy”** means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy 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) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice. Any instruction to discharge the Storage Facility pursuant to 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 FCDS Date”** means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

**“Effective Flexible Capacity”** or **“EFC”** 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<sub>MAX</sub>, 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 by dividing Energy Out by Energy In (a) pursuant to Exhibit O for the initial Efficiency Rate, and (b) based on actual Storage Facility operations for each calendar month thereafter.

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

**“Electrical Losses”** means 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.

**“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”** means AC energy charged (in MWh) to the Storage Facility as measured at the Storage Facility Meter pursuant to a Charging Notice.

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

**“Energy Out”** means that total AC energy discharged (in MWh) as measured at the Storage Facility Meter pursuant to a Discharging Notice.

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

**“Energy Supply Bid”** has the meaning set forth in the CAISO Tariff.

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

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

“**Exercise Period**” has the meaning set forth in Section 10.5(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 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.

“**Fitch**” means Fitch Ratings Ltd., or its successor.

“**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 Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

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

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

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

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

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

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

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

**“Generating Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (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<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; 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 by Buyer after delivery by Seller of such Green Attributes to Buyer.

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

**“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.

**“Guarantor”** means, with respect to Seller, any Person that (a)(i) is NextEra Energy Capital Holdings, Inc. (provided it is an Affiliate of Seller), or other third party reasonably acceptable to Buyer or (ii) has a Credit Rating of BBB- or better from S&P or Fitch, or a Credit Rating of Baa3 or better from Moody’s, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) executes and delivers a Guaranty for the benefit of Buyer.

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

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

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

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

**“Initial Synchronization”** means the 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<sub>MAX</sub>, 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.

“**Inter-SC Trade**” has the meaning set forth in the CAISO Tariff.

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

“**Interconnection Capacity Limit**” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 48 MW.

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

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

“**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- from S&P or A3 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 Terms**” has the meaning set forth in Section 10.5(a).

“**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.

“**NEER**” means NextEra Energy Resources, LLC.

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

“**NERC**” means the North American Electric Reliability Corporation.

“**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).

“**Offer Notice**” has the meaning set forth in Section 10.5(a).

“**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, or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“**Permitted Transfer**” means each of the following transactions:

(a) Transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Seller or its Affiliates; *provided* (i)(A) Ultimate Parent retains the authority, directly or indirectly, to control Seller (or if applicable, the surviving entity), or (B) a wholly-owned, indirect subsidiary of Ultimate Parent operates the Facility, and (ii) if Seller is not the surviving entity, the transferee

(A) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (B) meets the Seller credit security requirements;

(b) A Change of Control of Ultimate Parent or NEER;

(c) Any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and that does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;

(d) The direct or indirect transfer of shares of, or equity interests in, Seller to a Lender;  
or

(e) A transfer of the Facility packaged with any of the following: (i) all or substantially all of the assets of NEER or Ultimate Parent; (ii) all or substantially all of NEER's or Ultimate Parent's renewable energy generation portfolio; or (iii) all or substantially all of NEER's or Ultimate Parent's solar generation and/or energy storage portfolio; provided, that in the case of each of (i), (ii) and (iii): (A) the transferee (1) executes and delivers to Buyer a written agreement under which the transferee assumes in writing all of Seller's duties and obligations under this Agreement and otherwise agrees to be bound by all of the terms and conditions of this Agreement, and (2) meets the Seller credit security requirements; and (B) the entity that operates the Facility following such transfer is (or contracts with) a Qualified Operator.

**"Permitted Transferee"** means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

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

Notwithstanding the foregoing, with respect to Seller, Permitted Transferee shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect subsidiaries.

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

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

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

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

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

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

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

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

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

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

“**Portfolio Financing**” means any tax equity or debt transaction entered into by an Affiliate of Seller that is secured only by a Portfolio.

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

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

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

“**Prohibited PV Module**” has the meaning set forth in Section 2.3(b).

“**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 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 or Station Use.

“**Qualified Operator**” means Seller or an operator of photovoltaic solar generation facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated three (3) or more photovoltaic solar generation facilities, each having a nameplate capacity rating of twenty (20) MW or more, for not less than three (3) years and at least one (1) battery energy storage facility having a nameplate capacity rating of one (1) MW and/or two (2) MWh or more, for not less than two (2) years.

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

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

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

“**RA Deficiency Payment True-Up**” has the meaning set forth in Section 3.8(c).

“**RA Guarantee Date**” means the Commercial Operation Date; [REDACTED]

[REDACTED]

**“RA Shortfall Month”** means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity plus any Replacement RA (if applicable) that was included in the Showing Month for Buyer of the Storage Facility for such month was less than the Qualifying Capacity of the Storage Facility 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 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, 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.

“**ROFR Offer**” has the meaning set forth in Section 10.5(a).

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

“**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**” has 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(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

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

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

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

“**Seller Initiated Test**” has the meaning set forth in Section 4.9(c).

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

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

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

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

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

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

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, 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.

“**SOC**” or “**State of Charge**” means the (a) 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 information technology, telecommunications, lights, motors, temperature control systems, control facility systems and other electrical loads that are necessary for operation of the Facility except during periods in which the Storage Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

“**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 or Effective Storage Capacity 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 as Discharging Energy, expressed in MWh.

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

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the Transmission Provider, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

**“Third-Party Offer”** has the meaning set forth in Section 10.5(a).

**“Third-Party Transaction”** has the meaning set forth in Section 10.4(b).

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

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

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

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

**“Ultimate Parent”** means NextEra Energy, 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:

(f) 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;

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

(h) 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;

(i) 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;

(j) 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;

(k) a reference to a Person includes that Person's successors and permitted assigns;

(l) 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;

(m) 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;

(n) 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;

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

(p) the expression "and/or" when used as a conjunction shall connote "any or all of";

(q) 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

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

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

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

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

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

(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; 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) During the Term, Seller shall not install any PV modules as part of the Facility that were procured by Seller pursuant to a master agreement for the procurement of PV modules that was (i) entered into by Seller on or after the Effective Date, and (ii) fails to contain a representation, covenant, or other statement that the supplier of such modules does not use forced labor in the mining, processing, procurement, or manufacturing of such PV modules, or a similar representation, covenant, or other statement (any so-prohibited PV module is, a "**Prohibited PV Module**"). Seller shall notify Buyer within ten (10) Business Days of becoming aware of any breach, or likely breach, of its obligations under this Section 2.3(b).

(c) Once during the Delivery Term, Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor, reasonably acceptable to Seller, to audit Seller's compliance with the requirements of Section 2.3(b). Such audit shall be conducted during normal business hours and upon reasonable advance written notice to Seller, and such audit shall be limited in scope to the review of Seller's compliance with the requirements of Section 2.3(b). Seller may, in its sole and absolute discretion, require such auditor to enter into a confidentiality agreement with Seller before beginning such audit, which such confidentiality agreement shall include a restriction against such auditor disclosing any information learned in the course of such audit to Buyer other than such information that is (i) strictly within the scope of the audit, and (ii) necessary for the auditor to disclose to Buyer or any other Person in order to reasonably satisfy the purpose of the audit. If at any time after the Commercial Operation Date, Seller provides reasonably satisfactory evidence, to either Buyer or such auditor and either before or during such audit, that the PV modules it has installed in the Facility complies with the requirements of Section 2.3(b), then this Section 2.3(c) shall be of no further force and effect. Seller's provision to Buyer or such auditor of copies of the agreements under which it procured such PV modules, as may be redacted to remove pricing terms, shall be deemed satisfactory evidence for the purposes of the foregoing sentence.

2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone

completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/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 on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall diligently pursue Full Capacity Deliverability Status for the Guaranteed Storage Capacity 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 Storage Facility from the CAISO and shall perform all actions necessary to ensure that the

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

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the amount of Qualifying Capacity the Facility would reasonably be estimated to qualify for, based on the CPUC-adopted qualifying capacity methodologies then in effect), minus (ii) the Net Qualifying Capacity of the Facility, multiplied by the price for CPM Capacity as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("**CPM Price**");

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[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 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. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

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

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

3.12 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-

Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity (“**Compliance Expenditure Cap**”).

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

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

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

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

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller 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 (5<sup>th</sup>) Contract Year regarding the use of grid energy to provide Charging Energy to commence at the beginning of the sixth (6<sup>th</sup>) Contract Year, or earlier if a change of applicable Laws makes such change feasible at an earlier date as mutually agreed to between the Parties; *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 (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 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 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) available Storage Capability (items (i)-(iv) collectively referred to as the "**Forecasted Product**"), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable ("**Monthly Forecast**").

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

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW / one (1) MWh or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), that directly result from a Forced Facility Outage, Force Majeure Event or other cause, in each case that has not already been communicated to Buyer or Buyer's SC, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer, provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

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

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, due to Seller's failure to provide such forecast, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Day-Ahead 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 Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

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

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

(d) Seller Equipment Required for 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 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 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

#### 4.5 **Energy Management.**

(a) **Charging Generally.** Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility. Except as otherwise expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with Charging Energy.

(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, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) **No Unauthorized Charging.** Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice 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. 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 (x) Seller shall pay Buyer the cost of such Energy associated with such charging of the Storage Facility, and (y) Buyer shall be entitled to discharge such Energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge. Notwithstanding the foregoing, during any

Curtailed Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice 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. 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, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices 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 shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder or as expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

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

(h) Pre-Commercial Operation Date Period Use and Charging and Discharging.

Prior to CAISO Commercial Operation, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Storage Facility; *provided*, in regard to the Storage Facility, prior to CAISO Commercial Operation Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility testing. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices, and shall use commercially reasonable efforts to complete any installation, commissioning and testing activities of the Storage Facility. For the period from CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Monthly Capacity Payment, pro-rated on a daily basis, and Buyer shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility.

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy used to serve Station Use), (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f) (*provided*, Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from Energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences), and (iii) Station Use may not be supplied from PV Energy, Charging Energy or Discharging Energy.

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) or by providing at least sixty (60) days' notice subject to consent by Buyer not to be unreasonably withheld, conditioned or delayed. 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 cost

Buyer incurs in connection therewith (including replacement Capacity Attributes as required by the CAISO), and (B) 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 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 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 reduction of Product deliveries pursuant to this Section 4.6 shall not excuse any such reductions in the Storage Capability and/or Availability Effective Storage Capacity for purposes of calculating the Annual Storage Capacity Availability pursuant to Exhibit P, (ii) any reduction in Product resulting from this Section 4.6 shall not reduce Seller's obligation to deliver Capacity Attributes, except to the extent that such inability or reduction is the result of circumstances set forth in Section 4.6(c) or Section 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 Buyer as a result of any of the conditions in this Section 4.6, 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. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a)

any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods (“**Lost Output**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G (“**Energy Replacement Damages**”); *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed 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 is the adjustment of Seller’s Monthly Capacity Payment by the Efficiency Rate Factor pursuant to 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 Operating Restrictions and the Storage Facility’s initial CAISO Certification associated with the Installed Storage Capacity. To the extent the Storage Facility is unable to provide Ancillary Services for any reason not excused hereunder during any Calculation Interval that is not otherwise deemed an Unavailable Calculation Interval, then as exclusive remedies the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the YTD Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%).

#### 4.9 **Storage Facility Testing.**

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

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

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

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

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

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

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test. For all Seller Initiated Tests, (1) Seller shall reimburse Buyer the amount of Buyer’s payment of 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. Any such representative(s) of Buyer shall adhere to the safety and security procedures of Seller, which shall be provided by Seller to Buyer in writing. Buyer shall indemnify and hold Seller harmless for any losses or claims for personal injury, death or property damage to the Facility or Site solely to the extent caused by Buyer, its authorized agents, employees, and inspectors, during any such access.

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

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

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

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

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

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

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

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

## 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 in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements shall (i) permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, (ii) provide for separate metering of the Facility, (iii) provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource IDs, and (iv) provide that in the event of any discretionary allocation of curtailment of output from generating or energy storage facilities using the Shared Facilities shall not be allocated to the Facility more than its 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 Meters. Seller shall separately meter all Station Use. 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 Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

**7.2 Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists 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 (10<sup>th</sup>) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

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

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

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

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

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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon 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. Subject to this Section 8.7 and the other terms of this Agreement governing Seller's Development Security requirements, Seller may change the type and/or issuer (as applicable) of the Development Security from time to time and at any time.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement,

Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit S. 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); *provided*, however, that in no event shall Seller have any obligation to replenish the Performance Security to the extent that the aggregate amount of such replenishment of the Performance Security during the Delivery Term exceeds two (2) times the Performance Security requirement. Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. Subject to this Section 8.8 and the other terms of this Agreement governing Seller's Performance Security requirements, Seller may change the type and/or issuer (as applicable) of the Performance Security from time to time and at any time.

**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's Financial Statements.** From the Effective Date, unless such financial statements are available on the internet at <https://www.cleanpoweralliance.org/>, if requested in writing by Seller, Buyer shall provide to Seller unaudited quarterly financial statements within ninety (90) days of the end of each quarter, and audited annual financial statements within one hundred eighty (180) days after the end of each fiscal year. Buyer's financial statements shall have been prepared in accordance with GAAP, provided that Buyer's quarterly budget-to-actual reports are not prepared in accordance with GAAP. Should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

## 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, pandemic, or plague; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

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

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

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other

Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, 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 either Party may terminate this Agreement upon Notice to the other Party with respect to the Facility experiencing the Force Majeure Event; *provided*, in the case of Seller as the Party electing to terminate this Agreement, for a period of two (2) years from the date of the termination of this Agreement, Seller shall not, and shall cause its Affiliates and any successors or assign to not, following such termination directly or indirectly enter into any agreement or consummate any transaction relating to the sale of Facility Energy with any Person other than Buyer (a "**Third-Party Transaction**") except in compliance with the terms and conditions of Section 10.5. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

#### 10.5 **Right of First Refusal.**

(a) Following a termination by Seller under Section 10.4, if Seller receives a bona fide written offer for a Third-Party Transaction that Seller desires to accept (each, a "**Third-Party Offer**"), Seller shall immediately notify Buyer in writing (the "**Offer Notice**") of, subject to any confidentiality obligations that may apply to Seller, the identity of all proposed parties to such Third-Party Transaction and the material financial and other terms and conditions of such Third-Party Offer (the "**Material Terms**"). Each Offer Notice shall constitute an offer by Seller to enter into an agreement with Buyer on the same Material Terms of such Third-Party Offer (the "**ROFR Offer**").

(b) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the Offer Notice (the "**Exercise Period**"), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent containing the Material Terms and any

standard and customary conditions applicable to a transaction of this nature, executed by Buyer; provided, however, that Buyer is not required to accept any non-financial terms or conditions contained in any Material Terms that cannot be fulfilled by Buyer as readily as by any other Person (e.g., an agreement conditioned upon the services of a particular individual or the supply of goods or services exclusively under the control of such third-party offeror).

(c) If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 10.5, at any time following the expiration of the Exercise Period, Seller may consummate the Third-Party Transaction with the counterparty identified in the applicable Offer Notice, on Material Terms that are the same or more favorable to Seller as the Material Terms set forth in the Offer Notice. If such Third-Party Transaction is not consummated, the terms and conditions of this Section 10.5 will again apply and Seller shall not enter into any Third-Party Transaction without affording Buyer the right of first refusal on the terms and conditions of this Section 10.5.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

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

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

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

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

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

(iv) such Party becomes Bankrupt;

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

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

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

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

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

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

(iv) if, in any Contract Year, the Annual Storage Capacity Availability multiplied by the Effective Storage Capacity of the applicable period is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("**Storage Cure**")

**Plan**”) and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

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

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

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

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

(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;

(viii) failure by Seller to uninstall from the Facility any Prohibited PV Module identified by Buyer, within three hundred and sixty-five (365) days of Buyer's Notice to Seller that the Facility contains such Prohibited PV Module.

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 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, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. Notwithstanding anything to the contrary in this Section 11.3(a)(i), in no event shall the Damage Payment paid by Seller exceed the full Development Security amount and any interest accrued thereon. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal the sum of the actual, documented and verifiable costs incurred by Seller between the Effective Date and the Early Termination Date in connection with the Facility, less the fair market value (determined in a commercially reasonable manner) of (A) all Seller's assets individually, or (B) the entire Facility, whichever is greater on the Early Termination Date, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) **Termination Payment On or After the Commercial Operation Date.** The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") shall be the aggregate of all Settlement Amounts plus any 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.

(a) Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position 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.

(b) Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except where liquidated damages 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 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS

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

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

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

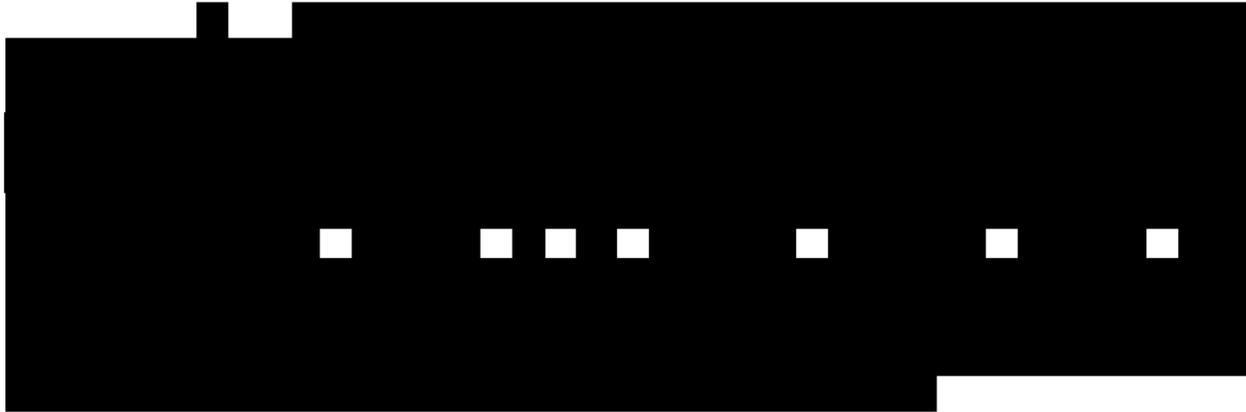
(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial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

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

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

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

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



13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

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

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

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

indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

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

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

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

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

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

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

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

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

## ARTICLE 14 ASSIGNMENT

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

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement in substantially the form attached as Exhibit T ("**Collateral Assignment Agreement**").

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:

- (a) the assignee is a Permitted Transferee;
- (b) Seller gives Buyer Notice of such transfer or assignment within fifteen (15) Business Days before the date of such proposed transfer or assignment; and
- (c) 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 **Permitted Transfers by Seller.** Seller may make a Permitted Transfer, without the prior written consent of Buyer, provided that Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such Permitted Transfer.

14.5 **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.

14.6 **Buyer Financing Assignment**. Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("**Buyer Assignee**") at any time upon not less than fifteen (15) Business Days' notice by delivering Notice of such assignment, which notice must include a proposed assignment agreement substantially in the form attached hereto as Exhibit L ("**Assignment Agreement**"), provided that, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer's Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody's and BBB- from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.6; *provided*, (a) Seller shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Seller or its financing parties, and

## 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 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 Ten Million Dollars (\$10,000,000) per occurrence, and an annual aggregate of not less than Ten Million Dollars (\$10,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars (\$10,000,000) per occurrence and in aggregate. 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. The amount of insurance required above may be satisfied by any combination of primary and excess insurance.

(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) Builder's All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, builder's all-risk insurance covering the Facility during such construction periods.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) 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 self-insure in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and business automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## ARTICLE 18 CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality.** The Party receiving Confidential Information (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders (including bona fide prospective 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 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.

RESURGENCE SOLAR II, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### FACILITY DESCRIPTION

**Site Name:** Resurgence Solar II

**Site includes all or some of the following APNs:** 0491-101-16-0000, 0491-101-17-0000, 0491-101-18-0000, 0491-101-19-000, 0491-151-38-0000, 0491-151-39-0000, 0491-151-40-0000, 0498-171-05-0000, 0498-171-06-0000

**City:** Boron

**County:** San Bernardino, CA

**Zip Code:** 93516

**Latitude and Longitude:** 35.0131, -117.5487

**Facility Description:** A solar photovoltaic electric generating facility with a net nameplate capacity of 48 MW AC coupled with a lithium ion (Li-Ion) battery storage facility with a net nameplate capacity of 40 MW AC / 160 MWh located near the City of Boron within San Bernardino County, California. The Facility is a portion of a larger 138 MW solar + 115 MW storage project. Seller may install additional inverter capacity to account for production and delivery losses.

**Site Diagram:** Attached

**Delivery Point:** P-node

**Generating Facility Metering Points:** See Exhibit R

**Storage Facility Metering Points:** See Exhibit R

**P-node:** To be established prior to the Commercial Operation Date at the Kramer Junction 115kV bus. Seller shall promptly notify Buyer following the establishment of the P-node.

**Transmission Provider:** South California Edison

**Additional Information:** None

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Facility.

- a. **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all primary contractors and ordered all 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.”** Subject to the other terms of this Agreement, Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
  
- b. Seller may extend the Guaranteed Construction Start Date (in addition to any extensions pursuant to a Development Cure Period) 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 (which may have already been extended due to a Development Cure Period or a prior payment of Daily Delay Damages), 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 (and as may have been further extended by a Development Cure Period), 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 Seller achieves Commercial Operation after 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), but in fewer days than the number of days by which Seller missed the Guaranteed

Construction Start Date (not including any extensions to such date resulting from Seller's payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period), then Buyer shall refund to Seller an amount equal to fifty percent (50%) of the Daily Delay Damages for the difference between (i) the number of days by which Seller missed the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller's payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period), minus (ii) the number of days by which Seller missed 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 any Development Cure Period). For illustrative purposes only, if Seller misses the Guaranteed Construction Start Date (not including any extensions to such date resulting from Seller's payment of Daily Delay Damages, but as may be extended pursuant to any Development Cure Period) by ten (10) days, but only misses the Guaranteed Commercial Operation Date (not including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, but accounting for any extensions to such date pursuant to any Development Cure Period) by four (4) days, then Buyer shall refund to Seller an amount equal to fifty percent (50%) of six (6) days' worth of Daily Delay Damages.

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. Subject to the other terms of this Agreement, 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. In addition to any extensions pursuant to any Development Cure Period, Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date (which may have already been extended due to a Development Cure Period or a prior payment of Daily Delay Damages), 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 (and as may have been further extended by a Development Cure Period), 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, both be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:
  - a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or
  - b. a Force Majeure Event occurs; or
  - c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or
  - d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (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 PV Capacity or Guaranteed Storage Capacity.**

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity

is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay “**PV Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.

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

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

**EXHIBIT C**  
**COMPENSATION**

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

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

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

(c) Excess Settlement Interval Deliveries. If (i) during any Settlement Interval that is not coincident with a Charging Notice, Seller delivers PV Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours, or (ii) during any Settlement Interval that is coincident with a Charging Notice, Seller delivers PV Energy in excess of the product of (A) the sum of (1) the Guaranteed PV Capacity plus (2) the Energy In during such Settlement Interval, times (B) the duration of the Settlement Interval, expressed in hours (in each case, "Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) Monthly Capacity Payment.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the Storage Rate x one thousand (1,000) x Effective Storage Capacity x Efficiency Rate Factor; [REDACTED]

[REDACTED] Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than the first day of calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

"Efficiency Rate Factor" means:

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

Efficiency Rate Factor = 100%

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

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

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

$$\text{Efficiency Rate Factor} = 0$$

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

"Storage Capacity Availability Payment True-Up Amount" means an amount equal to  $A \times B - C - D$ , where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year

"Capacity Availability Factor" means:

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

$$\text{Capacity Availability Factor} = 0$$

Exhibit C - 2

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

## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

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

(ii) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller 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.

(iii) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the 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 as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

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

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

## **EXHIBIT E**

### **PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

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

**EXHIBIT F-1**

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

**EXHIBIT F-2**

**MONTHLY EXPECTED PV ENERGY**

[MWh Per Hour] – [*Insert Month*]

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

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

**EXHIBIT F-4**

**MONTHLY AVAILABLE STORAGE CAPABILITY**

[MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

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

## EXHIBIT G

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

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

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 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 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 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-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is \_\_ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test 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 NextEra Energy Capital Holdings, Inc. on behalf of [name of NextEra project company], 700 Universe Blvd, Juno Beach, Florida 33408 (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [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 officer, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.

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]

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[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 officer of [ ], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of \_\_\_\_\_ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of [ ] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]

[ ]

\_\_\_\_\_  
Name and Title of Authorized Representative

Date\_\_\_\_\_

## EXHIBIT L

### FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_\_] by and among [PPA Seller], a [\_\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

#### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[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: .....  
.....  
Name:  
Title:

By:  
  
Name:  
Title:

FINANCING PARTY

By: .....  
Name:  
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: .....  
Name:  
Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** The Power Purchase Agreement dated [\_\_\_\_\_] by and between PPA Buyer and PPA Seller.

**“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 period under the PPA<sup>1</sup>

**Assigned Product:** [Describe and define]

**Further Information:** [Include, if any]<sup>2</sup>

**Projected P99 Generation:** The “Projected P99 Generation” is attached hereto on a monthly basis.

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<sup>1</sup> 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.

<sup>2</sup> 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 product information:

**Unit Information**<sup>1</sup>

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		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT N**

**NOTICES**

<p><b>RESURGENCE SOLAR II, LLC, a Delaware limited liability company (“Seller”)</b></p>	<p><b>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</b></p>
<p><b>All Notices:</b></p> <p>Street: 700 Universe Blvd.  City: Juno Beach, FL 33408  Attn: Business Management</p> <p>Phone: 561-401-2672  Email: DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com  Christopher.Basara@nexteraenergy.com</p>	<p><b>All Notices:</b></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><b>Reference Numbers:</b></p> <p>Duns:  Federal Tax ID Number:</p>	<p><b>Reference Numbers:</b></p> <p>Duns:  Federal Tax ID Number:</p>
<p><b>Invoices:</b></p> <p>Attn: Business Management  Phone: 561-401-2672  E-mail: DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com  Christopher.Basara@nexteraenergy.com</p>	<p><b>Invoices:</b></p> <p>Attn: Director, Power Planning &amp; Procurement  Phone: (213) 269-5870  E-mail: settlements@cleanpoweralliance.org</p>
<p><b>Scheduling:</b></p> <p>Attn:  Phone:  Facsimile:  Email:</p>	<p><b>Scheduling: TBD</b></p> <p>Attn:  Phone:  Email:</p>
<p><b>Confirmations:</b></p> <p>Attn:  Phone:  Facsimile:  Email:</p>	<p><b>Confirmations:</b></p> <p>Attn: Director, Power Planning &amp; Procurement  Phone: (213) 269-5870  Email: nkeefers@cleanpoweralliance.org</p>

<b>RESURGENCE SOLAR II, LLC, a Delaware limited liability company (“Seller”)</b>	<b>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</b>
<b>Payments:</b> Attn: Business Management Phone: (561) 694-4725 E-mail: DL-NEXTERA-WESTINTERNATIONAL-REGION@nee.com	<b>Payments:</b> Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: settlements@cleanpoweralliance.org
<b>Wire Transfer:</b> Seller shall provide to Buyer the information below at least 60 days prior to the Commercial Operation Date. BNK: [TBD] ABA: [TBD] ACCT:[TBD]	<b>Wire Transfer:</b> BNK: River City Bank ABA: 121-133-416 ACCT: XXXXXX8042

## 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 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. 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) determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

#### Capacity Test Procedures

##### PART I. GENERAL.

- (1) Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "CT". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).
- (2) Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller'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 Seller'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.

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 resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

- (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
- (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

- B. Parameters. During each CT, the following parameters shall be measured 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);
  - (4) Stored Energy Level (MWh).
- C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
- (1) Relative humidity (%);
  - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
  - (3) Ambient air temperature (°F).
- D. Test Showing. Each CT shall record and report the following datapoints:
- (1) That the CT successfully started;
  - (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;
  - (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;
  - (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);
  - (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
  - (6) Amount of Charging Energy and Energy In to go from 0% SOC to 100% SOC;
  - (7) Amount of Discharging Energy and Energy Out, to go from 100% SOC to 0% SOC.
- E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
  - (2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.
  - (3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.
- F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
  - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
  - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

- H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its

review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility (“**Supplementary Capacity Test Protocol**”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Storage Capacity. The Effective Storage Capacity 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 initial Efficiency Rate, and shall be used for the calculation of the Efficiency Rate Factor in Exhibit C until updated after the first month of operations.

### PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

#### A. **Effective Storage Capacity and Initial Efficiency Rate Test**

- Procedure:

- (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have lapsed since the Storage Facility commenced charging.

- (4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter Energy In.
- (6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. 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 Part III.A.6(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.
- (8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record and store the Discharging Energy (in MWh) as measured at the Storage Facility Meter, if applicable.
- (11) Record and store the Energy Out from the commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Part III.A.6 or Part III.A.9, as applicable.

- 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 initial Efficiency Rate is calculated as the total amount of Energy Out (as reported under Section III.A(11) 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 following the first month of operations.

**B. AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's maximum discharging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Storage Facility active power level at the Storage Facility Meter.
  - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 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**

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's full charging level within 1 second.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.
- Procedure:
  - (1) Record the Storage Facility active power level at the Storage Facility Meter.
  - (2) Command the Storage Facility to follow a simulated CAISO RIG signal of 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.

**D. Reactive Power Production Test**

- Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Storage Facility reactive power level at the Facility Meter.
  - (2) Command the Storage Facility to follow 16 MVAR for ten (10) minutes.
  - (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**E. Reactive Power Consumption Test**

- Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.
- System starting state: The Storage Facility will be in the on-line state at 50% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.
- Procedure:
  - (1) Record the Storage Facility reactive power level at the Facility Meter.
  - (2) Command the Storage Facility to follow -16 MVAR for ten (10) minutes.
  - (3) Record and store the Storage Facility reactive power response.
- System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

**EXHIBIT P**

**ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION**

(a) Following the end of each calendar month 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:

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

“**A**” is the “Available Effective Storage Capacity”, which shall be the sum of the capacity, in MW AC, expected from each system inverter in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines), but “A” shall never exceed the Effective Storage Capacity.

“**Storage 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 (calculated as the available battery charging capability (in MWh) in the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) 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 cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer’s guidelines), 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” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) If the total rated power of the Storage Facility inverters is less than the Installed Storage Capacity divided by 0.95 charging and divided by 0.95 discharging expressed in kVA at 45°C, then Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval.

## EXHIBIT Q

### OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

#### I. STORAGE FACILITY OPERATING RESTRICTIONS

File Update Date:	[XX/XX/20XX]	
Technology:	Lithium Ion Batteries	
<b>A. Contract Capacity</b>		
Guaranteed Storage Capacity (MW):	40	
Effective Storage Capacity (MW):	40	
<b>B. Total Unit Dispatchable Range Information</b>		
Interconnect Voltage (kV)	115	
Maximum Storage Level (MWh):	160	
Minimum Storage Level (MWh):	0	
Stored energy capability (MWh):	160	
Maximum Discharge (MW):	40	
Maximum Charge (MW):	40	
Guaranteed Efficiency Rate:	[REDACTED]	
Maximum energy throughput (BET) (MWh/year):	[REDACTED]	
<b>C. Charge and Discharge Rates</b>		
Mode	Maximum (MW)	Ramp Rate (MW/min) Description
Energy (Charge)	40	[REDACTED]
Energy (Discharge)	40	[REDACTED]
<b>D. Ancillary Services</b>		
Frequency regulation is included:	Yes	
Spin is included:	Yes	

- Maximum annual average State of Charge (SOC) of [REDACTED] %

**EXHIBIT R**  
**METERING DIAGRAM**

To be updated by Seller prior to Commercial Operation Date

## EXHIBIT S

### FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [\_\_\_\_\_] (the “**Effective Date**”) by and between NextEra Energy Capital Holdings, Inc., a Delaware corporation (“**Guarantor**”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

#### Recitals

- A. Buyer and [SELLER ENTITY], a Delaware limited liability company (“**Seller**”), entered into that certain Energy Storage Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [\_\_\_\_], 2021.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

**1. Guaranty.** For value received, and subject to the terms and conditions hereof, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

**2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to

the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "**Payment Demand**") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

**3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), and the Delivery Term has expired or terminated early, (y) the date that is twelve (12) months after the last day of the Delivery Term, or (z) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that are expressly waived under any provision of this Guaranty) in a subsequent action for recoupment, restitution, or reimbursement.

**4. Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

**5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

**6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate or limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and

other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, which would invalidate or materially impair Guarantor's ability to perform its obligations under this Guaranty, (d) except as disclosed in reports filed with the Securities and Exchange Commission by Guarantor's parent, NextEra Energy, Inc., there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

**7. Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at   
Attn:

If delivered to Guarantor, to it at   
Attn:

**8. Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of New York, excluding choice of law rules (other than Section 5-1401 and 5-1402 of the New York General Obligations Law), provided that, notwithstanding the foregoing, in no event shall such governing law prevent Buyer from complying with any obligations or from exercising any joint powers authority arising under the laws of the State of California. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

**9. Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer, which consent shall not be unreasonably withheld. This Guaranty is not assignable by Buyer without the prior written consent of Guarantor, which consent shall not be unreasonably withheld, except to the extent that the PPA is assigned in accordance with the terms

thereof. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

**10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

(b) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(c) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A FEDERAL COURT OF THE STATE OF CALIFORNIA, OR, TO THE EXTENT SUCH FEDERAL COURT LACKS SUBJECT MATTER JURISDICTION, IN A STATE COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL

REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

*[Signature on next page]*

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

NEXTERA ENERGY CAPITAL HOLDINGS,  
INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

BUYER:

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

## EXHIBIT T

### FORM OF COLLATERAL ASSIGNMENT AGREEMENT

This Consent to Collateral Assignment Agreement (this “Consent”) is entered into among (i) Clean Power Alliance of Southern California, a California joint powers authority (“CPA”), (ii) [*NextEra Entity*], a Delaware limited liability company (the “Project Company”), and (iii) [*Name of Collateral Agent*], a [*Legal Status of Collateral Agent*], as Collateral Agent for the secured parties under the Financing Documents referred to below (such secured parties together with their successors permitted under this Consent in such capacity, the “Secured Parties”, and, such agent, together with its successors in such capacity, the “Collateral Agent”). CPA, Project Company and Collateral Agent are hereinafter sometimes referred to individually as a “Party” and jointly as the “Parties”. Capitalized terms used but not otherwise defined in this Consent shall have the meanings ascribed to them in the PPA (as defined below).

#### RECITALS

The Parties enter into this Consent with reference to the following facts:

- A. Project Company and CPA have entered into that certain Renewable Power Purchase Agreement, dated as of [*Date*] [*List all amendments as contemplated by Section 3.4*] (“PPA”), pursuant to which Project Company will develop, construct, commission, test and operate the Facility and sell the Product to CPA, and CPA will purchase the Product from Project Company;
- B. As collateral for Project Company’s obligations under the PPA, Project Company has agreed to provide to CPA certain collateral, which may include Performance Security and Development Security and other collateral described in the PPA (collectively, the “PPA Collateral”);
- C. Project Company has entered into that certain [*Insert description of financing arrangements with Lender*], dated as of [*Date*], among Project Company, the Lenders party thereto and the Collateral Agent (the “Financing Agreement”), pursuant to which, among other things, the Lenders have extended commitments to make loans to Project Company;
- D. As collateral security for Project Company’s obligations under the Financing Agreement and related agreements (collectively, the “Financing Documents”), Project Company has, among other things, assigned all of its right, title and interest in, to and under the PPA and Project’s Company’s owners have pledged their ownership interest in Project Company (collectively, the “Assigned Interest”) to the Collateral Agent pursuant to the Financing Documents; and
- E. It is a requirement under the Financing Agreement and the PPA that CPA and the other Parties hereto shall have executed and delivered this Consent.

#### AGREEMENT

In consideration of the foregoing, and for other good and valuable consideration, the receipt and

adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereto hereby agree as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent and Agreement.

CPA hereby acknowledges:

(a) Notice of and consents to the assignment as collateral security to Collateral Agent, for the benefit of the Secured Parties, of the Assigned Interest; and

(b) The right (but not the obligation) of Collateral Agent in the exercise of its rights and remedies under the Financing Documents, to make all demands, give all notices, take all actions and exercise all rights of Project Company permitted under the PPA (subject to CPA's rights and defenses under the PPA and the terms of this Consent) and accepts any such exercise; *provided*, insofar as the Collateral Agent exercises any such rights under the PPA or makes any claims with respect to payments or other obligations under the PPA, the terms and conditions of the PPA applicable to such exercise of rights or claims shall apply to Collateral Agent to the same extent as to Project Company.

### 1.2 Project Company's Acknowledgement.

Each of Project Company and Collateral Agent hereby acknowledges and agrees that, following the occurrence of a default by Project Company under the PPA, CPA is authorized to act in accordance with Collateral Agent's instructions and the terms of this Agreement, and that, other than arising due to the negligence or willful misconduct of CPA, CPA shall bear no liability to Project Company or Collateral Agent in connection therewith, including any liability for failing to act in accordance with Project Company's instructions.

### 1.3 Right to Cure.

If Project Company defaults in the performance of any of its obligations under the PPA, or upon the occurrence or non-occurrence of any event or condition under the PPA which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable CPA to terminate or suspend its performance under the PPA (a "PPA Default"), CPA will not terminate or suspend its performance under the PPA until it first gives written notice of such PPA Default to Collateral Agent and affords Collateral Agent the right to cure such PPA Default within the applicable cure period under the PPA, which cure period shall run concurrently with that afforded Project Company under the PPA. In addition, if Collateral Agent gives CPA written notice prior to the expiration of the applicable cure period under the PPA of Collateral Agent's intention to cure such PPA Default (which notice shall include a reasonable description of the time during which it anticipates to cure such PPA Default) and is diligently proceeding to cure such PPA Default, notwithstanding the applicable cure period under the PPA, Collateral Agent shall have a period of ninety (90) days (or, if such PPA Default is for failure by the Project Company to pay an amount to CPA which is due and payable under the PPA other than to provide PPA Collateral, thirty (30) days, or, if such PPA Default is for failure by Project Company to provide PPA Collateral, ten (10) Business Days) from the Collateral Agent's receipt of the notice of such

PPA Default from CPA to cure such PPA Default; *provided, that*, such additional cure period for the Collateral Agent shall commence on the later of (1) the end of the Project Company's cure period under the PPA and (2) the date the Collateral Agent receives notice of the PPA Default; *provided, further*, (a) if possession of the Facility is necessary to cure any such non-monetary PPA Default and Collateral Agent has commenced foreclosure proceedings within sixty (60) days after notice of the PPA Default and is diligently pursuing such foreclosure proceedings, Collateral Agent will be allowed a reasonable time, not to exceed one hundred eighty (180) days after the notice of the PPA Default, to complete such proceedings and cure such PPA Default, and (b) if Collateral Agent is prohibited from curing any such PPA Default by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a PPA Default shall be extended for the period of such prohibition, so long as Collateral Agent has diligently pursued removal of such process, stay or injunction. Collateral Agent shall provide CPA with reports concerning the status of efforts to cure a PPA Default upon CPA's reasonable request.

#### 1.4 Substitute Owner.

Subject to Section 1.7, the Parties agree that if Collateral Agent notifies CPA (such notice, a "Financing Document Default Notice") that an event of default has occurred and is continuing under the Financing Documents (a "Financing Document Event of Default") then, upon a judicial foreclosure sale, non-judicial foreclosure sale, deed in lieu of foreclosure or other transfer following a Financing Document Event of Default, Collateral Agent (or its designee) shall be substituted for Project Company (the "Substitute Owner") under the PPA, and, subject to Sections 1.7(b) and 1.7(c) below, CPA and Substitute Owner will recognize each other as counterparties under the PPA and will continue to perform their respective obligations (including those obligations accruing to CPA and the Project Company prior to the existence of the Substitute Owner) under the PPA in favor of each other in accordance with the terms thereof; *provided*, before CPA is required to recognize the Substitute Owner, the Substitute Owner must have demonstrated to CPA's reasonable satisfaction that the Substitute Owner meets the qualifications of a Permitted Transferee under the PPA (a "Permitted Transferee"). For purposes of the foregoing, CPA shall be entitled to assume that any such purported exercise of rights by Collateral Agent that results in substitution of a Substitute Owner under the PPA is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same.

#### 1.5 Replacement Agreements.

Subject to Section 1.7, if the PPA is terminated, rejected or otherwise invalidated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company, its owner(s) or guarantor(s), and if Collateral Agent or its designee directly or indirectly takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) ("Replacement Owner"), CPA shall, and Collateral Agent shall cause Replacement Owner to, enter into a new agreement with one another for the balance of the obligations under the PPA remaining to be performed having terms substantially the same as the terms of the PPA with respect to the remaining Term ("Replacement PPA"); *provided*, before CPA is required to enter into a Replacement PPA, the Replacement Owner must have demonstrated to

CPA's reasonable satisfaction that the Replacement Owner satisfies the requirements of a Permitted Transferee. For purposes of the foregoing, CPA is entitled to assume that any such purported exercise of rights by Collateral Agent that results in a Replacement Owner is in accordance with the Financing Documents without independent investigation thereof but shall have the right to require that the Collateral Agent and its designee (if applicable) provide reasonable evidence demonstrating the same. Notwithstanding the execution and delivery of a Replacement PPA, to the extent CPA is, or was otherwise prior to its termination as described in this Section 1.5, entitled under the PPA, CPA may suspend performance of its obligations under such Replacement PPA, unless and until all PPA Defaults of Project Company under the PPA or Replacement PPA have been cured.

#### 1.6 Transfer.

Subject to Section 1.7, a Substitute Owner or a Replacement Owner may assign all of its interest in the Facility and the PPA and a Replacement PPA to a natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority or other entity (a "Person") to which the Facility is transferred; *provided*, the proposed transferee shall have demonstrated to CPA's reasonable satisfaction that such proposed transferee satisfies the requirements of a Permitted Transferee.

#### 1.7 Assumption of Obligations.

##### (a) Transferee.

Any transferee under Section 1.6 shall expressly assume in a writing reasonably satisfactory to CPA all of the obligations of Project Company, Substitute Owner or Replacement Owner under the PPA or Replacement PPA, as applicable, including posting and collateral assignment of the PPA Collateral. Upon such assignment and the cure of any outstanding PPA Default, and payment of all other amounts due and payable to CPA in respect of the PPA or such Replacement PPA, the transferor shall be released from any further liability under the PPA or Replacement PPA, as applicable.

##### (b) Substitute Owner.

Subject to Section 1.7(c), any Substitute Owner pursuant to Section 1.4 shall be required to perform Project Company's obligations under the PPA, including curing defaults, posting and collateral assignment of the PPA Collateral; *provided*, the obligations of such Substitute Owner shall be no more than those of Project Company under the PPA.

##### (c) No Liability.

CPA acknowledges and agrees that neither Collateral Agent nor any Secured Party shall have any liability or obligation under the PPA as a result of this Consent (except to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner) nor shall Collateral Agent or any other Secured Party be obligated or required to (i) perform any of Project Company's obligations under the PPA, except as provided in Sections 1.7(a) and 1.7(b) and to the extent Collateral Agent or a Secured Party is a Substitute Owner or Replacement Owner, or (ii) take any action to collect or enforce any claim for payment assigned under the Financing Documents. If Collateral Agent becomes a Substitute Owner pursuant to Section 1.4 or enters into

a Replacement PPA, Collateral Agent shall not have any personal liability to CPA under the PPA or Replacement PPA and the sole recourse of CPA in seeking enforcement of such obligations against Collateral Agent shall be to the aggregate interest of the Secured Parties in the Facility; *provided*, such limited recourse shall not limit CPA's right to seek equitable or injunctive relief against Collateral Agent, or CPA's rights with respect to any offset rights expressly allowed under the PPA, a Replacement PPA or the PPA Collateral.

#### 1.8 Delivery of Notices.

CPA shall deliver to Collateral Agent, concurrently with the delivery thereof to Project Company, a copy of each notice, request or demand given by CPA to Project Company pursuant to the PPA relating to (a) a PPA Default by Project Company under the PPA, (b) any claim regarding Force Majeure by CPA under the PPA, (c) any notice of dispute under the PPA, (d) any notice of intent to terminate or any termination notice, and (e) any matter that would require the consent of Collateral Agent pursuant to Section 1.11 or any other provision of this Consent. Collateral Agent acknowledges that delivery of such notice, request and demand shall satisfy CPA's obligation to give Collateral Agent a notice of PPA Default under Section 1.3. Collateral Agent shall deliver to CPA, concurrently with delivery thereof to Project Company, a copy of each notice, request or demand given by Collateral Agent to Project Company pursuant to the Financing Documents relating to a default by Project Company under the Financing Documents.

#### 1.9 Confirmations.

CPA will, as and when reasonably requested by Collateral Agent from time to time, confirm in writing matters relating to the PPA (including the performance of same by Project Company); *provided*, such confirmation may be limited to matters of which CPA is aware as of the time the confirmation is given and such confirmations shall be without prejudice to any rights of CPA under the PPA as between CPA and Project Company.

#### 1.10 Exclusivity of Dealings.

Except as provided in Sections 1.3, 1.4, 1.8, 1.9 and 2.1, unless and until CPA receives a Financing Document Default Notice, CPA shall deal exclusively with Project Company in connection with the performance of CPA's obligations under the PPA. From and after such time as CPA receives a Financing Document Default Notice and until a Substitute Owner is substituted for Project Company pursuant to Section 1.4, a Replacement PPA is entered into or the PPA is transferred to a Person to whom the Facility is transferred pursuant to Section 1.6, CPA shall, until Collateral Agent confirms to CPA in writing that all obligations under the Financing Documents are no longer outstanding, deal exclusively with Collateral Agent in connection with the performance of CPA's obligations under the PPA, and CPA may irrevocably rely on instructions provided by Collateral Agent in accordance therewith to the exclusion of those provided by any other Person.

#### 1.11 No Amendments.

To the extent permitted by Laws, CPA agrees that it will not, without the prior written consent of Collateral Agent (not to be unreasonably withheld, delayed or conditioned) (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the PPA (b) terminate or suspend its performance under the PPA (except in accordance with Section 1.3) or (c)

consent to or accept any termination or cancellation of the PPA by Project Company.

## SECTION 2. PAYMENTS UNDER THE PPA

### 2.1 Payments.

Unless and until CPA receives written notice to the contrary from Collateral Agent, CPA will make all payments to be made by it to Project Company under or by reason of the PPA directly to Project Company. CPA, Project Company, and Collateral Agent acknowledge that CPA will be deemed to be in compliance with the payment terms of the PPA to the extent that CPA makes payments in accordance with Collateral Agent's instructions. *[Collateral Agent may specific account information]*

### 2.2 No Offset, Etc.

All payments required to be made by CPA under the PPA shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the PPA.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF CPA

CPA makes the following representations and warranties as of the date hereof in favor of Collateral Agent:

### 3.1 Organization.

CPA is a joint powers authority and community choice aggregator duly organized and validly existing under the laws of the state of California, and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members . CPA has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by CPA of this Consent and the PPA have been duly authorized by all necessary corporate or other action on the part of CPA and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of CPA which, if not obtained, will prevent CPA from performing its obligations hereunder or under the PPA except approvals or consents which have previously been obtained and which are in full force and effect.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the PPA is in full force and effect, have been duly executed and delivered on behalf of CPA by the appropriate officers of CPA, and constitute the legal, valid and binding obligation of CPA, enforceable against CPA in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium

or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### 3.4 No Default or Amendment.

Except as set forth in Schedule A attached hereto: (a) Neither CPA nor, to CPA's actual knowledge, Project Company, is in default of any of its obligations under the PPA; (b) CPA and, to CPA's actual knowledge, Project Company, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to CPA's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

### 3.5 No Previous Assignments.

CPA has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the PPA, except as previously disclosed in writing and consented to by CPA.

## SECTION 4. REPRESENTATIONS AND WARRANTIES OF PROJECT COMPANY

Project Company makes the following representations and warranties as of the date hereof in favor of the Collateral Agent and CPA:

### 4.1 Organization.

Project Company is a limited liability company duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which it owns or leases real property or in which the nature of its business requires it to be so qualified, except where the failure to so qualify would not have a material adverse effect on its financial condition, its ability to own its properties or its ability to transact its business. Project Company has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 4.2 Authorization.

The execution, delivery and performance of this Consent by Project Company, and Project Company's assignment of its right, title and interest in, to and under the PPA to the Collateral Agent pursuant to the Financing Documents, have been duly authorized by all necessary corporate or other action on the part of Project Company.

### 4.3 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Project Company by the appropriate officers of Project Company, and constitutes the legal, valid and binding obligation of Project Company, enforceable against Project Company in accordance with

its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

#### 4.4 No Default or Amendment.

Except as set forth in Schedule B attached hereto: (a) neither Project Company nor, to Project Company's actual knowledge, CPA, is in default of any of its obligations thereunder; (b) Project Company and, to Project Company's actual knowledge, CPA, has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (c) to Project Company's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either CPA or Project Company to terminate or suspend its obligations under the PPA; and (d) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto.

#### 4.5 No Previous Assignments.

Project Company has not previously assigned all or any part of its rights under the PPA.

### SECTION 5. REPRESENTATIONS AND WARRANTIES OF COLLATERAL AGENT

Collateral Agent makes the following representations and warranties as of the date hereof in favor of CPA and Project Company:

#### 5.1 Authorization.

The execution, delivery and performance of this Consent by Collateral Agent have been duly authorized by all necessary corporate or other action on the part of Collateral Agent and Secured Parties.

#### 5.2 Execution and Delivery; Binding Agreement.

This Consent is in full force and effect, has been duly executed and delivered on behalf of Collateral Agent by the appropriate officers of Collateral Agent, and constitutes the legal, valid and binding obligation of Collateral Agent as Collateral Agent for the Secured Parties, enforceable against Collateral Agent (and the Secured Parties to the extent applicable) in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

### SECTION 6. MISCELLANEOUS

#### 6.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the Party or Parties to whom such notice is addressed, shall refer on their face

to the PPA (although failure to so refer shall not render any such notice or communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed (a) if to CPA or Project Company, in accordance with *[Notice Section of the PPA]* of the PPA, (b) if to Collateral Agent, to *[Collateral Agent Name]*, *[Collateral Agent Address]*, Attn: *[Collateral Agent Contact Information]*, Telephone: *[ ]*, Fax: *[ ]*, and (c) to such other address or addressee as any such Party may designate by notice given pursuant hereto.

#### 6.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT SHALL BE CONSTRUED IN ACCORDANCE WITH, AND THIS CONSENT AND ALL MATTERS ARISING OUT OF THIS CONSENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CONFLICTS OF LAWS PROVISIONS THEREOF THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.

(b) All disputes, claims or controversies arising out of, relating to, concerning or pertaining to the terms of this Consent shall be governed by the dispute resolution provisions of the PPA. Subject to the foregoing, any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California or of the United States of America for the Central District of California, and, by execution and delivery of this Consent, each Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each Party further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to its notice address provided pursuant to Section 6.1 hereof. Each Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

#### 6.3 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

#### 6.4 Severability.

In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

#### 6.5 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may (a) be terminated, amended, supplemented or modified, except by an instrument in writing signed by CPA, Project Company and Collateral Agent or (b) waived, except by an instrument in writing signed by the waiving Party.

6.6 Termination.

Each Party's obligations hereunder are absolute and unconditional, and no Party has any right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until CPA has been notified by Collateral Agent that all of the obligations under the Financing Documents shall have been satisfied in full (other than contingent indemnification obligations) or, with respect to the PPA or any Replacement PPA, its obligations under such PPA or Replacement PPA have been fully performed.

6.7 Successors and Assigns.

This Consent shall be binding upon each Party and its successors and assigns permitted under and in accordance with this Consent, and shall inure to the benefit of the other Parties and their respective successors and assignee permitted under and in accordance with this Consent. Each reference to a Person herein shall include such Person's successors and assigns permitted under and in accordance with this Consent.

6.8 Further Assurances.

CPA hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent.

6.9 Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAWS, THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER. EACH PARTY FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

6.10 Entire Agreement.

This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument, the terms, conditions and provisions of this Consent shall prevail.

6.11 Effective Date.

This Consent shall be deemed effective as of the date upon which the last Party executes this Consent.

6.12 Counterparts; Electronic Signatures.

This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the Parties and may be used in lieu of the original Consent for all purposes.

*[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.

[NEXTERA ENTITY],  
a Delaware limited liability company.

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

By: \_\_\_\_\_

By: \_\_\_\_\_

*[Name]*

*[Name]*

*[Title]*

*[Title]*

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

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

*[NAME OF COLLATERAL AGENT],*

*[Legal Status of Collateral Agent].*

By: \_\_\_\_\_

*[Name]*

*[Title]*

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

## **SCHEDULE A**

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

**AMENDMENT NO. 1 TO POWER PURCHASE AGREEMENT**

This Amendment No. 1 (the “**Amendment**”) to the Agreement (as defined below), is dated as of July 8, 2022 (the “**Effective Date**”), between Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”), and Estrella Solar, LLC, a Delaware limited liability company (“**Seller**”). Seller and Buyer are each a “**Party**” and together the “**Parties**”.

**RECITALS**

- A. The Parties entered into that certain Renewable Power Purchase and Sale Agreement, dated as of November 6, 2020 (as may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Agreement**”).
- B. Pursuant to Article 10 and Section 4 of Exhibit B of the Agreement, Seller has claimed significant delays to the Milestone schedule, including delays in achieving Construction Start by the Guaranteed Construction Start Date (“**GCSD**”) and Commercial Operation on or before the Guaranteed Commercial Operation Date (“**GCOD**”), as more particularly set forth in Attachment 1 (the “**Development Cure Period Claims**”).
- C. The Parties intend to resolve all matters with respect to Seller’s Development Cure Period Claims and potential liquidated damages for unexcused delays which might be owed by Seller to Buyer by entering into this Amendment on the terms set forth herein.
- D. The Parties do not intend to amend, now or in the future, any pricing set forth in the Agreement except as set forth in this Amendment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

- 1. Definitions. Capitalized terms used and not defined in this Amendment have the respective meanings assigned to them in the Agreement.
- 2. Amendments to the Agreement.
  - (a) In the Guaranteed Construction Start Date section of the Cover Sheet, the phrase “June 1, 2022” is deleted and replaced with “June 1, 2023”.
  - (b) In the Guaranteed Commercial Operation Date section of the Cover Sheet, the phrase “December 31, 2022” is deleted and replaced with “December 31, 2023”.
  - (c) In the Milestones table on the Cover Sheet, the dates for the following Milestones are replaced with the dates indicated below:

Milestone	Expected Date for Completion
Financial Close	██████████
Expected Construction Start Date	██████████
Initial Synchronization	11/15/2023
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	11/30/2023
Expected Commercial Operation Date	12/31/2023

- (d) The number of Contract Years specified for the Delivery Term on the Cover Sheet shall be changed from “Fifteen (15)” to “Sixteen (16)”.
- (e) In the Delivery Term Expected Energy table on the Cover Sheet, an additional row shall be added as follows:

Contract Year	Expected Energy (MWh)
16	██████████

- (f) In the Guaranteed Efficiency Rate table on the Cover Sheet, an additional row shall be added as follows:

Contract Year	Guaranteed Efficiency Rate
16	████

- (g) In the Contract Price section of the Cover Sheet, each reference to “1 – 15” for the applicable Contract Years in the two tables shall be changed to “1 – 16”.
- (h) Section 1.1 is amended to add a new defined term as follows:

“**Amendment No. 1**” means that certain Amendment No. 1 to Power Purchase Agreement executed between the Parties effective as of July 8, 2022 amending this Agreement.

- (i) A new Section 3.8(c) is added as follows:

(c) Initial Replacement RA. Notwithstanding any other provisions of this Agreement to the contrary, Seller shall provide to Buyer twenty-eight (28) MW of Replacement RA for each month of July, August and September of 2023 in accordance with the procedures set forth in the proviso in the last four lines of Section 3.8(b), provided that such Replacement RA may at Seller's election consist of System RA, Local RA and/or Flexible RA.

(j) Section 3.10 is replaced in its entirety with the following:

3.10 Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(k) Section 4.10(g) is replaced in its entirety with the following:

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(l) New Sections 4.10(i) and (j) are added as follows:

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

(j) Seller's obligations under Sections 3.10 and 4.10(i) shall be subject to Section 3.12, the term "Project" as used in Section 3.10 shall refer to the "Facility" and/or "Generating Facility" (as appropriate) as defined herein, and the term "commercially reasonable efforts" as used in Section 3.10 and Section 4.10(i) means efforts consistent with and subject to Section 3.12.

(m) In Section 10.4(a), the phrase "one hundred eighty (180)" is replaced by the phrase "sixty (60)".

(n) A new Section 13.5 is added as follows:

13.5 Seller's Consideration for Amendment. In consideration for Buyer agreeing to Amendment No. 1, Seller shall, on or before October 6, 2022, pay to Buyer five hundred thousand dollars (\$500,000).

- (o) In the final paragraph of Section 4 of Exhibit B, the phrase "one hundred eighty (180)" is replaced by the phrase "sixty (60)" and the phrase "two hundred seventy (270)" is replaced by the phrase "one hundred fifty (150)".

3. Development Cure Period Claims. As of the Effective Date of this Amendment, all of the Development Cure Period Claims are resolved by this Amendment and Seller acknowledges and agrees that no additional day-for-day extensions of the GCSD or GCOD will be granted with respect to any events occurring prior to the Effective Date of this Amendment. Notwithstanding the foregoing, the Parties acknowledge and agrees that: (a) the foregoing and the Development Cure Period Claims shall not reduce or limit the availability of any extensions for Development Cure Period or Force Majeure Events that Seller may be entitled to under the terms of the Agreement due to events, facts or circumstances arising after the Effective Date of this Amendment, and (b) the full amount of the limitations on extensions for Development Cure Period and Force Majeure Events set forth in the final paragraph of Section 4 of Exhibit B (as amended herein) shall be available to Seller with respect to any Development Cure Period or Force Majeure Event claims by Seller on and after the Effective Date of this Amendment. Seller represents and warrants as of the Effective Date of this Amendment that neither it, nor any of its Affiliates, are currently aware of any existing facts or circumstances specifically involving the Facility or its procurement that are reasonably likely to be a basis for any additional claims of Development Cure Period extensions to the GCSD or GCOD (it being understood that circumstances related to COVID-19, supply chain and related matters could change unexpectedly). Notwithstanding the foregoing, in no event shall any further delays or other adverse developments with respect to the approval or execution of a Franchise Agreement with Los Angeles County, or the issuance thereof, constitute a basis for a claim of Force Majeure or additional Development Cure Period day-for-day extensions of the GCSD or GCOD.

4. Limited Effect. Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed by the Parties. Without limiting the generality of the foregoing, the amendments contained herein will not be construed as an amendment to or waiver of any other provision of the Agreement or as a waiver of or consent to any further or future action on the part of either Party that would require the waiver or consent of the other Party. On and after the Effective Date of this Amendment, each reference in the Agreement to "this Agreement," "the Agreement," "hereunder," "hereof," "herein" or words of like import will mean and be a reference to the Agreement as amended by this Amendment.

5. Miscellaneous.

- (a) This Amendment is governed by and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions of such State.
- (b) This Amendment shall inure to the benefit of and be binding upon each of the Parties and each of their respective successors and permitted assigns.

- (c) The headings in this Amendment are for reference only and do not affect the interpretation of this Amendment.
- (d) This Amendment may be executed in counterparts, each of which is deemed an original, but all of which constitutes one and the same agreement. Delivery of an executed counterpart of this Amendment electronically or by facsimile shall be effective as delivery of an original executed counterpart of this Amendment.
- (e) This Amendment constitutes the sole and entire agreement between the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- (f) Each Party shall pay its own costs and expenses in connection with this Amendment (including the fees and expenses of its advisors, accounts and legal counsel).

*[Signature Page Follows]*

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

**“SELLER:”**

**Estrella Solar, LLC**

By: \_\_\_\_\_

Printed Name:

Title:

**“BUYER:”**

**CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA**

By: \_\_\_\_\_

Printed Name:

Title:

## **ATTACHMENT 1**

### **Development Cure Period Claims**

1. Matters set forth in that certain letter, dated December 29, 2021, from Seller (executed by Sean McBride) to Buyer entitled “Re: Force Majeure Notice Under [Agreement]”.
2. Matters set forth that certain letter, dated June 8, 2022, from Seller (executed by Trupti Kalbag) to Buyer entitled “Re: Estrella Solar Project Delays”.

## RENEWABLE POWER PURCHASE AGREEMENT

### COVER SHEET

**Seller:** Estrella Solar, LLC, a Delaware limited liability company

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

**Description of Facility:** A 56 MW solar photovoltaic Generating Facility combined with a 112 MWh (28 MW x 4 hours) battery energy Storage Facility, as more fully described herein

**Guaranteed Construction Start Date:** June 1, 2022

**Guaranteed Commercial Operation Date:** December 31, 2022

**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	10/1/2021
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	11/15/2022
Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)	11/30/2022
Expected Commercial Operation Date	12/31/2022

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

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	166,561
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]
15	[REDACTED]

**Guaranteed Capacity:** 84 MW of total Facility capacity

**Guaranteed Storage Capacity:** 28 MW of Installed Storage Capacity at four (4) hours of continuous discharge

**Guaranteed PV Capacity:** 56 MW of Installed PV Capacity

**Guaranteed Efficiency Rate:**

<b>Contract Year</b>	<b>Guaranteed Efficiency Rate</b>
----------------------	-----------------------------------

1	█
2	█
3	█
4	█
5	█
6	█
7	█
8	█
9	█
10	█
11	█
12	█
13	█
14	█
15	█

**Contract Price**

The Renewable Rate shall be:

<b>Contract Year</b>	<b>Renewable Rate</b>
1 – 15	\$█/MWh (flat) with no escalation

The Storage Rate shall be:

<b>Contract Year</b>	<b>Storage Rate</b>
1 – 15	\$█/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: for the Generating Facility (subject to Section 3.7(d))
  - Full Capacity Deliverability Status: for the Storage Facility
    - a) RA Guarantee Date: Commercial Operation Date

**Scheduling Coordinator:** Buyer

## **Security and Guarantor**

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

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

Guarantor: N/A as of Effective Date

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 2020 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

### RECITALS

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

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

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

### ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

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

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

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

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, and the Cover Sheet.

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

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, and any other ancillary services, in each case as defined in the CAISO Tariff

from time to time that the Facility is at the relevant time actually physically capable of providing consistent with applicable Law, the Interconnection Agreement, and the Operating Restrictions set forth in Exhibit Q. For clarity, Ancillary Services as used herein does not include any ancillary services that the Facility is not actually physically capable of providing consistent with the Operating Restrictions set forth in Exhibit Q and the Facility's CAISO Certification.

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

**"Annual Forecast"** has the meaning set forth in Section 4.3(a).

**"Annual Storage Capacity Availability"** has the meaning set forth in Exhibit P.

**"Approved Forecast Vendor"** means (a) the CAISO or (b) 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.

**"Bankrupt"** means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to 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 curtail any PV Energy which would have been produced from the Generating Facility for a period of time based on the full amount of PV Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) 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 Economic Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWs subject to the reduction; or

(ii)

[REDACTED]

[REDACTED]

[REDACTED]

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Energy that was not delivered 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 breach or default 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 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 and sold under CAISO market rules, including Resource Adequacy Benefits.

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

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

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

**“CEC”** means the California Energy Commission or its successor agency.

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

**“CEC Precertification”** means that the CEC has issued a precertification for the Facility 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*, 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 and Station 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. The Parties acknowledge that, with reference to Exhibit R, prior to the Grid Charging Effective Date all Charging Energy will originate at, and flow directly from, the Generating Facility (after passing through the Generating 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, instructing 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, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed 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”, the MW rate in such “Charging Notice” shall be deemed to be automatically adjusted to the actual power level of the Generating Facility (adjusted for Electrical Losses). Any Buyer Dispatched Test and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

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

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

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

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

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

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

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

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

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

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

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

“**Contract Price**” has the meaning set forth on the Cover Sheet. 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 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 3.8(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, 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;

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

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

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

“**Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a

Curtailment Order; *provided*, 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) ninety (90).

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

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

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

**“Discharging Energy”** means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy 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, instructing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or amount of MWh; *provided*: (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be discharging, the sum of PV Energy and Discharging Energy delivered to the Delivery Point 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 delivered to the Delivery Point 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 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 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.

**“Dispatch Operating Target”** has the meaning set forth in the CAISO Tariff.

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

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

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

**“Effective Storage Capacity”** means the lesser of (a) P<sub>MAX</sub>, and (b) the maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point pursuant to 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 a Storage Capacity Test 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.

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

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

**“Energy”** means electrical energy, measured in kilowatt-hours or multiple units thereof.

**“Energy In”** has the meaning set forth in Part 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 Part III.A(10) of Exhibit O.

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

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

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

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

**“Expected Energy”** means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted 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.

“**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(a).

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

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

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

“**Full Capacity Deliverability Status Finding**” means a written confirmation from the CAISO that the Storage Facility is eligible for Full Capacity Deliverability Status, which written confirmation may only identify the Storage Facility indirectly as it is part of a larger project using the same CAISO queue position.

“**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 shown on Exhibit R.

**“Generating Facility Testing Condition”** has the meaning set forth in Part I.B.4 of Exhibit O.

**“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 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<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; 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.

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

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

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

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

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

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

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

**“Installed PV Capacity”** means the actual generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (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<sub>MAX</sub>, 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 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”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and

pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**“Interconnection Capacity Limit”** means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under the Interconnection Agreement, in the amount of 56 MW.

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

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

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

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

**“ITC”** means the investment tax credit established pursuant to Section 48 of the 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 Resources**” has the meaning set forth in the CAISO Tariff.

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

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

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

“**Make-up Days**” has the meaning set forth in Exhibit B.

“**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 the Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“**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.

“**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 Instruction**” has the meaning in the CAISO Tariff.

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

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

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

“**Performance Security**” means (i) cash, (ii) a Letter of Credit or (iii) a Guaranty (if permitted by Buyer, in its sole discretion), 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 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 that is delivered from the Generating Facility, as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use (if any).

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

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

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

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

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

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

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

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

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

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

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

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

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

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

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

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within SP 15 TAC Area and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

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

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

**“Resource Adequacy Rulings”** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or

decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

“**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**” has 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(s), FMM Schedule(s) (as defined in the CAISO Tariff), and/or any other financially binding Schedule(s), 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 the Interconnection Agreement itself, that are used in common with third parties.

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

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, 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 (i) the level of charge of the Storage Facility relative to (ii) the Effective Storage Capacity multiplied by four (4) hours, based on the then-current Effective Storage Capacity, 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; *provided*, Station Use does not include Electrical Losses (including transformation losses in the transformer) that exist (a) between the Generating Facility Meter and the Delivery Point, (b) between the Storage Facility Meter and the Delivery Point, and (c) between the Generating Facility Meter and the Storage Facility Meter.

“**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 on Exhibit R.

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

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

**“Stored Energy Level”** means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time will be greater than the Stored Energy Level as defined in the preceding sentence.

**“Supplementary Capacity Test Protocol”** has the meaning set forth in Part II.H of Exhibit O.

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

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

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

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

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

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

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

“**Ultimate Parent**” means sPower, LLC, a Delaware limited liability company.

“**Unavailability Notice**” means any Seller Notice or schedule of Planned Outages with respect to unavailability of the Storage Facility and provided to Buyer pursuant to Sections 4.3(e) and 4.6.

“**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) 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 (including from the CAISO) for the commencement of operation of the Generating Facility, and of the Storage Facility (for general charging and discharging into the CAISO market [REDACTED]), 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 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);

(f) 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;

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

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

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (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.

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 which directly prevents Seller from achieving such Milestone, 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 shall 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*, 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 components thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to the terms and conditions of this Agreement, Buyer has no obligation to pay Seller the Renewable Rate for any Product from the Generating Facility for which the associated PV Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of PV Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/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 on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the "**Test Energy Rate**"). Following such ninety (90) day period, for a subsequent period of up to an additional ninety (90) days prior to the Commercial Operation Date, Buyer shall schedule Test Energy and any associated Products of the Generating Facility and pay to Seller the lesser of (i) all CAISO payments, credits and revenues

therefrom and (ii) fifty percent (50%) of the Renewable Rate for each MWh of Test Energy delivered to Buyer. The price for any Test Energy delivered to Buyer after such one hundred eighty (180) days shall be zero dollars (\$) per MWh. The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process for the Storage Facility. 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 Storage Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.7(d) and 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) Seller shall use commercially reasonable efforts to obtain and deliver Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer's benefit, including applying for a deliverability allocation for the Generating Facility one (1) time after the Effective Date, at no cost to Buyer, and thereafter applying for a deliverability allocation from time to time at Buyer's request and Buyer shall reimburse Seller for Seller's costs associated therewith.

3.8 **Resource Adequacy Failure.** Subject to Section 19.12:

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

(b) **RA Deficiency Amount Calculation.** For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Storage Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the Guaranteed Storage Capacity), minus (ii) the Net Qualifying Capacity of the Storage Facility, multiplied by the price for CPM Capacity (in \$/kW) as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("**CPM Price**"); *provided*, Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of

the Storage Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Storage Facility with respect to such month, not to exceed ten percent (10%) of the Qualifying Capacity amount in any such RA Shortfall Month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification**. Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Delivery Term, including compliance with all requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Facility. 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 cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars (\$25,000) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

- (a) Any actions required for Seller to comply with its obligations set forth in

the first paragraph above, the cost of which shall be included in the Compliance Expenditure Cap, shall be referred to collectively as the “**Compliance Actions**”; *provided*, Compliance Actions shall not require Seller to 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. [REDACTED]

[REDACTED] *provided*, Seller shall obtain Buyer’s written approval prior to taking any Compliance Action which is reasonably likely to cause the Storage Facility to have reduced capacity and/or availability; *provided further*, Buyer shall be deemed to have waived any failure by Seller to comply with the requirements of this Agreement to the extent such failure results from any delay in Seller taking any Compliance Action as directed by Buyer, or due to Buyer’s delay in providing, the approval set forth in the immediately preceding proviso.

(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 shall 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, Seller shall provide a second Notice to Buyer, and if Buyer does not respond to such second Notice within five (5) 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 at its reasonable discretion after a Buyer rejection of the previously proposed compliance costs); *provided*, if Buyer responds within the required timeframe, Buyer shall have such time as Buyer reasonably requires to direct Seller to take the Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe, subject to the provisions of Section 3.12(a).

(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 (subject to the provisions of Section 3.12(a)), 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 the use of grid energy (i.e., energy not produced by the Generating Facility) to provide Charging Energy or conversion from two (2) to one (1) CAISO Resource IDs; *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 to permit the use of grid energy to provide Charging Energy 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 shall be scheduled with the CAISO by 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 and Ancillary Services 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 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 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 for First Contract Year.** No less than forty-five (45) days before the first day of the first Contract Year of the Delivery Term, and as updated by Seller from time to time thereafter in its discretion or as may be required below, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day hourly expected Energy from the Generating Facility (the "**Forecasted Product**"), by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer (the "**Annual Forecast**").

(b) **[Reserved]**

(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 (or arrange for an Approved Forecast Vendor to 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 (or the Approved Forecast Vendor'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 (or the Approved Forecast Vendor) 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 Annual Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify (or arrange for an Approved Forecast Vendor to notify) Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product ("**Real-Time Forecast**"), in each case, whether due to 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 (or arrange for an Approved Forecast Vendor to notify) Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy (including those provided by an Approved Forecast Vendor) 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. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; *provided*, 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 (or the Approved Forecast Vendor, as applicable) shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, with respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify (or arrange for an Approved Forecast Vendor to notify) Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller or the Approved Forecast Vendor 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.

(f) Forecasting Penalties. If with respect to any given hour Seller has failed to provide the forecast required in Section 4.3(d) and has failed to arrange for an Approved Forecast Vendor to provide such forecast, and due to such failures 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 set forth in the Day-Ahead Forecast (or Annual Forecast to the extent no Day-Ahead Forecast was Delivered to Buyer), and (ii) the actual PV 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 shall fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

#### 4.4 Dispatch Down/Curtailment.

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

[REDACTED]

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

#### 4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver

the Charging Energy from the Generating Facility to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), 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 shall 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 shall 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, in connection with a Buyer Dispatched Test or 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; *provided*, if Seller receives a Charging Notice that is not in compliance with the Operating Restrictions, Seller shall notify the SC as soon as reasonably practicable, but in no event later than one (1) hour following receipt of such non-compliant Charging Notice, and Seller shall comply with the Charging Notice to the fullest extent possible without violating the Operating Restrictions until such time as Seller receives a modified Charging Notice. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then 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. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) Discharging Notices; No Unauthorized Discharging. Buyer shall 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, subject to the requirements and limitations set forth in this Agreement, the CAISO Tariff including the Operating Restrictions and the existing level of charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement shall 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). Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice, in connection with a Buyer Dispatch Test or 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 (it being acknowledged, however, that any unintended or accidental 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)); *provided*, if Seller receives a Discharging Notice that is not in compliance with the Operating Restrictions, Seller shall notify the SC as soon as reasonably practicable, but in no event later than one (1) hour following receipt of such non-compliant Discharging Notice, and Seller shall comply with the Discharging Notice to the fullest extent possible without violating the Operating Restrictions until such time as Seller receives a modified Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, (i) during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and (ii) 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) Consequences of Unauthorized Charging and Discharging. 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 unintended or accidental 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, 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. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Storage Facility. Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy) prior to (and after) the Commercial Operation Date, and Seller shall only charge and discharge the Storage Facility in connection with

installation, commissioning and testing of the Storage Facility, and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility installation, commissioning and testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth herein.

(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 Automated Dispatches or Alternative Dispatches (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;

[REDACTED]

(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, and is

not capable of responding to Automated Dispatches or Alternative Dispatches

), such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the Annual Storage Capacity Availability. Except as set forth 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 Automated Dispatches or Alternative Dispatches.

(iii) For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility either (A) fails to respond at all to an Ancillary Services Dispatch, 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 any such failure to respond at all to an Ancillary Services Dispatch or to be certified by the CAISO to provide Ancillary Services.

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

(l) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), and (ii) the supply of such Station 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).

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

(a) Facility Maintenance. 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. No Planned Outages shall be scheduled during the period 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. 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. Subject to the restrictions set forth in this Section 4.6(a), Seller shall have the right during each Contract Year, on no less than sixty (60) days advance Notice to Buyer, to make changes to each such schedule, and shall reasonably coordinate to obtain comments from Buyer on such changes; *provided*, Buyer shall cooperate with Seller to make changes to each such schedule, including on less than sixty (60) days advance notice, and shall permit any changes if doing so would not have a material adverse impact on Buyer, provided that (i) such proposed

change is not during the period from each June 1 through October 31 during the Delivery Term unless (x) with respect to maintenance on the Storage Facility, such maintenance is conducted between the hours of 10 p.m. and 6 a.m. and would not cause more than 5 MWs of the Effective Storage Capacity to be unavailable, and (y) with respect to maintenance on the Generating Facility, such maintenance is conducted during the time after sunset and prior to sunrise, and (ii) Seller agrees to reimburse Buyer for any costs or charges associated with such changes.

(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.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability to the extent the Storage Facility otherwise has an Unavailable Calculation Interval under Exhibit P.

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. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) PV Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *provided*, 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 is Seller’s payment of liquidated damages made pursuant to Section (f) 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.**

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

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, 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 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 such Storage Capacity 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 Automated 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 as required by Exhibit O, 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 shall be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test. For all Seller Initiated Tests, Seller shall reimburse Buyer the amount of Buyer’s payment for the Charging Energy for such Seller Initiated Test, and Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy. 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, 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 transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy generated, any fractional MWh amounts (i.e., kWh) shall 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 an 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 to Seller next coming due 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 4.10, 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 WREGIS Certificates will be created equivalent to the amount of PV Energy that is generating by the Generating Facility. If the RPS (or other applicable Law) is applied or changes in a manner 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.

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

## **ARTICLE 5 TAXES**

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

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

## **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 Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

## **ARTICLE 7 METERING**

### **7.1 Metering.**

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall segregate and separately meter Station Use to the extent reasonably possible for the technology selected by Seller for the Facility in accordance with Prudent Operating Practice and CAISO requirements, and any such meter(s) shall have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes. Upon the reasonable request from time

to time by Buyer, Seller shall provide Buyer a report of the metered quantities of Station Use consumed by the Storage 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 Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, 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 (other than UIE) 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. [REDACTED]

[REDACTED]

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 make commercially reasonable efforts to cause the meter to be tested. 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 shall 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*, (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 (10<sup>th</sup>) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy, Charging Energy, Discharging Energy, Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

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

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

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter

inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve (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 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 (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, 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. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination

Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. 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: (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 shall 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, 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 [REDACTED]  
[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.** 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 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 [REDACTED], and [REDACTED], and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's commercially unreasonable 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 with respect to the Facility experiencing the Force Majeure Event. 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) the failure by Seller (A) to achieve Construction Start on or before the Guaranteed Construction Start Date, or (B) to 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 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 ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, for any full Contract Year, the Annual Storage Capacity Availability for such Contract Year multiplied by the weighted average Effective Storage Capacity for such Contract Year is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from

Buyer a plan or report developed by Seller that describes the cause of the failure to meet such seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days (“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;

[REDACTED]

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

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a 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, calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

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

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

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

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be 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, 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 shall 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, 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 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 to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60) days 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 to Buyer on terms and conditions (including price) materially similar to those set forth in this Agreement, 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 as set forth in Section 4.8 and 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.

11.9 **Seller Pre-COD Termination.** At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and

retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date; *provided*, in no event shall the sum of (A) and (B) exceed an amount equal to two (2) times the Development Security amount.

**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 15 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 OR OTHERWISE.

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 2.4, 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(f), 4.5(k), 4.7, 4.8(b), 4.8(c), 10.4, 11.2, 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

**ARTICLE 13**  
**REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

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

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, 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 shall 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) shall be deemed an assignment and shall 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 agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions (with such changes as may be reasonably requested by Lenders):

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

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

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

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

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

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer shall have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

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

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

(e) Lender shall receive prior written notice of and the right to approve material amendments to this Agreement, which approval shall not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's remaining obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

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

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

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

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person shall 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.

Except as provided in the preceding sentence, 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*, 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 S ("**Assignment Agreement**"), such agreement not to be unreasonably withheld; (ii) 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; (iii) 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 (iv) 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.

## **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) for (i) 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) 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, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim; *provided*, 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 shall 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. Seller, if it has employees, shall maintain 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 shall 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 include Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. 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, then without restricting Buyer's remedies under Article 11, the Law or otherwise, Seller shall (in accordance with the applicable provisions of Section 16.2) indemnify and defend Buyer against all claims and liability for which, and to the same extent that, Buyer would have been covered by Seller's insurance pursuant to this Article 17 if Seller had not failed to comply with the provisions of this Article 17.

## **ARTICLE 18 CONFIDENTIAL INFORMATION**

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

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

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

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“**Requested Confidential Information**”), Buyer 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 shall 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, (i) a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, [REDACTED]

[REDACTED], 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 (or, in the case of preceding clause (ii), to maintain Seller's level of burdens or obligations under Section 3.8), in each case 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 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.

ESTRELLA SOLAR, LLC, a Delaware  
limited liability company

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Estrella Solar

**Site includes all or some of the following APNs:** 3262-006-002, 3262-006-003, 3262-001-005, 3262-001-006, 3265-018-001, 3265-018-002, 3265-019-030, 3267-003-025, 3267-003-053, 3267-003-031, 3267-003-061, 3267-003-022, 3267-003-044, 3267-005-005, 3265-022-044, 3265-022-045, 3265-022-010, 3265-022-011, 3265-022-013, 3265-022-015, 3265-022-012, 3265-022-014, 3267-005-021, 3267-005-022, 3219-021-008, 3219-021-009, 3219-021-010, 3219-021-011, 3203-001-036, 3203-001-038, 3203-002-007, 3203-002-008, 3203-002-006, 3203-002-005, 3267-005-902, 3219-024-100, 3219-023-007, 3219-023-008, 3219-023-016, 3219-023-018, 3219-023-019, 3203-001-041, 3203-001-009, 3203-002-010, 3203-002-009, 3203-001-031

**City:** North Antelope Valley

**County:** Los Angeles County

**Zip Code:** 93536

**Latitude and Longitude:** -118.3133, 34.8509

**Delivery Point:** Pnode for the Generating Facility

**Generating Facility Metering Point:** See Metering Diagram in Exhibit R

**Storage Facility Metering Point:** See Metering Diagram in Exhibit R

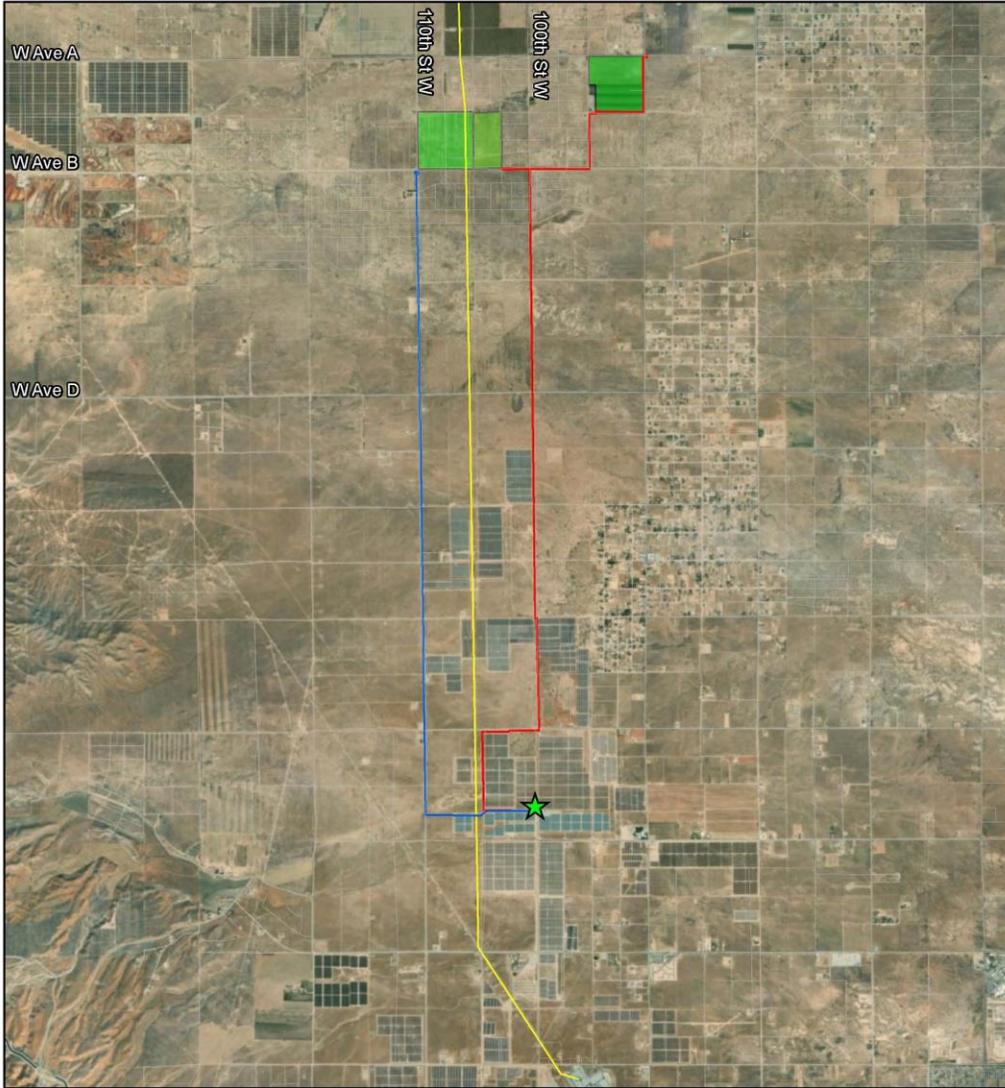
**P-node applicable to Facility's CAISO IDs:** As established by CAISO for POI at SCE Antelope Substation 220 kV Bus.

**Transmission Provider:** Southern California Edison

**Additional Information:** N/A

**Facility Description:** Estrella Solar is a 56 MW AC photovoltaic solar project which includes a 28MW / 112MWh AC-connected battery energy storage facility located in Los Angeles County, California. The Facility will be located within a portion of the green area set forth in the **Site**

Diagram, below.



LA County, CA			
		Project Parcels	Author: TA
		Gen-tie option A -- OH 34.5 kV (overhead)	Date: 5/8/2020
		Gen-tie option B -- UG 34.5 kV (underground)	Version: 1.0
		500 kV Windhub -- Antelope	Type: Project Overview
		Big Sky North Substation	
			El Campo & Estrella



## 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 an engineering, procurement, and construction contract (or similar contract) and issuance of a full notice to proceed (or reasonable equivalent) to the contractor or integrator party thereto, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary so that engineering, procurement and construction of the Facility may 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. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; *provided*, in no event shall Seller be obligated to pay aggregate Daily Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. Each day for which Seller pays Daily Delay Damages shall automatically extend the Guaranteed Commercial Operation Date, and if Seller achieves the Commercial Operation Date by one or more days prior to the extended Guaranteed Commercial Operation Date, with such number of days by which the Commercial Operation Date precedes the Guaranteed Commercial Operation Date as extended by the payment of Daily Delay Damages (but not by a Development Cure Period) being referred to as the “**Make-up Days**”, then Buyer shall refund to Seller an amount equal to the number of Make-up Days multiplied by the Daily Delay Damages amount, up to but not in excess of the aggregate amount of Daily Delay Damages previously paid. 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**”); and the “**Commercial Operation Date**” means the date set forth in such Notice of the occurrence of the fulfillment of such conditions precedent.
  - 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 cumulative extensions by payment of Daily Delay Damages and/or 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 Daily Delay Damages and/or Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for up to [REDACTED] [REDACTED] days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. 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.** 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 by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or

b. a Force Majeure Event occurs, [REDACTED]  
[REDACTED]  
[REDACTED] or

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 date that is thirty (30) days prior to 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 (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, 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; *provided*, the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Daily Delay Damages, Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

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

- a. *Guaranteed PV Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date (i.e., ninety (90) days after the Commercial Operation 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 one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “**Storage Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW at four (4) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

**EXHIBIT C**  
**COMPENSATION**

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

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

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

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

(d) Monthly Capacity Payment.

(i) Each 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. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than 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 is applicable.

(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%) of the Guaranteed Storage Availability, 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. 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 subject to withholding 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:

$$\text{Capacity Availability Factor} = 0$$

- (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:

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

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

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

**“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) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall

be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate.

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

## EXHIBIT D

### SCHEDULING COORDINATOR RESPONSIBILITIES

(a) 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, expeditiously take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer'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.

(b) 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.

(c) CAISO Costs and Revenues. Except as otherwise set forth in this part (c) 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. 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.

(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 shall 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.

(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, 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 possession, 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, 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**

**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 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:

$$[(A - B) * (C - D)]$$

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 SP15 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

“**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 - B) or (C - D) yields a negative number.

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.

Exhibit G - 2

**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 for the technology selected by Seller for the Facility 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 H - 2

**EXHIBIT I-1**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification (“**Certification**”) of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is \_\_ MW AC (“**Installed PV Capacity**”);

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of \_\_ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “**Installed Storage Capacity**”);

(c) The sum of (a) and (b) is \_\_ MW AC and shall be the “**Installed Capacity**”;  
and

(d) The Commercial Operation Storage Capacity Test demonstrated an Efficiency Rate of \_\_%, (i) a Battery Charging Factor of \_\_%, and (ii) a Battery Discharging Factor of \_\_%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT I-2**

**FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE**

This certification (“**Certification**”) of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] (“**Engineer**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of \_\_ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the “**Effective Storage Capacity**”); and

(b) The Storage Capacity Test demonstrated (i) an Efficiency Rate of \_\_%, (ii) a Battery Charging Factor of \_\_%, and (ii) a Battery Discharging Factor of \_\_%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to Clean Power Alliance of Southern California, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
- (2) the Construction Start Date occurred on \_\_\_\_\_ (the “**Construction Start Date**”); and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]  
APPLICANT: [TO BE ADVISED (SHOULD BE A SINGLE ENTITY)]  
AMOUNT: [TO BE ADVISED]  
EXPIRY: 1 YEAR FROM ISSUANCE

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., New York 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 New York, New York.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. New York time, on or before the Expiration Date of a copy of this Letter of Credit No. [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.

Drawing(s) under this Letter of Credit may be presented to us by facsimile transmission to facsimile number [XXX] (if presented by fax it must be followed up by a phone call to Issuer at [XXX] to confirm receipt. In the event of a presentation via facsimile transmission, no mail

confirmation is necessary and the facsimile transmission shall constitute the operative drawing documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit shall 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 Exhibit A.

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 shall expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date shall 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 New York, 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 [XXXXXX], 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 GUARANTY

This Guaranty (this "**Guaranty**") is entered into as of [\_\_\_\_\_] (the "**Effective Date**") by and between [\_\_\_\_\_] a [\_\_\_\_\_] ("**Guarantor**"), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, "**Buyer**").

#### Recitals

- A. Buyer and [SELLER ENTITY], a \_\_\_\_\_ ("**Seller**"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "**PPA**") dated as of [\_\_\_\_], 20\_\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

- 1. Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "**Guaranteed Amount**"), *provided*, Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.
- 2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "**Demand Notice**"), then Buyer may elect to exercise its rights under this Guaranty

and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

**3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

*provided*, Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

**4. Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Paragraph 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

**5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

**6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

**7. Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at   
Attn:   
Fax:

If delivered to Guarantor, to it at   
Attn:   
Fax:

**8. Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

**9. Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to

reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

#### **10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

- (i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.
- (ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

- (iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO SHALL BE DECIDED BY A REFEREE AND NOT BY A JURY.

*[Signature on next page]*

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[\_\_\_\_\_]

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

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

BUYER:

[\_\_\_\_\_]

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

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

By:\_\_\_\_\_

Printed Name:\_\_\_\_\_

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

## EXHIBIT 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 product information:

**Unit Information<sup>1</sup>**

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		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

**EXHIBIT N**  
**NOTICES**

<b>ESTRELLA SOLAR, LLC, a Delaware limited liability company (“Seller”)</b>	<b>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</b>
<b>All Notices:</b>  Street: 2180 South 1300 East, Suite 600 City: Salt Lake City, Utah 84106 Attn: General Counsel  Phone: (801) 679-3506 Email: <a href="mailto:notices@spower.com">notices@spower.com</a>	<b>All Notices:</b>  Street: 801 S Grand, Suite 400 City: Los Angeles, CA 90017 Attn: Executive Director  Phone: (213) 269-5870 Email: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a>
<b>Reference Numbers:</b> Duns: Federal Tax ID Number:	<b>Reference Numbers:</b> Duns: Federal Tax ID Number:
<b>Invoices:</b> Attn: Accounts Payable Phone: (801) 679-3512 E-mail: <a href="mailto:accountspayable@spower.com">accountspayable@spower.com</a>	<b>Invoices:</b> Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a>
<b>Scheduling:</b> Attn: Control Room Phone: (855) 679-3553 Email: <a href="mailto:ControlRoom@spower.com">ControlRoom@spower.com</a>	<b>Scheduling: TBD</b> Attn: Phone: Email:
<b>Confirmations:</b> Attn: Director, Utility Power Marketing Phone: (415) 692-7572 Email: <a href="mailto:tkalbag@spower.com">tkalbag@spower.com</a>	<b>Confirmations:</b> Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 Email: <a href="mailto:nkeefe@cleanpoweralliance.org">nkeefe@cleanpoweralliance.org</a>
<b>Payments:</b> Attn: Accounts Payable Phone: (801) 679-3512 E-mail: <a href="mailto:accountspayable@spower.com">accountspayable@spower.com</a>	<b>Payments:</b> Attn: Director, Power Planning & Procurement Phone: (213) 269-5870 E-mail: <a href="mailto:settlements@cleanpoweralliance.org">settlements@cleanpoweralliance.org</a>
<b>Wire Transfer:</b> BNK: ABA: ACCT:	<b>Wire Transfer:</b> BNK: River City Bank ABA: [REDACTED] ACCT: [REDACTED]

## 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.

A. 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).

B. Conditions Prior to Testing.

- (1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3, or equivalent, data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
- (2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller'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 Seller's RTU and Seller's EMS interface and the ability to record SCADA Systems 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 may 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 (the "**Generating Facility Testing Condition**"); *provided*, Seller may waive such Generating Facility Testing Condition 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 Generating Facility Testing Condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

## PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

- A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom (including pursuant to Part I.B.4). The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT shall still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such CT, if applicable, will be made in accordance with this Exhibit O (including pursuant to Part I.B.4).
  - (1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
  - (2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time, as may be adjusted per Part I.B.4 above, if applicable.
- B. Parameters. During each CT, the following parameters shall be measured and recorded

simultaneously for the Storage Facility, at two (2) second intervals:

- (1) Time;
- (2) Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
- (3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
- (4) SOC (MWh).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
- (3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

- (1) That the CT successfully started;
- (2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above, including, if applicable, as adjusted pursuant to Part I.B(4) above;
- (3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above, including, if applicable, as adjusted pursuant to Part I.B(4) above;
- (4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);
- (5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);
- (6) Amount of Charging Energy and Energy In, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC; and
- (7) Amount of Discharging Energy and Energy Out, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

- (1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.
  - (2) Abnormal Conditions. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT (including ambient air temperature above 40° Celsius or below 0° Celsius), 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 with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.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 Part II.I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event, or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.
- G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:
- (1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;
  - (2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
  - (3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects 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 modifications and additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design, equipment and vendor selection for 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 modifications and 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 Part II.D(7) above) divided by the total amount of Energy In (as reported under Part 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 liquidated damages (if any) under Section (f) of 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 shall be in the on-line state at 0% SOC.
- (2) Record the initial value of the Storage Facility SOC.
- (3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level, and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Storage Facility commenced charging.

- (4) Record and log the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.
- (5) Record and log the total AC energy (in MWh) charged to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses) ("**Energy In**").
- (6) Following an agreed-upon rest period (taking into account operating conditions of the Facility and the Interconnection Capacity Limit), command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.
- (7) Record 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 Part III.A(6)(a), the SOC will be deemed 0% for purposes of calculating the Battery Discharging Factor.
- (8) Record the total AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.
- (9) If the Storage Facility has not reached 0% SOC pursuant to Part III.A(6), continue discharging the Storage Facility until it reaches a 0% SOC.
- (10) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter for determining the Effective Storage Capacity and/or Efficiency Rate. "**Energy Out**" means the 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 Part III.A(6) until the Storage Facility has reached a 0% SOC pursuant to either Part III.A(6) or Part III.A(9), as applicable.

- Test Results

- (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter (without adjusting for Electrical Losses).

- (2) The resulting Effective Storage Capacity measurement is calculated as the total Energy discharged pursuant to Part III.A(8) at the Storage Facility Meter divided by four (4) hours.

**B. AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's 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 shall be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS shall 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 for ten (10) minutes.
  - (3) Record the Storage Facility active power response (in seconds).
- System end state: The Storage Facility shall 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 shall be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system shall 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 for ten (10) minutes.
  - (3) Record the Storage Facility active power response (in seconds).
- System end state: The Storage Facility shall 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.

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

“**Unavailable Calculation Intervals**” means the sum of year-to-date Unavailable Calculation Intervals (as defined in the above formula) for the applicable Contract Year, where for each Calculation Interval:

“**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 (measured at the Storage Facility Meter), expected from all available system inverters in such Calculation Interval (based on actual operating conditions), but “A” shall never exceed the then Effective Storage Capacity.

“**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 at the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at 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 cells in such Calculation Interval multiplied by (2) the capability, in MWh, expected from each such system cell (based on actual operating conditions).

**“Total YTD Calculation Intervals”** means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

(b) The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, or (ii)(A) for “available Effective Storage Capacity,” such amount equal to the Effective Storage Capacity minus the amount of unavailable capacity (in MWs) identified by Seller in an applicable Unavailability Notice for such Calculation Interval, and (B) for “Storage Capability,” such amount equal to (1) the Effective Storage Capacity multiplied by four (4) hours minus (2) the unavailable MWhs of battery charging and discharging capability identified by Seller in an applicable Unavailability Notice for such Calculation Interval. Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) Seller shall design the Storage Facility so that the final stamped design drawings used for construction of 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 28 MW charging and 28 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 shall 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) shall, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) shall 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.

#### STORAGE FACILITY OPERATING RESTRICTIONS

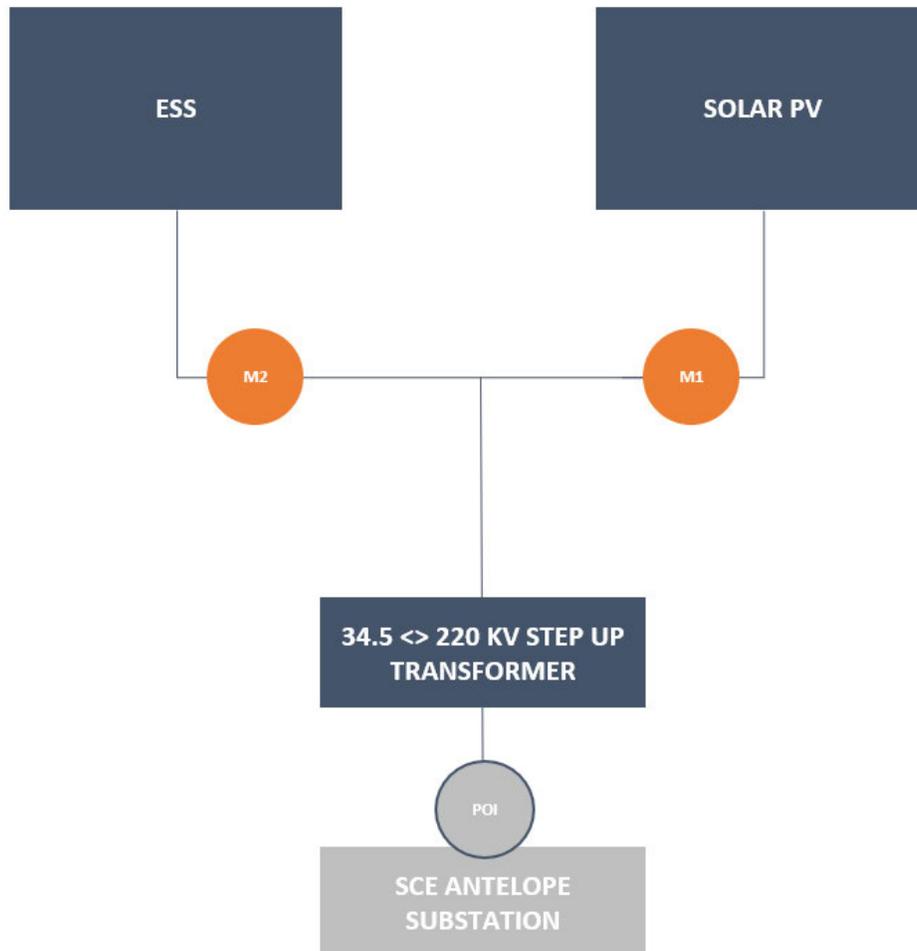
<b>File Update Date:</b>	[XX/XX/20XX]	
<b>Technology:</b>	Lithium Ion Battery Energy Storage	
<b>Storage Unit Name:</b>	[Unit Name and Number]	
<b>A. Contract Capacity</b>		
<b>Guaranteed Storage Capacity (MW):</b>	28	
<b>Effective Storage Capacity (MW):</b>	28	
<b>B. Total Unit Dispatchable Range Information</b>		
<b>Interconnect Voltage (kV)</b>	220	
<b>Maximum Storage Level (MWh):</b>	112	
<b>Minimum Storage Level (MWh):</b>	0	
<b>Stored energy capability (MWh):</b>	112	
<b>Maximum Discharge (MW):</b>	28	
<b>Maximum Charge (MW):</b>	28	
<b>Guaranteed Efficiency Rate:</b>	See Cover Sheet	
<b>Maximum energy throughput (BET) (MWh/year):</b>		
<b>C. Charge and Discharge Rates</b>		
<b>Mode</b>	<b>Maximum (MW)</b>	<b>Ramp Rate (MW/m) Description<sup>1</sup></b>
<b>Energy (Charge)</b>	28	
<b>Energy (Discharge)</b>	28	
<b>D. Ancillary Services</b>		
<b>Frequency regulation is included:</b>	Yes	
<b>Spin is included:</b>	Yes	
<b>E. Additional Restrictions</b>		
1. The Storage Facility shall be charged exclusively with PV Energy before the Grid Charging		

<sup>1</sup> Stated Ramp Rate assumes ramp from 0 MW to full power. The Parties acknowledge that the Ramp Rate as stated (in MW/min, with the minutes measured as the time between when the signal is received to when the energy is recorded at the Storage Facility Meter) is provided only for the ramping of the system at Maximum Charge or Maximum Discharge. Ramping to a lower output than the Maximum Charge or Maximum Discharge (in absolute value) will require an identical amount of time, and therefore the Ramp Rate as expressed in MW/min will be lower.

Effective Date.
2. [REDACTED] Cycles per Contract Year maximum. Two (2) Cycles per day maximum.
3. Seller shall not be required to operate the Facility in a manner that would cause Facility Energy to exceed the Interconnection Capacity Limit.
4. Average resting SOC of the Storage Facility in each Contract Year must be less than [REDACTED] %.
5 [REDACTED]
6. Minimum ambient operating temperature without de-rate: -20 Degrees C. Below – 20 C, the Facility may shut down in Seller’s discretion; <i>provided</i> , any such derate or Facility shut down shall not be considered in calculating any Annual Storage Capacity Availability under <u>Exhibit P</u> .

**EXHIBIT R**  
**METERING DIAGRAM**

**[Preliminary]**



**M1 = Generating Facility Meter**

**M2 = Storage Facility Meter**

**POI = Delivery Point**

## EXHIBIT S

### FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [\_\_\_\_\_] by and among [PPA Seller], a [\_\_\_\_\_] (“**PPA Seller**”), Clean Power Alliance of Southern California, a California joint powers authority (“**PPA Buyer**”), and [Financing Party] (“**Financing Party**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and Financing Party (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

#### 1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”)[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 shall 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 shall 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 shall 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 shall 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 shall 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: .....  
.....  
Name:  
Title:

By:  
  
Name:  
Title:

FINANCING PARTY

By: .....  
Name:  
Title:

Execution and delivery of the foregoing Assignment Agreement is hereby approved.

[ISSUER]

By: .....  
Name:  
Title:

## Appendix 1

### Assigned Rights and Obligations

**PPA:** The Power Purchase Agreement dated [\_\_\_\_\_] by and between PPA Buyer and PPA Seller.

**“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 PPA<sup>2</sup>

**Assigned Product:** [Describe and define]

**Further Information:** [Include, if any]<sup>3</sup>

**Projected P99 Generation:** The “Projected P99 Generation” is attached hereto on a monthly basis.

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<sup>2</sup> 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.

<sup>3</sup> To include transfer and settlement mechanics for RECs, as applicable.



## Management Report

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**To:** Clean Power Alliance (CPA) Board of Directors  
**From:** Ted Bardacke, Chief Executive Officer  
**Subject:** Management Report  
**Date:** July 7, 2022

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### **Financial Security Requirement Update**

On June 29, California Public Utilities Commission (CPUC) staff dismissed the calculation from Southern California Edison (SCE) that would have raised CPA's Financial Security Requirement (FSR) to \$87 million from the current \$147,000. CPUC staff reasoned that an increase of this magnitude would have to come from a formal proceeding, not from existing administrative regulations. Potential changes to the FSR calculation methodology has been directed to the existing Provider of Last Resort proceeding, which has been CPA's policy focus and was recommended in the letter the Board sent to CPUC commissioners earlier this month.

This dismissal will effectively lower CPA's General & Administrative costs in FY 2022/23 by approximately \$2 million below the budget approved by the Board in June, as an increase to our credit line or the payment for a Surety Bond is no longer necessary. Rigorous analysis by CPA staff, coordination of protests and outreach to the CPUC by our trade organization CalCCA, and the Board letter all played a role in this positive outcome.

### **FY 2022/23 State Budget Highlights**

A very substantive budget bill on energy (AB 205) passed the legislature and was signed by the governor in the last days of June less than one week after being unveiled. Summaries of the bill and the governor's signing statement are available [here](#) and [here](#).

Among other things, the bill:

- Establishes a statewide “Strategic Reliability Reserve Program” managed by the Department of Water Resources (DWR) that can own, operate, invest in and/or contract for new and existing (including fossil-based) electricity reliability resources and that could be activated in times of grid emergencies.
- Expands the permitting authority of the California Energy Commission (CEC) and DWR for energy generation and transmission projects.
- Establishes new demand response, distributed energy and long-duration storage programs at the CEC.
- Makes changes to how CARE rates and fixed charges are calculated.
- Authorizes a second round of California Arrearage Payment Program (CAPP2) spending, providing \$1.4 billion to assist utility customers with past due balances accumulated during the second half of 2021. CPA expects to credit customer accounts by between \$15 - \$20 million as a result of CAPP2, similar to the \$15.8 million from the first round of CAPP funding that was credited to customers earlier this year.

The Strategic Reliability Reserve Program and the expanded permitting authority have generated significant controversy and may be subject to further clean up legislation later in the session. CPA staff, our contract lobbyists, and CalCCA are currently analyzing the bill in greater depth and discussing areas we would like to see clarified or refined.

### **Customer and Community Engagement Highlights**

A full quarterly marketing and community engagement report is provided in Agenda Item

7. Highlights from that report include:

- Preparations are being made to launch applications for the annual community reinvestment grant that CPA advises on and is funded and administered by its billing manager, Calpine Energy Solutions. This year the total amount available to award has more than doubled to approximately \$200,000. CPA will be asking Board members and member jurisdictions for assistance in promoting the grant opportunity when applications open in August. Previous grantees include Active San Gabriel Valley, Clean Coalition, Climate Action Santa Monica, Columbia Memorial Space Center, El Concilio Family Services, International Indigenous

Youth Council, Special Service for Groups (SSG), and US Green Building Council – Los Angeles Chapter.

- CPA is debuting a new navigation architecture for its website, with the addition of permanent navigation for Board agendas/minutes, consolidated information on customer programs, a timeline/history of CPA, and the addition of a search function.
- Enrollments in the Power Share program, which provides a 20% bill discount and 100% renewable energy from local solar projects to low-income customers, has surpassed 3,000 customers and is on track to reach full program capacity this fiscal year. CPA anticipates signing up additional Power Share customers through its Community Solar program, for which bids from project developers were received last month.

### **Customer Programs Staffing Update**

Jack Clark, CPA's Senior Director of Customer Programs, has announced his departure from the organization to pursue a new opportunity in the private sector. Over the course of nearly two years at CPA, Jack built a customer programs team of five people and made significant progress in implementing each of the programs outlined in CPA's five-year customer programs strategic plan. CPA management thanks Jack for his service and wishes him well in his new position.

### **Monthly Financial Performance**

CPA recorded operating income of \$792,000 in April 2022, with higher energy costs than expected due to a high heat event that month. For the year to date, CPA recorded operating income of \$32.2 million, \$38 million more than the budgeted, year-to-date operating loss of \$5.8 million. The most recent monthly financial dashboard is provided in Attachment 1.

On June 28, 2022 CPA repaid the remaining \$20 million, plus \$172,000 in interest, of the \$30 million loan it took from Los Angeles County in August of 2021. The loan was taken out while CPA awaited the distribution of state money that allowed the organization to credit customers for unpaid balances accrued during the worst part of the Covid pandemic

and as additional insurance against potential summer 2021 market disruption arising from extreme heat events. The state funds were distributed in January 2022 and CPA repaid the first \$10 million of the loan in February 2022.

### **Customer Participation Rate and Opt Actions**

As of June 27, 2022, CPA's overall participation rate was 95.9%, unchanged from the previous two months. CPA had a total of 1,000,153 active customers, up 391 customers from the previous month. Opt-out levels – 302 accounts in June – are consistent with steady state levels in the spring, when opt-out activity is typically the lowest of the year. New accounts ("move-ins") were lower than closed accounts ("move-outs") by 467 customers in June. Attachment 2 provides participation rates and active accounts by jurisdiction.

### **Customer Service Center Performance**

Incoming calls to CPA's Customer Service Center were seasonally normal at 1,803 calls through June 28, reflecting stable bills and moderate weather. In June, 99% of calls were answered within 45 seconds and average wait time was 4 seconds, one second lower than May.

### **Contracts Executed Under the Chief Executive Officer's Authority**

A list of non-energy contracts executed under the CEO's signing authority is provided in Attachment 3. The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.

## **ATTACHMENTS**

1. Monthly Financial Dashboard
2. Overall Participation Rates by Jurisdiction
3. Non-Energy Contracts Executed under CEO's Authority

### Financial Dashboard

**YTD April 2022**

**Active Accounts 998,954**

**Participation Rate 95.83%**

**YTD Sales Volume 9,520 GWh**

**April Sales Volume 836 GWh**

Category	Percentage
Res	46%
Com-Sm	44%
Com-Lg	10%

#### Summary of Financial Results

in \$000,000's	April				Year-to-Date			
	Actual	Budget	Var	%	Actual	Budget	Var	%
Energy Revenues	53.9	60.5	-6.5	-11%	710.8	747.0	-36.1	-5%
Cost of Energy	50.8	42.5	8.3	20%	655.6	725.6	-70.0	-10%
Net Energy Revenue	3.2	18.0	-14.9	-82%	55.2	21.3	33.8	159%
Operating Expenses	2.4	2.6	-0.2	-9%	23.0	27.1	-4.2	-15%
Net Operating Income	0.8	15.4	-14.6	-95%	32.2	-5.8	38.0	

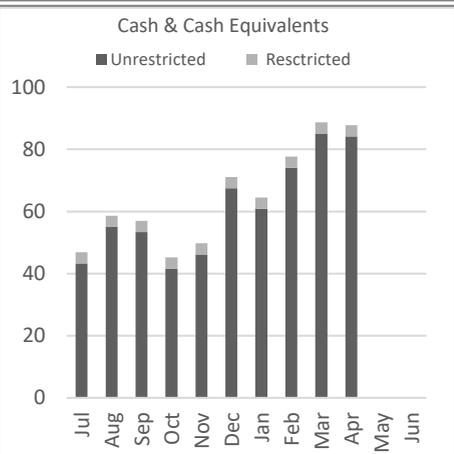
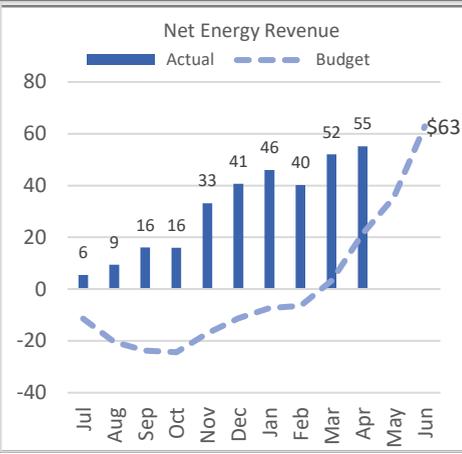
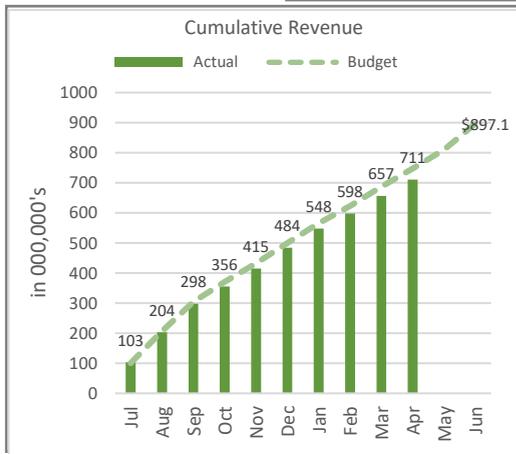
*Note: Numbers may not sum up due to rounding.*

CPA recorded operating income of \$792,000 in April 2022 which was \$14.6 million less than the budgeted operating income of \$15.4 million. For the year to date, CPA recorded operating income of \$32.2 million, \$38 million more than the budgeted, year-to-date operating loss of \$5.8 million.

Revenue was \$6.5 million or 11% lower than budgeted in April primarily due to the reversal of prior month charges by SCE. CPA is working with SCE to determine the cause of the reversal of prior month charges. The cost of energy was \$50.8 million or 20% higher than budgeted primarily as a result of higher energy market prices arising from events in the Ukraine, drought conditions in the west which have reduced hydroelectric production and by a heat event in April 2022 which caused CPA to serve higher energy consumption by CPA customers at elevated spot market prices. For the year to date, operating costs were lower than budgeted operating costs primarily because of lower staffing costs resulting from delayed hiring and staff turnover, the performance of services later in the year than budgeted, and the non-utilization of contingencies.

As of April 30, 2022, CPA had \$84.2 million in unrestricted cash and cash equivalents, and \$79.853 million available on its bank line of credit. CPA has a \$20 million loan outstanding due for repayment in June 2022.

CPA is in sound financial health and compliance with its bank and other credit covenants



**Definitions:**

- Accounts: Active Accounts represent customer accounts of active customers served by CPA per Calpine Invoice.
- Participation Rate %: Participation Rate represent active accounts 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 expenses: Operating expenditures include general, administrative, consulting, payroll and other costs required to fund operations
- Net operating income, also known as earnings before interest, depreciation and amortization (EBIDA), represents the difference between revenues and expenditures before depreciation expense, interest income and expense, and capital expenditures
- Cash and Cash Equivalents: Includes cash held as bank deposits.
- Year to date (YTD): Represents the fiscal period beginning July 1, 2021

## Participation by City and County

Jurisdiction	Default Option	Active Accounts	Participation Rate	Lean %	Clean %	100% Green %
Agoura Hills	100% Green	8,129	94.01%	1.72%	0.37%	97.91%
Alhambra	Clean	33,900	98.14%	1.47%	98.10%	0.43%
Arcadia	Lean	22,428	98.08%	99.78%	0.10%	0.12%
Beverly Hills	Clean	18,632	98.60%	1.63%	98.20%	0.17%
Calabasas	100% Green	9,704	97.78%	1.33%	0.30%	98.37%
Camarillo	Lean	28,348	95.93%	99.14%	0.26%	0.60%
Carson	Clean	29,198	97.71%	1.30%	97.63%	1.07%
Claremont	Clean	12,596	95.16%	2.29%	96.98%	0.72%
Culver City	100% Green	19,170	98.15%	4.02%	1.11%	94.87%
Downey	Clean	36,670	97.71%	1.49%	98.04%	0.47%
Hawaiian Gardens	Clean	3,626	96.90%	1.21%	98.01%	0.77%
Hawthorne	Lean	28,434	99.52%	98.76%	0.24%	1.01%
Los Angeles County	Clean	297,169	95.91%	1.75%	97.54%	0.71%
Malibu	100% Green	6,912	97.54%	2.88%	0.54%	96.59%
Manhattan Beach	100% Green	15,383	98.55%	2.57%	0.18%	97.25%
Moorpark	Clean	11,422	90.36%	3.02%	96.41%	0.57%
Ojai	100% Green	3,496	93.30%	5.95%	1.32%	92.73%
Oxnard	100% Green	55,555	96.01%	4.01%	0.46%	95.53%
Paramount	Lean	15,583	98.81%	98.21%	0.57%	1.22%
Redondo Beach	Clean	33,234	99.41%	1.90%	97.70%	0.40%
Rolling Hills Estates	100% Green	3,454	94.66%	7.09%	14.94%	77.97%
Santa Monica	100% Green	53,910	99.30%	3.50%	0.70%	95.80%
Sierra Madre	100% Green	4,971	94.72%	5.31%	1.57%	93.12%
Simi Valley	Lean	43,253	93.51%	99.67%	0.12%	0.21%
South Pasadena	100% Green	11,631	98.30%	3.67%	10.94%	85.38%
Temple City	Lean	12,541	97.57%	99.81%	0.06%	0.14%
Thousand Oaks	100% Green	44,101	89.82%	8.14%	1.66%	90.20%
Ventura	100% Green	43,586	94.71%	4.87%	1.29%	93.84%
Ventura County	100% Green	32,233	86.49%	6.51%	1.23%	92.27%
West Hollywood	100% Green	26,363	97.88%	2.37%	0.37%	97.26%
Westlake Village	Lean	3,722	88.79%	99.60%	0.05%	0.35%
Whittier	Clean	30,799	95.78%	1.85%	97.73%	0.42%
<b>Total</b>		<b>1,000,153</b>	<b>95.91%</b>			

## Overall Participation by Default Option

Default Option	Participation Rate	Default Option	Active Accounts	% of Active
100% Green	95.42%	100% Green	338,598	33.85%
Clean	96.57%	Clean	507,246	50.72%
Lean	96.03%	Lean	154,309	15.43%
<b>Total</b>	<b>95.91%</b>	<b>Total</b>	<b>1,000,153</b>	<b>100.00%</b>

<b>Clean Power Alliance</b>					
<b>Non-energy contracts executed under Chief Executive Officer authority</b>					
<b>Rolling 12 months -- Open contracts shown in Bold</b>					
Vendor	Purpose	Month	NTE Amount	Status	Notes
Baker Tilly	Financial audit services	June 2022	\$50,000	Active	
IHS Market	Subscription for CAISO forecasts	June 2022	\$15,000	Active	
MBI	Marketing contract renewal	June 2022	\$7,687	Active	3% increase to Board approved NTE upon renewal
Fraser	Marketing contract renewal	June 2022	\$55,647	Active	9% increase to Board approved NTE upon renewal
John Kotch	IT Consulting	June 2022	\$3,000	Active	
AiQueous	Salesforce implementation	June 2022	\$10,000	Active	
Place and Page	Graphic design and branding	June 2022	\$50,000	Active	
Informal Development	Website development	May 2022	\$50,000	Active	
Lattice	Performance management software	April 2022	\$9,000	Active	
Active San Gabriel Valley	Grant for community-based outreach	April 2022	\$8,000	Active	
MERITO	Grant for community-based outreach	April 2022	\$8,000	Active	
LinkedIn	Subscription for recruiting tools	March 2022	\$34,306	Active	
MCM	Municipal advisory services	March 2022	\$125,000	Active	
Pinnacle	AV maintenance/service plan	March 2022	\$25,273	Active	
Gridwell	Resource adequacy training	February 2022	\$2,000	Active	
Abbot, Stringham and Lynch	IT compliance reporting for CPUC	February 2022	\$8,500	Active	
California Science Center	Event space rental for Staff Retreat	February 2022	\$6,440	Active	
Orange Grove Consulting	DEI implementation planning services	February 2022	\$105,750	Active	
Zoe Misquez	Filing lobbying compliance forms	January 2022	\$500	Active	
Critical Mention, Inc.	Media monitoring service	January 2022	\$6,000	Active	
Clear Language Company	Minute transcription for board meetings	January 2022	\$0		Original Contract Date: November 2021 NTE \$20,000 Amendment 1 - \$0, to clarify fee structure
PR Web/Cision	Media/PR wire distribution services	January 2022	\$3,060	Active	
Ironclad	Contract lifecycle management platform	January 2022	\$22,000	Active	
Langan	GIS services/web browser tool	December 2021	\$8,000	Active	Original Contract Date: October 2020 NTE \$120,000 Amendment 1 - NTE increased to \$128,000 First Renewal Term extends through 10/20/2022
Maria Shafer	Minute transcription for board meetings	November 2021	\$20,000	Active	
Clear Language Company	Minute transcription for board meetings	November 2021	\$20,000	Active	
Omni Government Relations & Pinnacle Advocacy, LLC	Lobbying Services	November 2021	\$125,000	Active	Original Contract Date: December 2019 NTE \$108,000 Amendment #1 - first renewal term authorized November 2020, NTE \$108,000 Amendment #2 - second (final) renewal authorized, extends through December 5, 2022, new NTE \$125,000
MK Partners	Integration services for Salesforce SW	October 2021	\$7,995	Closed	Contract termination

## Clean Power Alliance

**Non-energy contracts executed under Chief Executive Officer authority  
Rolling 12 months -- Open contracts shown in Bold**

Vendor	Purpose	Month	NTE Amount	Status	Notes
Sigma Computing, Inc.	Business intelligence & analytics software tool	October 2021	\$10,000	Active	
MRW & Associates	Extension of ratemaking services contract	October 2021	\$35,000	Active	Original Contract Date: December 2020 NTE \$90,000 Amendment #1 - NTE increased to \$125,000 Extends through 12/2/2022 (renewals authorized)
Ross Associates	Consulting services for leadership training	October 2021	\$50,000	Active	
Salesforce	Stakeholder Relationship Management application subscription	September 2021	\$15,300	Active	
Clean Energy Counsel LLP	Extension of legal services agreement	September 2021	\$30,000	Active	Original Contract Date: November 2020 NTE \$355,000 Amendment #1 - NTE increased to \$385,000 in July 2021 Extends through 11/6/2021 (renewals authorized)
Elite Edge Consulting	Extension of consulting agreement for accounting services	September 2021	\$120,000	Active	Original Contract Date: September 2020 NTE \$112,000 Amendment #1 - NTE for renewals increased to \$120,000 in September 2020 Amendment #2 - First renewal authorized July 2021 - Extends through 6/30/2022
CV Resources	Recruiting Services	September 2021	N/A	Active	20% of starting salary upon hiring an exclusively referred candidate
Oscar Associates LLC	Recruiting Services	September 2021	N/A	Active	30% of starting salary upon hiring an exclusively referred candidate
Abbot, Stringham and Lynch	2020 CEC Power Source Disclosure Audit	August 2021	\$16,700	Active	Includes two optional renewals for years 2021 and 2022

## Clean Power Alliance

**Non-energy contracts executed under Chief Executive Officer authority  
Rolling 12 months -- Open contracts shown in Bold**

Vendor	Purpose	Month	NTE Amount	Status	Notes
Bradsby Group	Recruiting Services	August 2021	N/A	Active	25% of starting salary upon hiring an exclusively referred candidate
Pickit	Digital Asset Management	August 2021	\$2,400	Active	Annual Subscription
Chapman & Cutler, LLP	2021 Legal Services (CPA's Credit Agreement)	August 2021	\$35,000	Active	Original Contract Date: 3/1/21 NTE \$20,000 Amendment #1 - NTE increased to \$55,000 Extends through 4/30/22, auto-renew
Knowledge City	Employee Training	July 2021	\$7,251	Active	Licenses for employee training Extends through 6/30/2022
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	\$4,800	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	
OpenPath	New Office Keycard Access Control System	January 2021	\$1,500	Active	
Prime Government Solutions, Inc.	Board and committee meeting agenda management software	December 2020	\$16,000	Active	
ProComply, Inc.	Energy regulation compliance training	October 2020	\$5,000	Active	
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	
Burke, Williams, Sorenson, LLP	Legal Services Agreement (Brown Act, public entity governance issues and other legal services)	July 2020	\$ 100,000	Active	
Hall Energy Law PC	Energy Procurement Counsel	July 2020	\$ 125,000	Active	

**Clean Power Alliance**

**Non-energy contracts executed under Chief Executive Officer authority  
Rolling 12 months -- Open contracts shown in Bold**

<b>Vendor</b>	<b>Purpose</b>	<b>Month</b>	<b>NTE Amount</b>	<b>Status</b>	<b>Notes</b>
Adobe Inc.	AdobeSign Secure Electronic Signature Service	June 2020	\$ 3,200	Active	
Davis Wright Tremaine, LLP	Legal Services Agreement (Regulatory Assistance)	April 2020	\$ 90,000	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
Snowflake Inc.	Cloud-Native Elastic Data Warehouse Service	April 2020	\$ 36,000	Active	
Inventure Recruitment	Ongoing Recruitment Services	October 2019	\$ 120,000	Active	Renewed for 2021 at same amount



## Commonly Used Acronyms

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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

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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